

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2312451
Decision Date:	01/12/2024	Hearing Date:	01/02/2024
Hearing Officer:	Kimberly Scanlon		

Appearances for Appellant:

Via telephone

Pro se

Appearances for Nursing Facility:

Via telephone

██████████ Administrator; ██████████,
Director of Social Services; ██████████,
Liaison; ██████████ Regional Business Office
Manager



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge
Decision Date:	01/12/2024	Hearing Date:	01/02/2024
Nursing Facility's Reps.:	[REDACTED] Administrator; [REDACTED] Director of Social Services; [REDACTED], Liaison; [REDACTED], Regional Business Office Manager		
Hearing Location:	Taunton MassHealth Enrollment Center Room 2 (Remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated [REDACTED] 2023, the nursing facility informed the appellant of its intent to discharge her with less than 30 Days' notice (Expedited Appeal), to [REDACTED] located in [REDACTED] (hereinafter "homeless shelter") on [REDACTED] 2023 because she has failed, after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility." (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1).¹ The appellant filed this appeal in a timely manner on December 1, 2023. (130 CMR 610.015(F); Exhibit 2).² Notice of discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130

¹ While the Notice of Intent reads as an Expedited Appeal with Less than 30 days' notice, the Appellant did receive 30 days. (See, Exhibit 1). It should be noted that failure to pay is **not** grounds for an expedited appeal.

² 130 CMR 610.015(F) Expedited Appeals for Discharges and Transfers from a Nursing Facility Under 130 CMR

CMR 610.032(C)).

Action Taken by MassHealth

The nursing facility issued a notice of intent to discharge to the appellant.

Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the Appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility was represented telephonically by its Administrator, Director of Social Services, Liaison, and Regional Business Office Manager (hereinafter “BOM”). The Administrator testified that the appellant has been a resident of the nursing facility since 2021. She was admitted for a superficial femoral artery occlusion and at this time, does not require assistance with activities of daily living. She is wheelchair dependent, though not incontinent. Currently, the appellant owes a substantial amount of money to the nursing facility, totaling approximately \$105,000.00. (Exhibit 4, p. 20).³ He explained that he has made several attempts to resolve this payment issue by helping the appellant to obtain MassHealth coverage; however, the appellant has failed to provide the business office with any of the necessary paperwork. The appellant disputed that she failed to provide paperwork.

The BOM testified that the appellant has a Medicaid application that has been pending since March of last year. She explained that, as of since that date, she has made attempts to obtain the verifications necessary for MassHealth to approve the appellant’s application. She stated that the

610.029(B) or (C). A resident may request an expedited appeal when a nursing facility notifies a resident of a discharge or transfer under the time frames of 130 CMR 610.029(B) or (C). When such a request is made, BOH will schedule a hearing as soon as possible, but no later than seven days from the date BOH receives the request. The hearing officer must render a final decision as soon as possible, but no later than seven days from the date of the hearing. These time limits may be extended pursuant to 130 CMR 610.015(D). Appeal requests made under 130 CMR 610.015(F) automatically waive the requirement for ten-day advance notice of the scheduled hearing date under 130 CMR 610.046(A).

³ The facility has received partial Patient Paid Amounts (hereinafter “PPA”) from the appellant for January through May of last year, which ceased thereafter. These are the only funds the nursing facility has received from, or on behalf of, the appellant to date.

appellant has not cooperated with the process. The appellant responded and testified that she is trying her best to cooperate with the facility in obtaining the documentation requested by MassHealth. She explained that she told the facility about her family situation with respect to obtaining the requested documentation. She testified that she has given the facility all the documentation that she could and thought the matter was resolved. The appellant expressed her confusion with the application process; she has had multiple hearings with MassHealth and was under the impression that the current appeal was resolved.

Regarding discharge planning, the Director of Social Services testified that several attempts were made to find the appellant housing, to no avail. She stated that she met with the appellant approximately two months ago. At that time, the appellant expressed an interest in obtaining an apartment or residing at an assisted living facility. However, the appellant's finances indicate that she is over the allowable income limit to qualify for subsidized housing. The Liaison contacted an assisted living facility and an apartment building located in the community that the appellant formerly resided in. She testified that the landlord of the apartment building told her that the appellant, her daughter, and granddaughter were previously evicted for various reasons. As such, the landlord refused to give the appellant a housing reference. The Liaison explained that she then contacted the assisted living facility because a housing reference is not required there. Accordingly, the assisted living facility was willing to accept the appellant. She explained that the appellant stated that she was no longer interested in residing at the assisted living facility. Considering these developments, the nursing facility listed a homeless shelter on the discharge notice. The appellant expressed her concerns surrounding the homeless shelter and its location.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is a resident at the nursing facility.
2. The appellant currently owes the nursing facility over \$100,000.
3. The appellant's MassHealth application was recently denied.
4. The appellant appealed MassHealth's denial, and a fair hearing was held on the same day as this one, with this hearing officer; the record has been held open in that appeal and thus the appeal is still pending.
5. The appellant does not receive any skilled care services at the facility and is independent with her activities of daily living.
6. The nursing facility engaged in extensive discharge planning with the appellant.

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.⁴

Before a nursing facility discharges or transfers any resident, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative a notice written in 12-point or larger type that contains, in a language the member understands, the following:

- (1) the action to be taken by the nursing facility;
- (2) the specific reason or reasons for the discharge or transfer;
- (3) the effective date of the discharge or transfer;
- (4) the location to which the resident is to be discharged or transferred;
- (5) a statement informing the resident of his or her right to request a hearing before the Division's Board of Hearings including:
 - a) the address to send a request for a hearing;
 - b) the time frame for requesting a hearing as provided for under 130 CMR 456.702; and
 - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for nursing-facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. s. 6041 et seq.);
- (8) for nursing-facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. s. 10801 et seq.);

⁴ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal-services office; and
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal.

(130 CMR 456.701(C)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that a resident may be transferred or discharged from a nursing facility only when:

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;
- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility;
- (3) the safety of individuals in the nursing facility is endangered;
- (4) the health of individuals in the nursing facility would otherwise be endangered;
- (5) **the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have the Division or Medicare pay for) a stay at the nursing facility; or**
- (6) the nursing facility ceases to operate.

(See, 130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B)).

The nursing facility must also comply with all other applicable state laws, including M.G.L. c.111, §70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads:

A resident, who requests a hearing pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility licensed under section 71 of this chapter, unless a referee determines that the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place.⁵

In the present case, the issue on appeal is whether the appellant has failed, **after reasonable and appropriate notice**, to pay, or failed to have Medicaid or Medicare pay, for her stay at the nursing facility. (emphasis added). Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid denies the claim and the resident refuses to pay for his or her stay. (See, 42 CFR 483.15(c)(E)).

Here, the record is clear that the appellant has not exhausted her administrative remedies as it relates to her MassHealth eligibility. Immediately before this hearing, the appellant participated in a Board of Hearings fair hearing, the subject of which was a dispute over MassHealth's denial of her application. Following the hearing, the record was held open, and a fair hearing decision has not yet been issued. Because the appellant has not yet exhausted her administrative remedies, I find that the nursing facility may not discharge the appellant for nonpayment at this time. This appeal is approved.⁶

Order for Nursing Facility

Rescind the notice of discharge dated [REDACTED] 2023.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

⁵ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

⁶ This approval does not preclude the nursing facility from issuing a subsequent notice of intent to discharge, if the appellant's Medicaid application is subsequently denied, there are not any pending appeals with MassHealth, and the appellant still refuses to make payment thereafter.

Implementation of this Decision

If the nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc: Administrator, Saugus Rehabilitation and Nursing, 266 Lincoln Avenue, Saugus, MA 01906