

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2312850
Decision Date:	01/09/2024	Hearing Date:	01/03/2024
Hearing Officer:	Radha Tilva		

Appearance for Appellant:

Pro se

Appearance for Nursing Facility:

Director of Social Services

Administrator

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 home discharge - nonpayment
Decision Date:	01/09/2024	Hearing Date:	01/03/2024
Nursing Facility's Rep.:	[REDACTED]	Appellant's Rep.:	Pro se
Hearing Location:	Telephonic	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], Parsons Hill (hereinafter "the nursing facility") issued a 30 Day Notice of Intent to Discharge Resident to a [REDACTED] for failure to pay for his stay at the nursing facility (Exhibit 1). The appellant filed this appeal in a timely manner on December 11, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The facility informed the appellant of its intention to discharge her for nonpayment.

Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The facility was represented by the Administrator, Director of Social Services, and the Business Office Manager who all appeared by telephone. The appellant appeared via telephone. The appellant entered the facility on [REDACTED] for wound vac and IV antibiotics (Exhibit 4, p. 1). He was initially brought into the facility as short-term. On or around July 17, 2023, a conversion for long-term care benefits was submitted to MassHealth seeking backdated coverage. An official letter for approval was not received from MassHealth until October 2023 with the backdated patient-paid amount. The nursing facility testified that they told appellant that he could pay the retroactive PPA in increments to the nursing facility. The facility stated, however, that appellant told them he was unwilling to pay his patient-paid amount. At hearing the appellant also reiterated that he was unwilling to pay his patient-paid amount and stated that he had to help his daughter financially. On or around [REDACTED], 2023 the nursing facility issued a notice of intent to discharge appellant to [REDACTED] (Exhibit 1). An invoice from the facility, dated December 1, 2023, totaling \$6,431.40, was included with the notice (Exhibit 1, p. 4). At hearing the nursing facility testified that the average nightly rate at the hotel was around \$100.00 a night and that the hotel serves a continental breakfast. The nursing facility testified that appellant receives about \$1,118.00 a month in income.

The facility further testified that the physician at the nursing facility cleared appellant to go out into the community independently on July 27, 2023 (Exhibit 4, p. 19). The note is from the order summary report at the facility and states “plan for discharge...active...07/27/2023” (Exhibit 4, p. 19). No physician signature or name is associated with the July 27, 2023 entry (*Id.*). At hearing the facility further stated the mental health team met with appellant on November 6, 2023 and December 4, 2023 and did not question his mental health (Exhibit 4, pp. 24-26). The facility further testified that appellant is independent and had signed out over 70 times to go into the community from September 2023 to December 2023 (Exhibit 4, pp. 31-38). The appellant did not dispute that he goes out into the community and testified that he eats out as he does not like the food at the facility. The appellant further testified that though he is on kidney dialysis he can take care of himself and is able to arrange his own transportation to and from the dialysis appointments. The appellant stated that he does everything for himself at the facility.

With respect to discharge planning the nursing facility testified that the social worker attempted to meet with appellant and discuss housing options. The nursing facility found housing at a sober home for \$550.00 a month, but the appellant refused to sober housing. The nursing facility further testified that the housing coordinator met with him on or around October 17, 2023 and he told them that he had “something.” Moreover, the facility testified that every Monday they have housing meetings, but appellant has not attended a single meeting. The facility has met with him to help fill out the MFP and Champ waiver and applications. At hearing the appellant testified that he does not want to live in sober living and just wants to go to an apartment. The appellant further testified that no one has helped him find a place from the facility and that he is working

diligently to find housing. The appellant stated that he needs 30 days and he will try to get out of the nursing facility.

Findings of Fact

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

1. Appellant entered the nursing facility on or around [REDACTED] on a short-term basis.
2. On or around July 17, 2023 a conversion for long-term care benefits was submitted to MassHealth seeking backdated coverage.
3. An official letter for approval was not received from MassHealth until October 2023 with the backdated patient-paid amount.
4. A notice of intent to discharge the appellant for nonpayment was issued on [REDACTED] 2023.
5. Appellant appealed the discharge notice to the Board of Hearings on December 11, 2023.
6. An invoice from the facility, dated December 1, 2023, totaling \$6,431.40 in back-dated patient-paid amount, was issued to the appellant. No other prior statements issued to appellant were provided.
7. The appellant refuses to pay the patient-paid amount.
8. The appellant is independent and agrees that he can live in the community but is having difficulty securing housing.
9. The appellant is not cooperating with the facility in housing placement.

Analysis and Conclusions of Law

The requirements for a nursing facility-initiated transfer or discharge are set forth at 130 CMR 456.429, 456.701 through 456.704, and 610.028 through 610.030. The regulation permits transfer or discharge only when one of the following circumstances is met: (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 MassHealth or Medicare pay for) a stay at the nursing facility; or (6) the nursing facility ceases to operate (Emphasis added).

In this case, the facility premised its notice of intent to discharge on the appellant's failure to pay for his stay. Under 130 CMR 610.028(B) (B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The resident's clinical record has been provided to the hearing officer and entered into evidence (Exhibit 4). There is no dispute that appellant can live independently in the community as corroborated by his testimony. Moreover, there is no dispute that appellant owes a patient-paid amount to the nursing facility; appellant is just unwilling to pay it. The nursing facility has offered to accept partial payment for the retroactive patient-paid amount due, but appellant is unwilling to cooperate. While appellant does not dispute the allegation of nonpayment, the facility has failed to provide reasonable and appropriate notice to have appellant pay for his stay. The statement/invoice submitted with the discharge notice is dated December 1, 2023 (Exhibit 1, p. 4). The notice of intent to discharge, however, predates the statement. The nursing facility has not provided any other prior statements reflecting the patient-paid amount to appellant. Thus, the nursing facility has failed, at this time, to provide reasonable and appropriate notice.

With respect to the discharge plan, I do not reach a determination as to whether or not it is appropriate at this time, but I do encourage the facility to look at the terms of G. L. c. 111, § 70E. Under that section, "[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."

Because I find that the nursing facility failed to provide reasonable and appropriate notice prior to seeking a discharge, the notice of intent to discharge must be rescinded. The nursing facility is able to issue another notice of intent to discharge at any point upon receipt of this decision.

This appeal is approved.

Order for the Nursing Facility

Rescind the notice dated November 20, 2023.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should

contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Radha Tilva
Hearing Officer
Board of Hearings

cc: [REDACTED]