

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2313139
Decision Date:	1/17/2024	Hearing Date:	01/03/2024
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se

Appearance for Nursing Facility:
Carol Soldevilla, Dir. Social Services
Edith Mahoney, Administrator



*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:	Denied	Issue:	NF - Discharge
Decision Date:	1/17/2024	Hearing Date:	01/03/2024
Nursing Facility's Rep.:	Carol Soldeville, Dir. of Social Services, Edith Mahoney, Administrator	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center - Telephonic		

Authority

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

Jurisdiction

The appellant received a 30-day Notice of Intent to Discharge dated 11/30/23. The notice stated that Plymouth Rehabilitation & Healthcare Center ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED] on [REDACTED] 23. The notice indicates the reason for the discharge is that the appellant "no longer needs the skilled services." (Exhibit 1). The appellant filed this timely appeal on 12/14/23. (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal. (130 CMR 610.029; 42 CFR Ch IV §483.200 et seq.).

Action Taken by MassHealth

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.029?

Summary of Evidence

The NF representative testified that the appellant was admitted to the nursing facility on [REDACTED] 23 from the hospital with acute pancreatitis. (Exhibit 4, pp. 2-3). The nursing facility representative testified that the appellant had a feeding tube when he was admitted. The nursing facility representative testified that the appellant is now stable and eats by mouth. The nursing facility representative testified that the appellant is independent with all his Activities of Daily Living (ADLs) and is medically cleared to be discharged. (Exhibit 4, pp. 4-15).¹ The nursing facility representative testified that the [REDACTED] has a bed for the appellant, and no other shelter in the area has a bed. The nursing facility representative testified that the appellant does not have any income right now, and cannot afford a rooming house. (Exhibit 4, pp. 15-17). The nursing facility representative testified that the appellant has a disability attorney, who is helping him fill out a disability application with the Social Security Administration.

The appellant testified that he was living in his truck in the mall parking lot and working odd jobs before he got sick. The appellant testified that his truck is not operational now, and is stored at his sister's property. The appellant testified that living with his sister was not a possibility. The appellant testified that he wanted to live in [REDACTED] and not in [REDACTED]. The appellant testified that he wants to stay in the nursing facility until after his appointment on [REDACTED] 24 to have an MRI. The appellant testified that he might need a catheter because there was fluid in his abdomen.

The nursing facility representative testified that the appellant is medically stable and is capable of going to his appointment by himself. The nursing facility testified that the appellant's MassHealth is active, and he should be able to get transportation.

Findings of Fact

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

1. On [REDACTED] 23 the appellant was admitted to the nursing facility from the hospital with acute pancreatitis.
2. The appellant had a feeding tube when he was admitted.
3. The appellant is now stable, and eats by mouth.

¹ Doctor's Progress Note: "Medically cleared for discharge." (Exhibit 4, p.4). PT Discharge Summary: "All goals met." (Exhibit 4, p.6).

4. The appellant is independent with all his ADLs, and is medically cleared to be discharged.
5. The [REDACTED] has a bed for the appellant.
6. The appellant does not have any income.
7. The appellant has a disability attorney, who is helping him fill out a disability application with the Social Security Administration.
8. The appellant has an appointment on [REDACTED] 24 for an MRI.

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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.402 apply:²

"Nursing facility" - an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth.

"Discharge" - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.

"Transfer" — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;*
- (2) a Medicaid-certified bed to a Medicare-certified bed;*

² The regulatory language in the MassHealth Nursing Facility Manual has identical (or near-identical) regulatory counterparts within the Commonwealth's Fair Hearing Rules under 130 CMR 610.000 et seq., as well as federal regulations found under 42 CFR 483.000 et seq. As to this part of the regulatory law, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless other regulatory references is noted and appropriate.

- (3) a Medicare-certified bed to a Medicaid-certified bed;*
- (4) one nursing facility to another nursing facility; or*
- (5) a nursing facility to a hospital, or any other institutional setting.*

A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

The appellant is challenging the nursing facility's attempt to discharge him to a homeless shelter in the community via its notice dated 11/30/23. (Exhibits 1 and 130 CMR 456.402).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for the transfer or discharge of a resident from a nursing facility, and the requirements of the relevant notice. If these requirements are not met, the facility must permit the resident to remain in the facility.

The relevant portions of the regulation at 130 CMR 456.701 read as follows:

456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility

- (A) 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.
- (B) 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).
- (C) 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 ...

(Emphasis added)

The facility issued a discharge notice because the appellant's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The 11/30/23 "30-Day Notice of Discharge/Transfer" found in Exhibit 1 asserts the circumstances identified at 130 CMR 456.701(C)(2) and complies with the notice requirements set forth in 130 CMR 456.701(C). Therefore, the appellant received adequate and actual notice of the planned discharge.

The first issue is whether the appellant's discharge is appropriate because his health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The appellant was admitted to the facility because he had pancreatitis with a feeding tube. While the appellant was in the facility, the appellant was able to have the feeding tube removed and eat by mouth. The appellant is independent with all ADLs. The appellant does not have any documented conditions that require the clinical care provided by a nursing facility. Therefore, his discharge is appropriate.

The second issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c. 111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, reads as follows:

*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.***

(Emphasis added)

The notice of discharge lists the appellant's discharge location as the [REDACTED]. Based on the credible testimony of the facility Social Worker, the nursing facility has met its

burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly discharge from the facility, and thus has complied with MGL c. 111, §70E. The record reflects that the facility actively involved the appellant in selecting a discharge location, despite that location not being in his preferred city. The appellant did not provide any relevant and/or reliable evidence to prove that the homeless shelter listed on the “Notice of Discharge/Transfer” would not be a safe and appropriate place for his discharge, and is appealing the discharge because he wants to remain at the nursing facility until after he has an appointment for an MRI on [REDACTED] 24. Therefore, the nursing facility’s choice of the [REDACTED] [REDACTED] as a safe and appropriate discharge location meets the requirements of MGL c. 111, §70E.

The totality of the evidence presented is sufficient to warrant discharge under 130 CMR 610.028(A)(4). Therefore, this appeal is denied.

Order for Nursing Facility

Proceed with notice of discharge. The appellant may not be discharged any earlier than 30 days from the date of this decision.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc: [REDACTED]
[REDACTED]