

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2313464
Decision Date:	01/23/2024	Hearing Date:	01/09/2024
Hearing Officer:	Kimberly Scanlon		

Appearances for Appellant:

Via telephone



Appearances for Nursing Facility:

Via telephone

Jennifer Young, Social Worker
Jessica Kaufman, RN, Unit Manager, 5th Floor
Nicole Prado, Rehab Director
Tina Nkruman, Coordinator



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge/Transfer
Decision Date:	01/23/2024	Hearing Date:	01/09/2024
Nursing Facility Reps.:	Jennifer Young Jesscia Kaufman Nicole Prado Tina Nkruman	Appellant Rep.:	<i>Pro se</i>
Hearing Location:	Chelsea MassHealth Enrollment Center (Remote)		

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], [REDACTED], a skilled nursing facility, notified the appellant of its plan to discharge him to his former residence home on [REDACTED], because it determined that his health has improved such that he no longer needs the services provided by the nursing facility (Exhibit 1). The appellant filed this appeal in a timely manner on December 21, 2023 (130 CMR 610.015 and Exhibit 1). The discharge of a nursing home resident is valid grounds for appeal (130 CMR 610.028(A)). At the conclusion of the hearing, the record was held open for a short period of time to allow the appellant to investigate alternative discharge options (Exhibit 5).

Action Taken by the Nursing Home

The skilled nursing facility notified the appellant of its intent to discharge him because it determined that his health has improved such that he no longer needs the services provided by the nursing facility.

Issue

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

Summary of Evidence

The nursing facility was represented by several of its staff members, all of whom participated by telephone. A facility social worker testified that the appellant was admitted to the nursing facility from the hospital where he had been treated for leg and foot edema. The appellant has a history of foot and toe fractures stemming from alcohol use-related vascular problems. The appellant was treated at the facility and has no skilled needs at this time. He was given Lasix and compression stockings to assist with his symptoms. He is independent with all activities of daily living, at a wheelchair level. The facility will make sure that the appellant is discharged with a wheelchair, a 30-day supply of his medications, and any services he needs (such as physical or occupational therapy). The facility will also schedule an appointment for the appellant with his primary care physician.

The facility representatives stated that the discharge location listed on the notice is the appellant's former residence. The facility is aware that the appellant no longer resides at this location and is currently homeless. The facility representatives stated that they considered the [REDACTED], a medical shelter in Lowell, as a potential discharge location for the appellant. Because it is a medical shelter, residents do not need to leave during the day. The appellant declined placement there.¹ The appellant expressed interest in discharge to a sober program that would treat both his substance abuse and mental health issues; the facility scheduled a phone interview for potential placement in this type of program. Post-hearing, the facility was informed by the appellant that "he did not feel that it was going to work out" (Exhibit 6).

The appellant's nursing facility record includes a letter signed by [REDACTED]. The letter states that the appellant no longer requires skilled services and can safely discharge to the community "whether it be a shelter or sober program. Appellant reports currently homeless, interested in programs and working with social services, has a telephonic interview scheduled the day after the hearing. We are all hoping that he will be accepted" (Exhibit 4, p. 3).

The appellant appeared at the hearing by telephone as well and stated that, although he has been at the nursing facility for four months, he still has swelling in his legs and he still cannot walk. Nothing has changed since his admission. He lost his apartment (the discharge location on the notice) last June because he lost his job and could no longer afford the rent. Since then, he was on the streets, in and out of hospitals and detoxification programs, and was ultimately admitted to the nursing facility where he now resides. He stated that he has been banned from the Lowell

¹ The facility representatives explained that they included the appellant's former address on the discharge notice because the appellant refused placement at a medical shelter the facility had recommended.

shelter, and in any case, does not want to be in Lowell where drugs and alcohol are rampant. He has been clean for four months and he would like to stay clean.

Findings of Fact

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

1. The appellant is an adult male who has been a resident at the nursing facility for approximately four months.
2. The appellant was admitted to the nursing facility from the hospital for rehabilitation to treat leg and foot edema.
3. The appellant received treatment at the nursing facility and no longer has any skilled nursing needs.
4. The appellant's physician has documented that he no longer requires skilled services and can safely discharge to the community.
5. On [REDACTED] the nursing facility issued a discharge notice to the appellant; the notice informs the appellant of the nursing facility's plan to discharge him to his former residence because of improved health.
6. The appellant was evicted from his former residence last June and has not lived there since.
7. The appellant timely appealed the discharge notice to the Board of Hearings.

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. When the facility seeks to discharge a resident because of nonpayment, the clinical record must be documented (130 CMR 610.028(B)).

In this case, the nursing facility initiated discharge proceedings because it determined that his health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility. The record adequately supports the facility's position. The facility representatives offered unrefuted testimony that the appellant no longer has any skilled needs; the nursing facility physician concurs (Exhibit 4, p. 3). The appellant maintains that he still has leg swelling and cannot walk. These complaints notwithstanding, the evidence suggests that the appellant is independent with all activities of daily living at a wheelchair level, and currently requires no skilled nursing services.

Notwithstanding the above, however, the nursing facility has not satisfied its obligation under G.L. c. 111, § 70E. The key paragraph of that statute provides 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.

In this case, the discharge location is a residence where the appellant no longer resides. The facility representatives are aware that the appellant was evicted from his former apartment but included this address on the notice because the appellant refused placement at a medical shelter the facility had recommended. There is no dispute that the discharge location – an apartment to which the appellant no longer has access – is not a safe and appropriate place. The facility has not met its burden to show that the requirements of G.L. c. 111, § 70E, have been satisfied.

On this record, the appeal is approved.

Order for the Nursing Facility

Do not discharge the appellant under this notice of intent to discharge.

Implementation

If this 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.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

