

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2313854
Decision Date:	1/19/2024	Hearing Date:	01/16/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for Nursing Facility:

Via telephone:

Jennifer Young, LSWA

Nicole Coiteux, Rehabilitation Dir.

Monica Kosmider, Asst. Dir. of Nursing

Ernestina Nkrumah, After Care Coordinator



*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:	1/19/2024	Hearing Date:	01/16/2024
Nursing Facility's Reps.:	Jennifer Young, et al.	Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center 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 30-Day Notice of Intent to Discharge Resident dated December 15, 2023, Worcester Rehabilitation and Health Care Center (hereinafter, "the facility") informed the appellant of its intent to discharge him on January 15, 2023 because his health has improved sufficiently so that he no longer needs the services provided by the facility (see 130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on December 28, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge or transfer an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge him because his health has improved sufficiently that he no longer needs the services provided by the facility.

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 appellant and representatives from the facility appeared at hearing via telephone. The facility was represented by a licensed social work associate (LSWA), rehabilitation director, assistant director of nursing, and the after care coordinator.

The facility testified as follows: the appellant arrived at the facility with a primary diagnosis of orthostatic hypotension on [REDACTED] 2023 following a hospital stay. He has received skilled nursing care, physical therapy, and occupational therapy during his stay at the facility. At his most recent screening, MassHealth determined he is no longer clinically eligible for long-term care coverage. His MassHealth long-term care coverage will end on January 14, 2024. The appellant is primarily independent with his activities of daily living (ADLs), and he was discharged from occupational and physical therapy at wheelchair level. He cannot walk due to his orthostatic hypotension, but that does not qualify him for nursing level of care. He can safely live and receive services in the community. According to the facility's medical director, Dr. Adekunle Fajana, who oversees all patients, the appellant's orthostatic hypotension is chronic and is a medical ailment more than a rehab one. In its submission for hearing which included the appellant's clinical records, the facility provided a letter from Dr. Fajana explaining the discharge.

On December 15, 2023, the facility issued its 30-Day Notice of Intent to Discharge because the appellant's health has improved sufficiently so that he no longer needs the services provided by the facility. The facility explained that it has been working on discharge planning with the appellant throughout his stay and has discussed housing options and possible discharge locations with him. When the appellant entered the facility, he stated he was homeless, but hoped to stay with a friend upon discharge. That did not pan out and he has filled out a Section 8 application, but that can take years. The appellant has worked with Elder Services and completed a CHAMPs application for housing and applied for the MFP program. The facility explained that typically if a resident does not have somewhere to live upon discharge, it will list a homeless shelter as the discharge location. The appellant declined the shelter as an option and instead provided the address on the discharge notice, which is a former apartment of his. The facility also discussed the option of a rest home with the appellant. The day of hearing, the facility heard back from one rest home that had already evaluated the appellant. The rest home was willing to accept him, but needed to review his finances first.

The appellant stated that he cannot go back to the address listed in the discharge notice. It had been his apartment, but he has not paid rent in a long time and the apartment no longer belongs

to him. He disagreed that his health had improved. He cannot walk, but uses his wheelchair independently. He cannot shower without assistance and needs help using the bathroom. Additionally, he does not know the medications he takes or how to administer his insulin for diabetes.

The facility responded that his reliance on a wheelchair and inability to administer his medications do not qualify him for nursing facility level of care. The facility's staff could educate the patient on administering his medications and insulin. His clinical records show that he is independent or at the supervision level with all ADLs. The supervision level is similar to independent, but since it is a 24-7 care facility, it often provides the supervision. The facility emphasized that the appellant was a cooperative and nice resident of the facility and the decision to discharge was based solely on his improved health and lack of insurance to cover his stay, since MassHealth no longer deemed him clinically eligible for long-term care services.

Findings of Fact

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

1. The appellant was admitted to the facility from a hospital on [REDACTED] 2023 with a primary diagnosis of orthostatic hypotension (Testimony and Exhibit 4).
2. On December 15, 2023, the facility issued a 30-Day Notice of Intent to Discharge because the appellant's health has improved sufficiently so that he no longer needs the services provided by the facility (Testimony and Exhibit 1).
3. The proposed discharge location is an apartment in the community that no longer belongs to the appellant and he cannot live there (Testimony and Exhibit 1).
4. The appellant is primarily independent with his ADLs and was discharged from occupational and physical therapy at wheelchair level (Testimony and Exhibit 4).
5. After a screen, MassHealth determined that the appellant was no longer clinically eligible for MassHealth long-term care services and his MassHealth coverage for long-term care would terminate on January 14, 2024 (Testimony and Exhibit 4).
6. The appellant's orthostatic hypotension is a chronic medical ailment, and not a rehabilitation issue (Testimony and Exhibit 4).
7. The facility has been actively working on discharge planning with the appellant and trying to find him a placement at a rest home (Testimony).

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 mirror the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 et seq. and in the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.002 apply:¹

“Nursing facility” - a Medicare skilled nursing facility or Medicaid nursing facility licensed by the Department of Public Health to operate in Massachusetts, or a distinct Medicaid- or Medicare-certified unit within a facility.

“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;
- (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.

Based on the above definitions, the facility is attempting to discharge the appellant from the nursing facility to a noninstitutional setting (an apartment in the community that no longer belongs to the appellant) via its notice dated December 15, 2023.

The guidelines that apply in a determination of whether appellant can be so discharged are found in 130 CMR 456.701 and 130 CMR 610.028. This section of the regulations lists the only

¹ The regulatory language in the MassHealth Nursing Facility Manual has 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.

circumstances and conditions that allow for 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.

130 CMR 610.028 sets forth the notice requirements for transfers and discharges initiated by a nursing facility, and provides in part as follows:

(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).

Emphasis added (130 CMR 456.701(A) and (B)).

Furthermore, in addition to the MassHealth-related regulations discussed above the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. 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.²

This appeal is APPROVED. While there is documentation supporting that the appellant's health has improved sufficiently that he no longer needs the services provided by the facility, there are concerns regarding the safety and appropriateness of the nursing facility's discharge location. Primarily, the location is not a place the appellant can actually go. It was a previous apartment of his, but as he has not paid any rent, it is no longer his apartment.

The appellant does not have a right to remain in the nursing facility without paying, and he does not clinically qualify any longer for MassHealth to pay for his stay; but given that the proposed discharge location is not one to which the appellant can be discharged, the facility has not shown that the proposed discharge location in the December 15, 2023 notice under appeal is safe and appropriate.³

For these reasons, the appellant's appeal is approved.

Order for Nursing Facility

Rescind the 30-Day Notice of Intent to Discharge Resident dated December 15, 2023.

Implementation of this Decision

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

[REDACTED]

² The term "referee" in the statute refers to a Board of Hearings hearing officer.

³ At hearing, the facility discussed other possible discharge locations, including a rest home that was willing to accept the appellant, pending a review of his financial eligibility. There is nothing in this decision prohibiting the facility from issuing a new 30-Day Notice of Intent to Discharge listing a safe and appropriate discharge location; however, the discharge location proposed in the notice under appeal is not safe or appropriate given that the appellant cannot live there.