

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2401644
Decision Date:	02/22/2024	Hearing Date:	February 09, 2024
Hearing Officer:	Brook Padgett	Record Open to:	February 20, 2024

Appearance for Appellant:
Pro se

Appearance for Nursing Facility:
[Redacted] 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:	Expedited Skilled Nursing Facility Discharge 130 CMR 610.028
Decision Date:	02/22/2024	Hearing Date:	February 09, 2024
Appellant Rep.:	Pro se	Nursing Facility Rep.:	Administrator
Hearing Location:	Telephonic to the facility		

Authority

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

Jurisdiction

On [REDACTED] ("the facility" or the "[REDACTED]") delivered to the appellant a Notice of Intent to Discharge Resident With Less than 30 Days' Notice (Expedited Appeal) to [REDACTED], a homeless shelter) on [REDACTED] as the appellant's health has improved sufficiently that he no longer needs the services provided by the facility; and the appellant has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare and Medicaid) a stay at the facility. (Exhibit 1). The appellant appealed the facility action timely on February 01, 2024. (130 CMR 610.015(B)(5); Exhibit 2). An attempt to discharge a nursing facility resident is valid grounds for appeal (130 CMR 610.032(C)).

Action Taken by Nursing Facility

The nursing facility intends to discharge the appellant with less than 30 days' notice to [REDACTED] because his health has improved sufficiently that he no longer needs nursing facility care and he has failed to pay for his stay at the facility.

Issue

Did the nursing facility properly notify the appellant of the discharge, pursuant to 130 CMR 610.029, and is the intended discharge location a safe and appropriate place for the appellant pursuant to MGL Ch. 111, § 70E?

Summary of Evidence

The facility administrator testified that the appellant is [REDACTED] years old, and has been diagnosed with major depressive disorder, attention deficit disorder, anxiety disorder and a right leg abscess below the knee. On [REDACTED], the appellant was admitted to the facility, post hospital stay, for a right leg abscess which required amputation below the knee. Currently, the appellant needs no assistance with any activities of daily living (ADLs), is able to ambulate with a cane and routinely checks himself out of the facility for social outings and shopping. Physician notes state: “[The appellant’s] diabetes is well controlled, no new seizures present, [he] is more mobile with his prosthetic leg and leave the facility on a regular basis. [The appellant] has no medical needs that require his stay at the facility at this time.” The facility administrator stated the appellant has refused to pay his patient liability (Patient Paid Amount (PPA)) and is currently in arrears more than \$25,000.00. The administrator maintained the facility has attempted to transfer the appellant on multiple occasions to a number of transitional housing programs and shelters,¹ all of which either declined the appellant or the appellant refused to assist in the placement.

The appellant responded that he requires surgery on his left knee, as he has been told it is bone on bone. He also indicated he has carpal tunnel syndrome and anxiety. The appellant acknowledged that he does leave the facility, but maintained he cannot perform his ADLs (although he did not state what activities required assistance). The appellant argued he has no money and cannot afford to pay his arrearage.

The facility administrator stated the appellant was homeless prior to his hospital stay, and so they are discharging him to a community homeless shelter ([REDACTED]) as the appellant has refused to assist in finding all other placements.

The hearing record was extended until February 20, 2024 to allow the facility and the appellant to explore if there are any other suitable placements for the appellant prior to the intended discharge. (Exhibit 5).

¹ [REDACTED]

On February 16, 2024, the facility responded that they have sent multiple requests for placements that had been previously available to the appellant; however, the appellant either rejected the placements, or the facilities stated there is currently no availability. (Exhibit 6).²

² **2/13/24:**

- Regional Business Manager and Business Office Manager met with the appellant to discuss his outstanding balance of \$25,000.00 for the last 16 months of outstanding patient pay amount. The appellant indicated he only has \$500.00 in his account and was only willing to give \$50.00 a month. This has been the appellant's response every month he has met with Business Office staff. The Business Office staff explained once again the appellant has a PPA obligation of \$1,208.20 each month and that \$50.00 a month will not cover his patient liability, and he once again refused to pay.
- After Care Coordinator submitted referral to [REDACTED], as part of aftercare transition to community rest home.
- Social Worker completed referrals to several [REDACTED] All facilities denied admission secondary to lack of bed availability and client's maladaptive behaviors.
- Social Worker contacted [REDACTED] residential facility in [REDACTED] and appellant is scheduled for an intake interview tomorrow morning. Social Worker and unit supervisor met with the appellant to discuss the intake. The appellant expressed concerns about [REDACTED] receiving his medical records, including his psychiatric medications and diagnoses. The appellant began making excuses and accusations suggesting [REDACTED] would not be appropriate for him.

02/14/24:

- Social Worker and Substance Use Disorder Counselor met with the appellant to inform him of an intake interview scheduled with a [REDACTED] home on February 14, 2024.
- The appellant initially agreed to attend the interview, however, when the time came to attend, he refused stating he does not want to go to [REDACTED] as he feels it is unsafe.
- Social Worker and SUD Counselor provided reassurance that the area was appropriate, but the appellant remained resistant citing an ongoing grievance with another resident and that he does not want to leave the facility until it is resolved.

2/15/24:

- The appellant had a scheduled telehealth pre-op conference with Nurse Anesthetist at [REDACTED] between 8am-12pm. The appellant was observed walking with cane and exited [REDACTED] at 9:35 am, leaving the facility grounds in a gray SUV.
- Despite resident's lack of engagement in discharge planning, Social Worker pursued referrals for supportive housing. Social worker contacted the [REDACTED] about potential placement. The facility confirmed they have 1 male bed available currently. Social Worker continuing efforts to set up supportive discharge option due to resident's needs and challenges with transition planning.

2/16/24:

- Regional Business Office Manager and facility Business Office Manager met with the appellant to discuss continue outstanding patient liability balance of \$26,196.60. The appellant informed the staff that he will bring in cash today to pay part of it.
- The appellant went to the Business Office to pay \$100.00 cash on the outstanding balance. The appellant was informed that his patient liability of \$1,208.00/month needed to be paid in full based on his income calculation, plus \$500.00 towards his old balance. The staff didn't accept the \$100.00.
- Referral sent to [REDACTED] home which has several openings for males. Waiting response from rest home.
- Substance Use Counselor met with the appellant to inform him that there is a male bed available at the [REDACTED] It was stated that we need to follow up and complete the phone screening. Patient stated, "I'm not going to [REDACTED]!". Counselor stated that it may be a good option for him, and patient then yelled "I am NOT GOING TO [REDACTED]".

Findings of Fact

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

1. The appellant is [REDACTED] years old, and has been diagnosed with major depressive disorder, attention deficit disorder, anxiety disorder and a right leg abscess below the knee. (Exhibit 4.)
2. The appellant was admitted to the nursing facility on [REDACTED] post hospital stay, for a right leg abscess requiring amputation below the knee. (Exhibit 4 and testimony).
3. The appellant has an established PPA of \$1,208.00 per month. (Exhibit 6 and testimony).
4. The appellant currently needs no assistance with any ADLs and is able to ambulate with a cane. (Exhibit 4).
5. The appellant routinely checks himself out of the facility for social outings and shopping. (Exhibit 4, pp. 28 and testimony).
6. The facility physician has determined the appellant no longer requires any nursing facility services and is capable of managing his own care in the community. (Exhibit 4, p.28).
7. The appellant has been notified facility physician has determined he no longer requires any nursing facility services and is capable of managing his own care in the community. (Exhibit 1 and testimony).
8. The appellant has been notified of his \$25,000.00 arrearage on multiple occasions, and has stated he does not have the means to pay the facility. (Exhibit 1 and testimony).

Analysis and Conclusions of Law

On January 23, 2024, a "Notice of Intent to Discharge Resident With Less than 30 Days' Notice (Expedited Appeal)" was delivered to the appellant by the MHRH. The notice indicated the facility planned to discharge the appellant to [REDACTED] on [REDACTED] because his health has improved sufficiently so that he no longer requires skilled nursing services and he has failed to pay for his patient liability at the nursing facility. The notice included the appellant's right to appeal the discharge and the name of a person at the nursing facility who is responsible for supervising the discharge.

MassHealth regulations allow for a resident to be transferred or discharged from a nursing facility

when 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 (130 CMR 610.028(A)(2)).³ A transfer or discharge on this ground must be documented by the resident's physician. (130 CMR 610.028(B)(1)).⁴ The regulations also allow a nursing facility to transfer or discharge a resident for failing to pay, or for failing to have MassHealth/Medicaid pay for services. Both of these regulations require the nursing facility provide reasonable and appropriate notice to the resident. (130 CMR 610.028(A)(5)).

The appellant entered the nursing facility on [REDACTED] from the hospital after receiving care for a large right leg abscess resulting in an amputation below the knee. The record shows the appellant currently receives no therapy and requires no assistance with any ADLs. The record further shows the appellant's primary care physician has documented that the appellant no longer requires any nursing facility services and is capable of managing his own care in the community, and he has been properly notified of the medical determination documented by his physician. While the appellant maintained he requires future knee surgery, he offered no credible evidence to counter the current position of the nursing facility and its physician that the appellant's medical needs could be safely addressed in the community. Additionally, the appellant did not dispute he is able to regularly leave the facility on his own; although he stated he is not able to perform his ADLs, he did not state which day to day activities required nursing assistance.

The record demonstrates the appellant has failed to pay his PPA liability from his arrival in [REDACTED] to the present. The facility business office confirms the appellant has a monthly PPA of \$1,208.20, and that the appellant has been notified of his responsibility and arrearage on many occasions. Despite receiving notification of his patient liability obligation, the appellant has refused to pay his monthly PPA and the evidence shows he is in arrears more than \$25,000.00.

MGL Chapter 111, §70E and 42 CFR 483.12(a)(7) requires the facility to provide sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The federal Centers for Medicare and Medicaid defines "sufficient preparation" within the meaning of 42 CFR 483.12(a)(7) to mean that the facility informs the resident where he or she is going, and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the

³ 130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility (A) A resident may be transferred or discharged from a nursing facility only when:. . . (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;

⁴ 130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility (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 documentation must be made by: (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2);

resident's family in selecting the new residence. (See, *Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance*, 61 Mass. App. Ct. 320 (2004)).

The nursing facility notice lists the [REDACTED] as the appellant's discharge location. Based on the credible testimony of facility administrator and the medical documentation from the facility physician, the facility has met its burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly discharge. The appellant submitted no evidence to prove that [REDACTED] listed on the "Notice of Discharge" would not be a safe and appropriate place for his discharge. The record further details that the nursing facility actively involved the appellant in applying for alternative discharge locations; however, the facility credibly testified the appellant has not cooperated in this pursuit.

The record supports discharge of the appellant to [REDACTED], as the nursing facility's notice of discharge dated [REDACTED] meets the requirements of 130 CMR 610.028 and MGL c. 111, §70E. The nursing facility has complied with the applicable state and federal notice requirements, and their actions have been more than appropriate and reasonable.

For the foregoing reasons, this appeal is DENIED.

Order for the Nursing Facility

Proceed with discharge, but not 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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: Respondent: [REDACTED]
[REDACTED]