

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402777
Decision Date:	03/15/2024	Hearing Date:	03/11/2024
Hearing Officer:	David Jacobs		

Appearances for Appellant:



Appearance for MassHealth:

Jeff Diminico, Administrator
Amy Lawrence, Business Office Manager
Linda Pacheco, Social Worker
Jeff Wyrostek, Physical Therapist



*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:	Nursing Facility - Discharge
Decision Date:	03/15/2024	Hearing Date:	03/11/2024
Facility Rep.:	Jeff Diminico, Amy Lawrence, Linda Pacheco, Jeff Wyrostek	Appellant's Reps.:	[REDACTED]
Hearing Location:	Board of Hearings (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 notice dated [REDACTED], a skilled nursing facility ("the facility"), notified the appellant of its plan to discharge her to her [REDACTED] apartment on [REDACTED] because it determined that she had failed to pay for her stay at the facility (Exhibit 1). The appellant filed this appeal in a timely manner on February 23, 2024 (130 CMR 610.015 and Exhibit 2). The discharge of a nursing home resident is valid grounds for appeal (130 CMR 610.028(A)).

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 facility submitted the appellant's clinical record (Exhibit 4) and was represented telephonically at the hearing by its administrator, office manager, the appellant's social worker, and appellant's physical therapist. The administrator testified that the appellant has been staying at the facility since [REDACTED], and as of February 28, 2024 has accrued \$91,995.00 in unpaid bills (Exhibit 4, pg. 2). In January and February 2024, the appellant's daughter made two payments of \$100.00 each on the appellant's behalf and promised to continue to make similar monthly payments. However, the facility rejected that offer as the appellant's bills for staying at the facility are over \$500 a day and will accrue faster than the \$100.00 a month could ever hope to pay off. Instead, the facility made a different offer to the appellant's daughter that would allow the appellant to continue living at the facility if she were to apply for MassHealth and pay off the balance not covered by MassHealth with a 20% discount. The administrator testified that the appellant rejected the offer as the appellant considers herself a [REDACTED] resident and does not want to become a Massachusetts resident to be eligible for MassHealth. Furthermore, the appellant does not have the money available to pay the remaining balance regardless of the discount.

The appellant was represented telephonically at the hearing by her daughter that conceded to the facts as laid out by the facility administrator. She testified that the appellant is now willing to apply for MassHealth but stated that her mother has no money to pay off any balance not covered by MassHealth and is unwilling to pay off the debt herself. Furthermore, she testified that her mother had a fall in [REDACTED] at the facility causing her injury that the daughter believes was negligently handled by the facility staff. She argued that the facility should remove some of the past due balance as recompense for that negligence. The facility administrator refused to do so.

The appellant's daughter further argued that her main reason to contest the discharge is that she does not believe it will be a safe discharge as there is no care available to her mother if she is discharged back to her apartment where she lives alone. The facility social worker conceded the appellant requires regular care and testified that she worked with the appellant to find a suitable discharge location, but the appellant refused all options that were not her apartment. The appellant's daughter added that [REDACTED] does not offer the kind of at home care that her mother needs and she would likely need to privately pay for such services, a cost the appellant's daughter does not think her mother can bare as her only income is through social security. Regardless, the facility responded that they have been working with the appellant to make the appellant aware of what home care services will be available to her.

Findings of Fact

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

1. The appellant was admitted to the facility in [REDACTED].
2. The appellant received a “Notice of Intent to Discharge Resident with Less than 30 Days’ Notice” on [REDACTED].
3. The facility submitted the appellant’s clinical record.
4. The appellant has past due bills accrued from [REDACTED] to February 28, 2024 owed to the facility in the amount of \$91,995.00.
5. The appellant has made two payments of \$100.00 in January and February 2024 and promises to continue paying \$100.00 each month.
6. The facility rejected the appellant’s promised pay schedule as the appellant accrues more than \$500 a day in bills for her stay.
7. The facility made an offer to the appellant to remove 20% of the past due amount if she applied for MassHealth and paid the amount remaining. The appellant is willing to apply for MassHealth but does not have the money to pay off the additional past due amount.
8. The facility’s offer was refused by the appellant’s daughter on the appellant’s behalf.
9. The appellant requires the services of the facility or an in-home caregiver.
10. The location of discharge is the appellant’s [REDACTED] apartment.
11. The facility staff worked with the appellant to find a suitable discharge location, but all choices except for the appellant’s home were refused.
12. The facility has worked with the appellant to make her aware of what in-home services will be available to her.

Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility when the transfer or discharge is appropriate because the resident has failed to pay for a stay at the facility (130 CMR 610.028(A)(5)). A transfer or discharge on this ground must be documented by the

resident's clinical record (130 CMR 610.028(B)).

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:

- (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 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); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(4).

M.G.L. Ch. 111, § 70E states that,

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.

The first issue is whether the appellant's discharge is appropriate because she has failed to pay for her stay at the facility (130 CMR 610.028(A)(5)). Here, it is found that the facility has appropriate grounds to discharge the appellant. Although the appellant has offered to pay \$100.00 a month to

settle the debt, the facility has refused that pay schedule. The hearing officer agrees that it is unreasonable to expect the facility to accept such an amount as satisfactory as the appellant's bills of over \$500 a day will accrue much faster than \$100.00 a month can possibly pay off.

The appellant's daughter argues that regardless of the lack of payment the appellant cannot be discharged as the services the facility provides are medically necessary and she cannot afford to pay for them at home. However, the appellant offers no legal support for the medical needs of the resident to be considered to avoid discharge for lack of payment.

The appellant's daughter further argues that the appellant suffered a fall in [REDACTED] that was handled negligently by the facility staff causing the appellant injury and some of the past due amount should be removed due to that negligence. The facility administrator refused, and the hearing officer cannot impose such liability on the facility through this decision. The appellant may have a separate cause of action against the facility due to the described incident. However, this decision makes no finding on the merits on such an action if the appellant chooses to do so.

Based on the above, it is found that is appropriate for the facility to discharge the appellant for lack of payment and we move onto the second issue.

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 appellant's apartment in [REDACTED]. Here, I find that the facility has given sufficient preparation and orientation to the appellant to satisfy MGL c.111, §70E. The appellant was consulted about the choice of discharge location and refused all choices that were not her own apartment. The appellant's daughter argues that the appellant's apartment will not be a safe place for her due to her need for in-home care and her inability to afford it. However, the facility testified they have worked with the appellant to make her aware of the in-home care options available to her and how to request them. Furthermore, the appellant has refused to accept any other facility options that may be more appropriate for her needs. Thus, the facility has met its burden to prepare and orient the appellant for transfer to a safe and appropriate place.

Therefore, the appellant's appeal is DENIED.

Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 5 days from the date of this decision.

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.

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.

David Jacobs
Hearing Officer
Board of Hearings

CC:

[REDACTED]

[REDACTED]