

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402898
Decision Date:	4/2/2024	Hearing Date:	March 12, 2024
Hearing Officer:	Brook Padgett	Record Open to:	March 29, 2024

Appearance for Appellant:

Pro se

Appearance for Nursing Facility:

Administrator
Director of Social Services
Regional Business Manager



*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 Nursing Facility Discharge Failure to Pay 130 CMR 610.028
Decision Date:	4/2/2024	Hearing Date:	March 12, 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 February 21, 2024, Saugus Rehabilitation & Nursing ("the facility" or the "SR&N") delivered to the appellant a Notice of Intent to Discharge Resident With Less than 30 Days' Notice (Expedited Appeal) to [REDACTED] ([REDACTED] a homeless shelter) on [REDACTED] 2024 as the appellant has failed, after reasonable and appropriate notice, to pay for (or have Medicare or Medicaid to pay for) his stay at the facility. (Exhibit 1). The appellant appealed the facility action timely on February 26, 2024. (130 CMR 610.015(B)(4); 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 he has failed to pay or have Medicare or Medicaid pay for his stay at the facility.

Issue

Did the nursing facility properly notified the appellant of the discharged, pursuant to 130 CMR 610.028, 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 a [REDACTED] year old male who was admitted to the [REDACTED] facility on [REDACTED] 2023 after presenting to the Emergency Department ("ED") for residual left side weakness and functional decline. He was evaluated, stabilized, and subsequently kept as an inpatient for treatment. Past medical history includes Schizophrenia, kidney injury, coronary artery disease, anxiety, obesity, delusion, and hypertension. The regional business manager stated that staff has repeatedly spoken to the appellant that he needs to complete an application for MassHealth or be able to privately pay. The representative stated the appellant has refused to provide any of the necessary documentation to complete a MassHealth application and although he receives \$1,700.00 in Social Security benefits, he has stated he does not intend to give the facility his money. The facility submitted evidence of the appellant's current medical notes. (Exhibit 4 & 5).

The appellant responded that he had a stroke and is currently in a wheelchair and cannot go to the [REDACTED] as it is not safe. The appellant stated he has been on Medicare and Medicaid for years but that his MassHealth stopped in December 2023. The appellant stated he did not know why it stopped but he has been trying to get information from Direct Express. The appellant maintained he would give the facility \$1,400.00 but they want \$1,600.00 which is too much and leaves him with only \$75.00 to buy clothes or shoes or any other necessary items. The appellant argued that he is disabled and he cannot appropriately be cared for at the [REDACTED]

The hearing record was extended until March 29, 2024 to allow the facility to provide documentation that the appellant has failed, after reasonable and appropriate notice, to pay for or failed to have the Division or Medicare pay for his stay at the facility and that he has been given reasonable and appropriate notice; that the intended transfer or discharge is documented by the resident's clinical record; and that the nursing facility has provided sufficient preparation and orientation to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. The appellant and/or his representative was also given additional time to submit medical documentation that the intended transfer is not appropriate for the appellant's medical needs. (Exhibit 6).

On March 14, 2024, the appellant submitted a letter from his case worker and a licensed clinical social worker ("LCSW") at the [REDACTED] Community Human Services stating the appellant is enrolled in

Adult Community Clinical Services (“ACCS”)¹ and that it was their “belief that a discharge to the [REDACTED] would be detrimental to his health and wellness.” (Exhibit 7).

On March 19, 2024, the appellant submitted a letter from his physician at Cambridge Health Alliance (“CHA”) stating that the appellant has been a patient for almost 4 years and in the system for over 14 years. The appellant “recently suffered a stroke causing left side paralysis in his leg. He currently uses a wheelchair for most ambulation and is engaged in therapy to improve his strength and mobility. In his current state, it is not safe for him to be placed in a homeless shelter as he does not have the necessary faculties to be effectively mobilized, care for himself and protect his belongings.” (Exhibit 8).

On March 21, 2024 the facility submitted multiple emails beginning February 08, 2024 regarding the appellant's refusal to complete an application for MassHealth; along with an April 01, 2024 printout indicating past due charges totaling \$62,280.00. (Exhibit 9).

On March 25, 2024, the facility submitted a letter from the Medical Director of the Saugus Center stating the appellant has been under his care since [REDACTED] 2023 and that the appellant has “attained functional gains and has met rehabilitative goals.” The appellant is “currently stable and is clinically ready to be discharged to the community.” (Exhibit 10).

Findings of Fact

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

1. The appellant is a [REDACTED] year old male who was admitted to the [REDACTED] on [REDACTED] 2023 after presenting to the ED for residual left side weakness and functional decline. (Exhibit 4, 5 & Testimony).
2. The appellant's past medical history includes Schizophrenia, kidney injury, coronary artery disease, anxiety, obesity, delusion, and hypertension. (Exhibit 4 & 5).
3. The appellant has refused to complete or participate in filing an application for MassHealth (Exhibit 9 & Testimony).
4. The appellant has been notified of past due charges totaling \$62,280.00. (Exhibit 9).

¹ Adult Community Clinical Services (ACCS) is a Department of Mental Health’s primary community service for adults. ACCS is a comprehensive, clinically focused service that provides clinical interventions and peer and family support to facilitate engagement, support functioning and maximize symptom stabilization and self-management of individuals residing in all housing settings. In addition, ACCS provides a range of provider-based housing options as treatment settings to assist individuals in developing skills, establishing natural supports and resources to live successfully in the community. [ACCS | Mass.gov](https://www.mass.gov/info-details/adult-community-clinical-services).

5. The facility Medical Director has indicated the appellant has “attained functional gains and has met rehabilitative goals” and is “currently stable and is clinically ready to be discharged to the community.” (Exhibit 10).
6. Medical notes dated [REDACTED] 2024 indicate the appellant is alert and oriented and is able to ambulate with the aid of a wheelchair. (Exhibit 4 & 5).
7. On February 21, 2024, the appellant was provided at notice of facilities intended action; the specific reason for the discharge or transfer; the effective date of the transfer; the location of transfer; a statement informing him of his right to request a hearing; the name, address, and telephone number of the local long-term-care ombudsman office; a statement that he may seek legal assistance with the address of the nearest legal services office; and the name of a person at the nursing facility who can answer any questions the appellant had about the notice and who will be available to assist the resident in filing an appeal. (Exhibit 1).

Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility when the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have the Division or Medicare pay for) their stay at the facility. (130 CMR 610.028(A)(5)). The regulations require the nursing facility to provide reasonable and appropriate notice. (130 CMR 610.028(A)(5)) and the transfer or discharge must be documented by the resident’s clinical record. (130 CMR 610.028(B)(1)).

On February 21, 2024 a “Notice of Intent to Discharge Resident With Less than 30 Days’ Notice (Expedited Appeal)” was delivered to the appellant by the SR&N. The notice indicated the facility planned to discharge the appellant to [REDACTED] [REDACTED] on [REDACTED] 2024 because he has failed to pay for his patient liability at the nursing facility.

The record establishes that the appellant has failed to pay his Patient Paid Amount (“PPA”) liability from his arrival in October 2023 to the present. The facility business office confirms the appellant has an outstanding bill of more than \$62,280.00 and that the appellant has been notified of his responsibility and arrearage on many occasions. Despite receiving notification of his obligation the appellant has refused to pay or apply for MassHealth benefits to pay for his stay in the nursing facility. There was no credible evidence offered by the appellant to counter the current position of the nursing facility that the appellant has failed to pay or have a third party pay for his care at the facility from October 2023 to the present.

The facility in this instance has met the required burden as the appellant's discharge 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, the name, address, and telephone number of the local long-term-care ombudsman office, a statement that he may seek legal

assistance and the name of a person at the nursing facility who can answer any questions he had about the notice.

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 MassHealth agency 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)(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, if the resident has made such a person known to the facility, 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 MassHealth agency including:
 - (a) the address to send a request for a hearing;
 - (b) the time frame for requesting a hearing as provided for under 130 CMR 610.029; and
 - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;

- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for nursing facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 6041 *et seq.*);
- (8) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. § 10801 *et seq.*);
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal services office; and
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal. (*Emphasis added*).

The facility medical director has documented that the appellant has “attained functional gains and has met rehabilitative goal” and is “currently stable and is clinically ready to be discharged to the community.” While the appellant as well as his physician and LCSW argue that it is not safe for the appellant to be placed in a homeless shelter as he does not have the necessary faculties to be effectively mobilized, care for himself and protect his belongings and that the discharge would be detrimental to his health and wellness, there was no medical evidence presented to challenge the facility assessment that the appellant has met his rehabilitative goals, that his condition is not currently stable or that he is not clinically ready to be discharged to the community. The appellant's submitted letters are concerned with problems any individual would encounter living in a homeless shelter and are not unique to the appellant or his current medical condition.

G.L. c. 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 resident’s family in selecting the new residence. (See *Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance*, Appeals Court No. 03-P-879, 2004).

The nursing facility has complied with the applicable state and federal notice requirements of 130 CMR 610.028 and G.L. c.111, §70E and the record supports the appellant was properly informed of the discharge to [REDACTED] therefore this appeal is DENIED.

Order for the Nursing Facility

Proceed with discharge.

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]