

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2403696
Decision Date:	4/24/2024	Hearing Date:	03/25/2024
Hearing Officer:	Kimberly Scanlon		


Appearance for Appellant:

Via telephone

Pro se

Appearance for Nursing Facility:

Via telephone

 Administrator;
Director of Nursing Services;
Supervisor



*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:	30-Day Nursing Facility Discharge
Decision Date:	4/24/2024	Hearing Date:	03/25/2024
Nursing Facility's Reps.:	██████████ Administrator; ██████████ ██████████ Director of Nursing; ██████████ ██████████ Supervisor	Appellant's Rep.:	Pro se
Hearing Location:	Taunton 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 March 4, 2024, the nursing facility informed the appellant of its intent to discharge her to ██████████ (hereinafter "a homeless shelter") on ██████████ 2024 because: the move is necessary for her own welfare and her needs cannot be met within the facility; her health has improved sufficiently so that she no longer requires the services provided by the facility; and the safety of the individuals in the nursing facility is endangered due to her clinical status or behavioral status (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1). The appellant filed this appeal in a timely manner on March 8, 2024 (130 CMR 610.015(F); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by Nursing Facility

The facility informed the appellant of its intent to discharge her for the following reasons: because the move is necessary for her own welfare and her needs cannot be met within the facility; her health has improved sufficiently that she no longer needs the services provided by the facility; and the safety of the individuals in the nursing facility is endangered due to her clinical or behavioral status.

Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility was represented telephonically by its Administrator, Director of Nursing, and a Supervisor. The facility's Administrator testified that the appellant has been a resident of the nursing facility since [REDACTED] 2023. She was admitted for a right lateral fracture with minimal displacement, a left medial fracture without any displacement, and a left lateral chin fracture sustained from a fall (Exhibit 4, p. 9). Presently, the appellant has met her nursing and rehabilitation goals. The facility's Administrator stated that the appellant is independent, attends church, medical appointments and the like, goes out with friends and goes to the bank - all of which illustrate the appellant's independence. Thus, she no longer requires the care that the facility provides. With respect to safety issues, the facility's Administrator testified that the appellant resides in a semi-private room by herself due to her incompatibility with other residents. Additionally, the resident has also demonstrated non-compliance with the facility's policies and procedures. The facility's Administrator testified that the appellant does not allow some of the facility's staff to enter her room. As to the discharge plan, the facility intends to discharge the appellant to a homeless shelter.

The facility's Nursing Director testified that the appellant can independently take her medications, she ambulates without assistance, and does not require assistance with activities of daily living (ADLs). Further, the appellant does not require nursing assistance and is not currently receiving skilled care services at the facility. Thus, the appellant's nursing goals, rehabilitation goals, and goals for ADL independence have all been met.

The appellant appeared at the hearing telephonically and testified on her own behalf. She explained that she came to Massachusetts from Florida last June and had not found housing prior to this nursing facility admission. She left Florida because of domestic abuse. She has family

members residing in Massachusetts; however, she is unable to reside with any of them because of their housing situations. She visited [REDACTED] last June and was told by shelter staff that she could not stay there because of her numerous health issues and the liability for her medical equipment (a breathing machine for asthma). The appellant explained that she now uses a walker as well. She also found out that the shelter operates through a lottery system, and if you do not get a good number, you may not get a bed. She explained that she has been trying to find housing since before her fall and has been continuing her attempts since her admission to the facility. She has been working diligently with the facility's social worker to obtain housing and was working with two outside social workers as well. The appellant testified that she pushed herself to become independent because the facility did not provide her with transportation to her medical appointments nor assisted her with obtaining housing. The appellant testified that she was recently approved for housing because of the efforts she has made independently.

The facility's Administrator testified that while the appellant has been approved for housing, there is a long wait before an applicant receives it. The appellant responded, stating that she has had problems receiving her mail at the facility, and that these mail delays have contributed to her inability to secure housing. She testified that she wants to be discharged, and she understands the facility wants to discharge her; however, she needs to be able to gather and receive the pertinent paperwork to obtain a permanent residence before she is discharged. The facility's Administrator testified that the facility ensures that all mail is distributed timely to the residents to the extent that the facility can control. The Administrator testified that discharging the appellant is in the best interests of the facility and the appellant.

Findings of Fact

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

1. The appellant is a resident of a nursing facility.
2. On March 4, 2024, the facility notified the appellant of its intent to discharge her to a homeless shelter for the following reasons: the move is necessary for her welfare; her health has improved sufficient so that she no longer requires the services provided by the facility; and the safety of the individuals in the nursing facility is endangered due to her clinical or behavioral status.
3. The appellant filed a timely appeal on March 8, 2024.
4. The appellant's health has improved in the nursing facility – she has met her rehabilitation goals, is independent with her ADLs, leaves the facility as needed, and does not require any nursing services.

5. The appellant's physician has not documented that she is appropriate for discharge to the community.
6. The facility has not provided sufficient preparation and orientation to the appellant to ensure that she is discharged to a safe and appropriate location.

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 action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.¹

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 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 Division's Board of Hearings 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 456.702; and
 - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 6041

¹ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

- 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. s. 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.

(130 CMR 456.701(C)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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.

(130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

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).

(130 CMR 456.701(B)).

In the present case, the appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

The record supports the nursing facility's claim that the appellant's health has improved in the nursing facility – she has met her rehabilitation goals, is independent with her ADLs, leaves the facility as needed, and does not require any nursing services.² However, the patient record does not meet the regulatory requirements, as there is no documentation from the appellant's physician that she is appropriate for discharge (Exhibit 4). Additionally, the facility must also persuasively demonstrate the appropriateness of the discharge location. On this record, the facility has failed to do so here.

Specifically, the nursing facility must also comply with G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.³

Here, the facility proposes to discharge the appellant to a homeless shelter. However, the record indicates that the appellant previously investigated potential placement at this shelter and was informed that she could not move in because of her health issues and medical equipment. The facility did not dispute the appellant's testimony and there is no evidence to suggest that facility staff had investigated whether the shelter would in fact accept the appellant. For these reasons, I find that the facility has failed to provide "sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place." Therefore, the notice of intent to discharge must be rescinded. This appeal is approved.

Order for Nursing Facility

² The record does not support the discharge for the other two reasons set forth by the facility – that the facility cannot meet her needs and that the safety of the individuals in the nursing facility is endangered due to her clinical or behavioral status.

³ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

Rescind the 30-day notice of intent to discharge the appellant.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

