

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

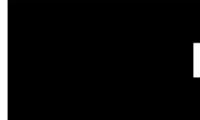


Appeal Decision:	Approved	Appeal Number:	2404243
Decision Date:	4/9/2024	Hearing Date:	4/4/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:

Pro se

Appearance for MassHealth:

 Administrator
Director of Social Services
Community Transition
Liaison

Interpreter:

N/A



*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:	NH Discharge
Decision Date:	4/9/2024	Hearing Date:	4/4/2024
MassHealth's Reps.:	[REDACTED] Administrator [REDACTED] Director of Social Services [REDACTED] Community Transition Liaison	Appellant's Rep.:	Pro se
Hearing Location:	Remote (Tel)	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 March 11, 2024, [REDACTED] (hereinafter "the nursing facility" or "facility") issued a "Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)"¹ to [REDACTED] (hereinafter "shelter") for the specific reason: "You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility."³ (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1). The Appellant filed this appeal in a timely manner on March 19, 2024. (130 CMR 610.015(F); Exhibit 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130 CMR 610.032(C)).

¹ The Notice states it is an expedited appeal, however, the date of the Notice is March 11, 2024, and the date sought for Discharge is [REDACTED] 2024. (Exhibit 1)

² No city, town, state, nor zip code is provided on the submitted Notice. (Exhibit 1)

³ The Notice does not include any amount due (Exhibit 1) Additionally, the submission by the nursing facility does not include any amount due. (Exhibit 4)

Action Taken by MassHealth

The nursing facility issued a “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)” to [REDACTED] (*hereinafter “shelter”*) for the specific reason: “You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1)

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701; in issuing to the Appellant a “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)” to [REDACTED] (*hereinafter “shelter”*) for the specific reason: “You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1)

Summary of Evidence

The Appellant is an individual over the age of 65 who is seeking appeal of a “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)” The Notice states it is an expedited appeal, however, the date of the Notice is March 11, 2024, and the date sought for Discharge is [REDACTED] 2024. (Exhibit 1) The Notice indicates that the nursing facility seeks to discharge the Appellant “to [REDACTED] (*hereinafter “shelter”*). No city, town, state, nor zip code is provided on the submitted Notice. (Exhibit 1) The Notice states the specific reason- for discharge: “You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1) The Notice does not include any amount due. (Exhibit 1) Additionally, the submission by the nursing facility does not include any amount due within the entirety of the submission. (Exhibit 4) The Notice submitted as Exhibit 1 does not include any information related to the name, address, and telephone number of the local long-term-care ombudsman office. (Exhibit 1) Additionally, there is no statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal-services office. (Exhibit 1) Also, the notice does not contain the address of the nearest legal-services office⁴. (Exhibit 1).

The nursing facility was represented telephonically at the hearing by its Administrator, its Social Services Director, and a community transition liaison from Greater Lynn Senior Services

⁴ Exhibit 1 contains none of the information listed. (Exhibit 1). However, the information regarding the local long-term-care ombudsman office and the address of a legal services office is included in Exhibit 4. (Exhibit 4, pgs. 2-3)

and testified as follows: the Appellant owes “around \$210,000” to the facility. (Testimony) The facility’s representatives stated that attempts were made to have the Appellant pay, but they attempts have been unsuccessful. (Testimony) The facility representatives stated that the Appellant receives income of approximately \$5000/month, but that she still owes “around \$210,000.” (Testimony) The facility stated attempts to have the Appellant return to where she had come from prior to the facility were unsuccessful, that the facility was informed that the Appellant was not welcome back at her residence prior to her treatment in the facility. (Testimony)

In response to questions posed, the Administrator indicated that the specific amount which the Appellant owes the facility was not included within this Administrative Record. (Testimony, Exhibit 4). The Administrator stated that the Business Manager was unavailable due to power issue from her home, but she would have the information. (Testimony) The Administrator stated that the information could be faxed after hearing, however, the Notice of Hearing dated March 20, 2024 (Exhibit 3) specifically requires that the information be presented prior to the Hearing. (Exhibit 3) Additionally, in response to questions posed, regarding the “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal), the facility indicated they were not seeking an expedited appeal, and the wrong notice must have been used. (Testimony)

The Appellant contested much of the testimony presented by the facility. (Testimony) The Appellant stated she did not know the exact amount, and that she had requested an itemized bill, but had not received one. (Testimony) The Appellant stated that she has made payments but has been told multiple amounts she owes. (Testimony). When asked why she did not have someone from the Ombudsmen’s office or legal aide to help her with the appeal, she indicated that she was not aware that she could have someone help her. (Testimony) When asked if she was served with information related to the Ombudsmen’s office or legal aide, the Appellant indicated she had “probably” received the information. (Testimony). That information is not included within Exhibit 1. (Exhibit 1)

Findings of Fact

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

1. The Appellant is an individual over the age of 65 who is seeking appeal of a “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal).” (Exhibit 1)
2. The Notice states it is an expedited appeal, however, the date of the Notice is March 11, 2024, and the date sought for Discharge is [REDACTED] 2024. (Exhibit 1)
3. The Notice indicates that the nursing facility seeks to discharge the Appellant [REDACTED] [REDACTED] (*hereinafter “shelter”*). (Exhibit 1)

4. No city, town, state, nor zip code is provided on the submitted Notice. (Exhibit 1)
5. The Notice states the specific reason for discharge: “You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1)
6. The Notice does not include any amount due. (Exhibit 1) Additionally, the submission by the nursing facility does not include any amount due within the entirety of the submission. (Exhibit 4) The Administrator confirmed that the amount due is not present within the submitted documentary evidence. (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 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.⁵

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, as codified within 130 CMR 456.701(C):

- (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

⁵ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth’s Fair Hearing Rules at 130 CMR 610.001 et seq. as well as 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.

- 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 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.

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.

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. Pursuant to 130 CMR 456.701(B), 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 456.702: Time Frames for Notices Issued by Nursing Facilities: ⁶

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are emergency discharges or emergency transfers.

⁶ See also 130 CMR 610.029: Time Frames for Notices Issued by Nursing Facilities

(A) The notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C).

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician. (emphasis added)
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not resided in the nursing facility for 30 days immediately prior to receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429, must comply with the requirements set forth in 130 CMR 456.701 and must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

(C) If the request for a hearing is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, if the request for a hearing is received within the applicable time period as described in 130 CMR 456.703(B)(3), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

The nursing facility must also comply with all other applicable state laws, including M.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.⁷

In the present case, there are numerous deficiencies on the face of the Notice served to the Appellant which run afoul of the Regulations. Specifically, the nursing facility issued a “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)” The Notice states it is an expedited appeal, however, the date of the Notice is March 11, 2024, and the date sought for Discharge is ██████████ 2024. (Exhibit 1) Pursuant to 130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities, specifically 130 CMR 456.702(B) there is no expedited process listed for a discharge sought for non-payment. (See also 130 CMR 610.029 (B)) In response to questions posed, regarding the “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)”, the facility indicated they were not seeking an expedited appeal, and the wrong notice must have been used. (Testimony)

Additionally, the Notice indicates that the nursing facility seeks to discharge the Appellant “to ██████████” (hereinafter “shelter”). No city, town, state, nor zip code is provided on the submitted Notice. (Exhibit 1) 130 CMR 456.701(C)(4) requires the Notice contain: “the location to which the resident is to be discharged or transferred.” Here, with no city, no town, no state nor any zip code, notice of the specific location where the facility is seeking to discharge that Appellant, the Notice is insufficient.

The Notice states the specific reason for discharge: “You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1) The Notice does not include any amount due. (Exhibit 1) Additionally, the submission by the nursing facility does not include any amount due within the entirety of the submission. (Exhibit 4) 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. Neither Exhibit 1, nor Exhibit 4, contains any information related to the specific amount the facility states the Appellant owes the facility. (Exhibit 1, Exhibit 4) Also, there is no documentary evidence to support a “reasonable and appropriate notice” served upon the Appellant to support the discharge. (Exhibit 1, Exhibit 4, 130 CMR 456.701(A)(5)) The

⁷ 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.

Notice is insufficient and does not state any amount due.

Other concerns regarding the adequacy of the Notice to the Appellant within the submission include the Notice submitted as Exhibit 1 does not include any information related to the name, address, and telephone number of the local long-term-care ombudsman office. (Exhibit 1) Additionally, there is no statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal-services office. (Exhibit 1) Also, the Notice does not contain the address of the nearest legal-services office. (Exhibit 1). Although Exhibit 1 contains none of the information listed, the information regarding the local long-term-care ombudsman office and the address of a legal services office is included in Exhibit 4. (Exhibit 4, pgs. 2-3). The Appellant's testimony that the information was "probably" received does not clarify whether the Appellant was served the necessary information as required by the Regulations. Coupled with the deficiencies highlighted supra, it is unclear, from this documentary record, what information required within the Notice was furnished to the Appellant. (Exhibit 1, Exhibit 4, 130 CMR 456.701(C)(6), 130 CMR 456.701(C)(9)⁸).

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Here, the Appellant has met the burden, by a preponderance of evidence, to demonstrate the invalidity of the administrative determination. Specifically, the Notice, which states it is a less than 30-day discharge, is belied by the date sought for discharge, 30 days as listed in Exhibit 1. The location for discharge is bereft of the city, town, state or zip code of the shelter. (Exhibit 1). Nowhere within the documentary evidence is there any information regarding any attempt at "reasonable and appropriate notice" served to the Appellant, nor any specific amount that Appellant has failed to pay for services provided by the facility (Exhibit 1, Exhibit 4, 130 CMR 456.701(A)(5)). The Administrator of the facility confirmed through testimony that the amount is not within the submitted documentary evidence. (Testimony) Consequently, there is no evidence in this Record that demonstrated the resident's clinical record contains documentation to explain the transfer or discharge as required. Other deficiencies (notice of information related to the Ombudsmen, notice of legal aid) within Exhibit 1 but appearing in Exhibit 4, pgs. 2-3, further erodes the nursing facility's position that the Notice served upon Appellant was adequate.

For all of the reasons highlighted supra, I find that the Notice served to the Appellant runs afoul of the Regulations. Due process requires proper notice, which is lacking within this

⁸ On Page 8 of Exhibit 4, there is a section included that does not pertain to the Appellant. The section lists "Strike Out Reason: Mistaken Entry Strike Out Date 4/4/23 17:30." The fact that it remains included within the submission coupled with the deficiencies highlighted supra, erodes the reliability of any testimony regarding the adequacy of the Notice served to the Appellant.

Administrative Record. The Appellant has met the burden, by a preponderance of evidence, to show the invalidity of the administrative determination through the inadequacy of the Notice served. Accordingly, this appeal is APPROVED.

Order for Nursing Facility

Rescind the March 11, 2024 “Notice of Intent to Transfer/Discharge With Less than 30 Days Notice (Expedited Appeal)⁹.”

Compliance with 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, Office of Medicaid, 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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:



⁹ Additionally, MGL c.111, §70E requires “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.” With this appeal, having been approved, with an Order that the March 11, 2024 be rescinded, the issue of the sufficiency of the preparation and orientation is not reached in this appeal.