

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2404870
Decision Date:	04/26/2024	Hearing Date:	04/19/2024
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearances for Skilled Nursing Facility:
Darlene McConnell – Dir. Social Service
Nicole Lucente – BOM
Donald Christie – 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:	Approved	Issue:	Nursing Facility Discharge
Decision Date:	04/26/2024	Hearing Date:	04/19/2024
Nursing Facility's Reps.:	Darlene McConnell; Nicole Lucente; Donald Christie	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 30A, 111, and 118E, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a 30-Day Notice of Intent to Discharge dated March 25, 2024, the respondent-nursing facility informed the appellant that she would be discharged to a hotel on April 24, 2024. (Exhibit 1.) The appellant filed this timely appeal on March 27, 2024. (Exhibit 1; 130 CMR 610.015(B).) Nursing facility residents have the right to appeal any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C).)

Action Taken by the Nursing Facility

The nursing facility seeks to discharge the appellant to a hotel because she “has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility” and “[t]he safety of the individuals in the facility is endangered due to the clinical and/or behavioral status of the resident as well as other residents within the facility.” (Exhibit 1.)

Issue

The appeal issues are whether: (1) the facility has valid grounds to discharge the appellant; (2) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028 and 610.029; and (3) the facility has provided sufficient preparation and

orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place pursuant to MGL Ch. 111, § 70E.

Summary of Evidence

This is not the first appeal for the appellant regarding being discharged from the facility. The appellant was given a discharge notice in [REDACTED], and a hearing was held before the Board of Hearings on or around January 23, 2024. (See Appeal No. 2400296 (Feb. 2024).) The grounds for appeal in that hearing were largely similar to the grounds set forth here. The appellant has a historical debt to the nursing facility of approximately \$13,000, but she does currently have Medicaid coverage, and her income is assigned to the facility. The nursing facility's representatives agreed that this was no longer a reason for seeking her discharge at this time.

The true reason for seeking the appellant's discharge is her continued smoking inside the facility, particularly in her room and bathroom. The appellant has, in fact, been caught smoking twice since her last appeal. The appellant testified that she is under a lot of stress because she has been trying to contact her daughter and granddaughter, and she cannot locate them. She also testified that she swears she will never do it again and understands that smoking in the facility is just cause for the facility to evict her.

In reviewing the clinical record submitted into the hearing record, the parties agreed that the appellant was clinically appropriate for long-term care. She is wheelchair-bound, though she is able to transfer and move short distances independently with a walker. The appellant receives nursing care and therapy services. The clinical record notes that the appellant is endangering others with her smoking, but this documentation was not done by a physician. Further, there was very limited evidence that the plan to discharge the appellant to a hotel would be a safe and appropriate place to discharge the appellant. The nursing facility highlighted that they had arranged referrals to community support organizations to provide services to the appellant at the hotel, but that those services could not be formally requested until the appellant was going to be discharged. They also argued that a physician needs to sign off on any discharge on the day that it happens, but they conceded that no physician has provided an opinion yet that this is a safe and appropriate plan for the appellant.

Findings of Fact

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

- 1) The appellant is clinically eligible for long-term-care services, she is currently covered by MassHealth for payment, and the facility is receiving payment currently. (Testimony by nursing facility representatives.)

- 2) The appellant has a historical debt to the nursing facility, but the facility agrees that they would not pursue discharge on this ground alone. (Testimony by nursing facility representatives.)
- 3) The appellant has been caught multiple times smoking in the facility, which she is aware is a danger to the health and safety of others in the facility. (Testimony by the nursing facility representatives and the appellant; Exhibit 3.)
- 4) This danger was not documented in the appellant's clinical record by a physician. (Exhibit 3; testimony by the nursing facility representatives.)

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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found both at 130 CMR 456.000 and 130 CMR 610.000.

A "discharge" is "the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual." (130 CMR 456.002; see also 130 CMR 610.004.)

The requirements for a nursing facility discharge or transfer are:

(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 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).**

(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 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;

(130 CMR 610.028(A)-(C) (emphasis added); see also 130 CMR 456.701(A).)

A nursing-facility resident who requests a hearing to dispute her discharge "pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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."¹ (MGL Ch. 111, § 70E.)

As a regulatory matter, "a physician" must document in the resident's clinical record the reasons for the discharge when the discharge is based upon the resident's endangering the safety or health of others in the facility. It is undisputed that no physician has documented the grounds for the

¹ The term "referee" in the statute refers to a Board of Hearings hearing officer.

appellant's discharge at this time. Similarly, there is no documentation in the record bearing on the appropriateness of the appellant's being discharged to a hotel.

For these reasons, this appeal must be APPROVED.

Order for the Nursing Facility

Rescind the March 25, 2024 discharge notice. Do not discharge the appellant under this discharge notice.

Implementation of this Decision

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.

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.

Christopher Jones
Hearing Officer
Board of Hearings

Cc: [REDACTED]