

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2404937
Decision Date:	4/23/2024	Hearing Date:	04/17/2024
Hearing Officer:	David Jacobs		

Appearances for Appellant:



Appearance for MassHealth:

Dina Lamarcha, Business Office Manager
Alan Lancaster, Director of Social Services
Scott Dickinson, Administrator
Kaley Moreschi, Unit 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:	Approved	Issue:	Nursing Facility - Discharge
Decision Date:	4/23/2024	Hearing Date:	04/17/2024
Facility Rep.:	Dina Lamarcha, Alan Lancaster, Scott Dickinson, Kaley Moreschi	Appellant's Reps.:	Pro se
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 March 6, 2024, Royal Woodmill Nursing & Rehab Center, a skilled nursing facility ("the facility"), notified the appellant of its plan to discharge her on [REDACTED], because it determined that she had failed to pay for her stay at the facility (Exhibit 1). No discharge location is listed. The appellant filed this appeal in a timely manner on March 28, 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, director of social services, and unit manager. The administrator testified that the appellant was admitted in [REDACTED] from a hospital due to weakness in her legs. Since her admission she has accrued \$77,512.00 in unpaid bills for her stay (Exhibit 4, pg. 9). While the appellant was initially covered by Medicare, she was converted in October 2023 and they no longer paid for her stay. At that time the facility attempted to have the appellant apply for MassHealth, but she was uncooperative, and the application process was delayed. Recently she was approved for MassHealth, but because of the delay MassHealth was not able to backdate her benefits to cover all the unpaid bills. As of April 1, 2024, the appellant still has unpaid bills not covered by MassHealth in the amount of \$12,004.40 (Exhibit 4, pg. 29). The administrator testified that the appellant was under the presumption that Medicare would continue to pay for her stay at the facility and she should not have to apply for MassHealth. The appellant gave no justification for this belief. The administrator continued that despite the Appellant being found eligible for MassHealth, the nursing facility began these proceedings due to the unpaid balance of \$12,004.40. Since starting these proceedings, the administrator has worked with the appellant to secure a discharge location that is appropriate for her. He discussed shelters, boarding houses, and hotels for the appellant to stay at. However, the appellant has not been cooperative with selecting a discharge location. The notice does not contain a discharge location because the appellant refuses to choose one. However, the facility will use [REDACTED] if no other discharge location is selected.

The appellant appeared telephonically and conceded to the facts laid out by the facility administrator related to the money owed. However, she disagrees with the facility in three key areas. First, she argues that the facility did not notify her of any bills for her stay before the March 1, 2024 bill (Exhibit 4, pg. 9). Second, she argues that she was cooperative in the process for applying for MassHealth. Third, she argues that the facility administrator did not discuss discharge locations with her and only "mentioned some boarding houses." The appellant does not intend to pay the past due amounts.

In response to the appellant's assertions, the facility administrator argued that facility bills were hand delivered to the appellant, reiterated that she was uncooperative in the MassHealth application process, and he did discuss discharge locations with the appellant. The administrator stated that he could provide documentary evidence of his claims. Therefore, the record was held open until April 19, 2024 to submit such documentation (Exhibit 5). On April 19, 2024 the facility submitted the requested documents (Exhibit 6). The documents include billing statements from October 2023 to March 2024 showing the appellant's fees for her stay (Exhibit 6, pgs. 6-11), email exchanges between the appellant and the facility concerning applying for MassHealth (Exhibit 6, pg.

19-31), and social service notes from the facility regarding its attempts to discuss discharge locations with the appellant (Exhibit 6, pg. 36-40).

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]. No discharge location is listed.
3. The facility submitted the appellant's clinical record.
4. The appellant has past due bills accrued from October 2023 to April 2024 owed to the facility in the amount of \$77,512.00 after her conversion from Medicare.
5. After the appellant was found eligible for MassHealth, the amount past due was reduced to \$12,004.40.
6. The appellant does not intend to pay the past due amount of \$12,004.40.

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).

(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 the following, in a language the member understands:

(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;

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 does not have appropriate grounds to discharge the appellant as the March 6, 2024 notice is deficient.

The notice on appeal does not contain a discharge location for the appellant. The facility administrator argues that this is due to the appellant not cooperating with choice of discharge location and the selection still being an ongoing process. However, 130 CMR 610.028(C)(4) requires the notice include "the location to which the resident is to be discharged or transferred." As the notice at issue does not include a location, the notice is insufficient under the Law. Therefore, because the appellant did not receive proper notice, she cannot be discharged. If the facility still wants to go forward with the discharge it is encouraged to send a new notice to the appellant that includes a discharge location. It should be noted that the appellant does not have to agree with the

discharge location in order for the notice to meet regulatory requirements.

The appellant's appeal is APPROVED.

Order for Nursing Facility

Do not discharge the appellant under this notice of intent to discharge.

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:

Royal Woodmill Nursing & Rehab Center
Attn: Administrator
800 Essex Street
Lawrence, MA 01841