

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2406308
Decision Date:	05/24/2024	Hearing Date:	05/16/2024
Hearing Officer:	Thomas J. Goode		

Appellant Representative:



Nursing Facility Representatives:

Norma B-Mullings, Administrator
Krystal Gagnon, Director of Social Services



*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:	Nursing Facility Initiated Discharge
Decision Date:	05/24/2024	Hearing Date:	05/16/2024
Nursing Facility Rep.:	Krystal Gagnon et al.	Appellant's Rep.:	Pro se
Hearing Location:	Remote		

Authority

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

Jurisdiction

On March 29, 2024, Parsons Hill Rehab and & Healthcare Center ("the nursing facility") issued a "30-Day Notice of Intent to Transfer/Discharge Resident" to the [REDACTED] in [REDACTED] services provided by the facility" (130 CMR 610.028, 610.029, 456.701, 456.702 and Exhibit 1). Appellant filed a timely appeal at the Board of Hearings on April 22, 2024 (130 CMR 610.015(B) and Exhibit 2). A 30-Day Notice of Intent to Transfer/Discharge Resident" because "[y]our health has improved sufficiently so that you no longer need the services provided by the facility" is valid grounds for appeal (130 CMR 610.015(B)).

Action Taken by the Nursing Facility

On March 29, 2024, Parsons Hill Rehab & Healthcare Center ("the nursing facility") issued a "30-Day Notice of Intent to Transfer/Discharge Resident" to the [REDACTED], because "[y]our health has improved sufficiently so that you no longer need the services provided by the facility."

Issue

The hearing issue is whether the nursing facility has issued proper notice, and whether the nursing facility is justified in seeking to discharge Appellant from the facility to the [REDACTED] on [REDACTED] because “[y]our health has improved sufficiently so that you no longer need the services provided by the facility.”

Summary of Evidence

The nursing facility administrator appeared by telephone along with the Director of Social Services. Appellant is [REDACTED] and was admitted to the nursing facility for a short-term stay on [REDACTED] following hospitalization for a right tibia fracture secondary to a fall. Prior to admission to the nursing facility, Appellant was homeless and lived at hotels and shelters. Appellant is enrolled in MassHealth coverage and her stay at the facility has been paid for by MassHealth. On [REDACTED] 2024, the nursing facility issued a 30-Day Notice of Intent to Transfer/Discharge Resident to the [REDACTED], because Appellant’s health has improved sufficiently so that she no longer needs the services provided by the nursing facility. Appellant’s diagnoses on admission included poly-substance abuse, anxiety, major depressive disorder, nutritional deficiencies, and an unspecified fracture of the right tibia and subsequent encounter for closed fracture with routine healing (Exhibit 4, p. 10). The facility representatives testified that Appellant is independent with activities of daily living (Exhibit 4, p. 24). An orthopedic surgery consultation dated April 5, 2024 shows that Appellant has moderate to severe arthritis of the right ankle and would probably need an ankle fusion which was not undertaken because Appellant is a smoker. An inappropriate affect was attributed to substance abuse or mental health issues (Exhibit 4, p. 36). A second orthopedic consultation shows that Appellant has severe ankle arthritis which is causing her pain and limited mobility. Appellant was educated to stop smoking to qualify for ankle fusion surgery (Exhibit 4, p. 42). The nursing facility representatives testified that nursing progress notes from March 26, 2024 show an X-ray with no acute fracture after Appellant twisted her right foot on the smoking patio. Appellant was reported to walk independently in flip flops with no assistive device and no disturbance in gait (Exhibit 4, p. 102). On March 26, 2024, Appellant’s primary care physician, [REDACTED], created a progress note indicating no medical diagnoses, no ambulation restrictions, sensation grossly normal to touch, and movement in all extremities. Appellant is noted to be alert and oriented x3 and cooperative with the examination. [REDACTED] determined that Appellant has progressed well since admission, and her health has improved significantly to the point that she no longer requires nursing services, or the services provided by the facility. [REDACTED] recorded that Appellant is stable for standard discharge, and would benefit from follow-up with outpatient providers post discharge (Exhibit 4, p. 118). The nursing facility representatives testified that Appellant’s grandfather recently passed away and Appellant reported that he left a two-family house to Appellant and Appellant’s father. The facility stated that Appellant could be discharged to the family home, but Appellant will not disclose family contact information (Exhibit 4, p. 107). The nursing facility representatives testified that the

discharge plan is to a local homeless shelter which is a safe and appropriate plan because Appellant's health has improved, and she does not require additional services in the community. The facility testified that Appellant has not cooperated with discharge planning efforts, but resources would be arranged prior to discharge including arranging a primary care physician and referrals for methadone maintenance in the community (Exhibit 4, pp. 107, 129, 157).

Appellant testified that her foot is sideways and causes her pain and difficulty walking in flip flops and sandals. Appellant stated that she has nowhere to go because her father does not speak to her, and her mother lives in [REDACTED]. Appellant denied frequent smoking.

Findings of Fact

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

1. Appellant is [REDACTED] and was admitted to the nursing facility for a short-term stay on [REDACTED] following hospitalization for a right tibia fracture secondary to a fall.
2. Prior to admission to the nursing facility, Appellant was homeless and lived at hotels and shelters.
3. Appellant is enrolled in MassHealth coverage and her stay at the facility has been paid for by MassHealth.
4. On March 29, 2024, the nursing facility issued a 30-Day Notice of Intent to Transfer/Discharge Resident to the [REDACTED], [REDACTED] because Appellant's health has improved sufficiently so that she no longer needs the services provided by the nursing facility.
5. Appellant's diagnoses on admission included poly-substance abuse, anxiety, major depressive disorder, nutritional deficiencies, and an unspecified fracture of the right tibia and subsequent encounter for closed fracture with routine healing.
6. Appellant is independent with activities of daily living.
7. An orthopedic consult dated March 13, 2024 shows that Appellant has severe ankle arthritis which is causing her pain and limited mobility. Appellant was educated that she must stop smoking to qualify for ankle fusion surgery.
8. An orthopedic surgery consultation dated April 5, 2024 shows that Appellant has moderate to severe arthritis of the right ankle and would probably need an ankle fusion which was not undertaken because Appellant is smoking. An inappropriate affect was attributed to

substance abuse or mental health issues.

9. Nursing progress notes from March 26, 2024 show an X-ray with no acute fracture after Appellant twisted her right foot on the smoking patio. Appellant was reported to walk independently in flip flops with no assistive device and no disturbance in gait.
10. On March 26, 2024, Appellant's primary care physician, [REDACTED], created a progress note indicating no ambulation restrictions; sensation grossly normal to touch; moves all extremities. Appellant is noted to be alert and oriented x3 and cooperative with the examination. [REDACTED] determined that Appellant has progressed well since admission; and her health has improved significantly to the point that she no longer requires nursing services, or the services provided by the facility. [REDACTED] recorded that Appellant is stable for standard discharge and would benefit from follow-up with outpatient providers post discharge (See Exhibit 4, p. 118).
11. Appellant has not cooperated with discharge planning efforts, and resources would be arranged prior to discharge including arranging a primary care physician and referrals for methadone maintenance in the community.

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

456.701: Notice Requirements for Transfers and Discharges 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

¹ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.701 et seq. is identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq.

endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have MassHealth 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 (4), 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 or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and

(2) a physician or PCP 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 the authorized 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 their right to request a hearing before MassHealth'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 *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.

The nursing facility must also comply with all other applicable state laws, including M.G.L. c.111, §70E which went into effect in November of 2008. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads:

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.

A transfer or discharge from a nursing facility because a resident's health has improved sufficiently so that a resident no longer needs the services provided by the nursing facility is a valid reason to discharge a nursing facility resident. Discharge from a nursing facility because a resident's health has improved requires that the resident's physician document the resident's clinical record to explain the transfer or discharge (130 CMR 456.701(A)(B)). On March 26, 2024, Appellant's primary care physician, [REDACTED] determined and documented in the medical record that Appellant has progressed well since admission, has no ambulation restrictions, and her health has improved significantly to the point that she no longer requires skilled nursing services provided by the facility. [REDACTED] recorded that Appellant is stable for standard discharge and would benefit from follow-up with outpatient providers post discharge (Exhibit 4, p. 118). The nursing facility has appropriately documented Appellant's medical record and Appellant's physician sufficiently explained the reasons for the discharge due to improved health. Further, the nursing facility has provided appropriate notice that complies with notice requirements specified at 130 CMR 456.701(C).

After considering the evidence and testimony in the hearing record, especially [REDACTED] documentation of the reasons for the discharge due to Appellant's improved health, this hearing officer concludes that although Appellant has not cooperated in discharge planning, the nursing facility has provided sufficient preparation and orientation to ensure a safe and orderly discharge from the facility to a local homeless shelter, which will include arranging continuation of methadone treatments and a new primary care physician in the community. Appellant is [REDACTED] old and prior to admission to the nursing facility, resided in hotels and homeless shelters. Appellant may also have housing options with family members. While returning to a homeless shelter is not ideal, the discharge plan is safe and appropriate considering Appellant's improved health such that she is independent with activities of daily living, and no longer requires nursing facility level of care.

For the foregoing reasons, the appeal is DENIED.

Order for the Nursing Facility

Proceed with the discharge plan to the [REDACTED] no sooner than 30 days from the date of this hearing 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Norma B-Mullings, Administrator, Parson Hill Rehab & Healthcare Center, 1350 Main Street, Worcester, MA 01603