

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2407991
Decision Date:	5/30/2024	Hearing Date:	05/23/2024
Hearing Officer:	Kenneth Brodzinski	Record Open to:	05/24/2024

Appearance for Appellant:

Pro se

Appearance for Champion Rehab & Nursing:

Lisa Mullins, Social Worker



*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:	SNF Discharge
Decision Date:	5/30/2024	Hearing Date:	05/23/2024
SNF's Rep.:	Lisa Mullins	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MEC		

Authority

This hearing was conducted pursuant to federal law and regulations at 42 U.S.C. §1396r and 42 CFR 483.10-483.206 and Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The nursing facility issued a notice dated May 16, 2024 of its intent to expeditiously discharge Appellant on the grounds that Appellant's health has improved so that she no longer requires the services provided by the facility (Exhibit A). Appellant filed this appeal in a timely manner on May 20, 2024 (see 130 CMR 610.015(B)(5) and Exhibit A). Expedited discharge of a nursing-facility patient constitutes valid grounds for appeal (see 130 CMR 610.029(B); 42 CFR Ch. IV, 483.200 et seq.).

Since the request for the hearing was received by the Board of Hearings during the notice period described in 130 CMR 610.015(B)(5), the nursing facility must stay the planned discharge or transfer until 5 days after this decision is rendered. While the stay is in effect, the resident shall not be transferred or discharged from the nursing facility (see 130 CMR 610. 030(B)).

Action Taken by the Nursing Facility

The nursing facility issued notice dated May 16, 2024 of its intent to discharge Appellant with less than 30-days' notice.

Issue

Whether or not the nursing facility can proceed to discharge Appellant under notice of May 16, 2024.

Summary of Evidence

Both parties appeared by telephone. Prior to hearing the facility submitted a packet of documentation including Appellant clinical record from the facility (Exhibit B). Appellant made no filing other than her request for the hearing (Exhibit A).

The facility representative testified that Appellant was admitted to the facility on [REDACTED] with the diagnosis of COPD, anxiety, and depression. At the time of her admission, the Appellant required assistance with all ADLs as well as assistance with walking. Appellant has since received physical therapy and other SNF services and today she is independent with all ADLs and her balance and strength are clinically assessed as normal. Appellant has been discharged by the facility's Rehabilitation Department.

The facility representative also testified that, while Appellant uses a wheelchair, facility staff have reported seeing her walking independently for at least 100 feet.

The facility representative testified that Appellant has actively avoided meeting with her to review her discharge plan of care; nevertheless, care planning has been put in place. According to the facility representative, the [REDACTED] will make a same day visit to Appellant on the date of her discharge and will provide VNA services in consultation with Appellant. Additionally, [REDACTED] services will do an on-site assessment with Appellant when she is discharged. The facility representative testified that, as stated in the subject notice, Appellant will be discharged to her former residence located in a hotel shelter where she resided with her nephew.

Upon questioning by the hearing officer, the facility representative testified that Appellant's treating physician is [REDACTED] and he agrees with the discharge. The hearing officer asked the facility representative to obtain a written statement from [REDACTED] confirming that he agrees with a noticed discharge. Accordingly, the hearing was open for one day for the facility to obtain and file such a letter.

Appellant appeared on her own behalf and asserted that no one from the facility has ever seen her walk as she uses her wheelchair all the time. Appellant also asserted that she spoke to her doctor and he told Appellant that he never discharged her.

Appellant testified that, outside of a wheelchair, she could only take a few steps and she shakes and trembles when she walks. Appellant stated that, when she is sitting on the toilet, she shakes and trembles as well. Appellant explained that she wishes to be able to walk before being discharged. Appellant testified that she lived with her nephew who was only [REDACTED] years old and she does not feel that he would be ready to care for her unless she was able to walk.

Appellant also asserted that the facility is not giving her prescribed anxiety medications. She acknowledged that her oxygen levels are good while she is using oxygen, but she also indicated that she continues to be a daily smoker.

In response, the facility representative testified that she herself witnessed Appellant walking and that she consulted with two certified nurses' assistants who also stated that they have seen appellant walking without shaking for at least 100 feet.

Post hearing, the facility timely filed two additional pages:

- A copy of a one-page typewritten note dated May 23, 2024 signed by [REDACTED] which states *"I am informing you of my support for the discharge of [Appellant] from [REDACTED] in Nursing with medications and services"* (Exhibit C, page 1); and
- A copy of a physician's order dated May 20, 2024 ordered by [REDACTED], which states *"May dc home with medications and services"* (Exhibit C, page 2).

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant was admitted to the facility on [REDACTED] the diagnosis of COPD, anxiety, and depression.
2. At the time of her admission, Appellant required assistance with all ADLs as well as assistance with walking.
3. Appellant has since received physical therapy and other SNF services and today she is independent with all ADLs and her balance and strength are clinically assessed as normal.
4. Appellant has been discharged by the facility's Rehabilitation Department.

5. While Appellant uses a wheelchair, facility staff Appellant (a social worker and two CNA's) have observed Appellant walking independently for at least 100 feet without trembling or shaking.
6. The facility has a post-discharge care plan in place.
7. According to the care plan, the [REDACTED] will make a same day visit to Appellant on the date of her discharge and will provide VNA services in consultation with Appellant.
8. According to the care plan, [REDACTED] services will do an on-site assessment with Appellant when she is discharged.
9. As stated in the subject notice, Appellant will be discharged to her former residence located in a hotel shelter where she resided with her nephew.
10. Appellant's treating physician at the facility is [REDACTED]
11. The record contains a copy of a one-page typewritten note dated May 23, 2024 signed by [REDACTED] which states *"I am informing you of my support for the discharge of [Appellant] from [REDACTED] in Nursing with medications and services"* (Exhibit C, page 1).
12. The record contains a copy of a physician's order dated May 20, 2024 ordered by [REDACTED] which states *"May dc home with medications and services"* (Exhibit C, page 2).
13. Appellant's health has improved sufficiently so that she no longer needs the services provided by the nursing facility.
14. Preparation and orientation have been provided to Appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place.

Analysis and Conclusions of Law

The issue on appeal is limited to whether the nursing facility is acting in compliance with federal and state law governing the discharge of nursing facility residents in its current attempt to discharge Appellant.

Massachusetts's regulations at 130 CMR 610.028, which embody federal regulations at 42 CFR Ch. IV §483.12, require the following:

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 10.028(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 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 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 610.029; and*
 - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;*
- (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. § 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. § 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 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.

(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.

Appellant did not challenge the sufficiency of the notice itself. A review of the subject notice reveals that it complies with the requirements of 130 CMR 610.028(A)-(C).

A review of the clinical record reveals that they support the testimony of the facility representative. Appellant's health has improved since her admission to the facility. Appellant was discharged from physical therapy on [REDACTED] with an indication that she has reached her "highest practical level" of functioning (Exhibit B, page 56). The MD letter and physician's order provided post-hearing show that Appellant's treating physician at the facility supports Appellant being discharged home with medication and support services (Exhibit C).

The record also supports a finding that, at least by the end of the hearing, preparation and orientation has been provided to Appellant to ensure a safe and orderly discharge from the facility to another safe and appropriate place insofar as the discharge planning is in place and was discussed in the presence of Appellant during the hearing. (M.G.L. c.111, §70E).

For the foregoing reasons, the appeal is APPROVED.

Order for the Nursing Facility

After 5 days from the date of this decision, proceed with the discharge pursuant to notice of May 16, 2024.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

MassHealth Leagl Department

Lisa Mullins, Champion Rehabilitation & Nursing Center, 2 Beaumont Avenue, Borcton, MA
02302