

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2408619
Decision Date:	06/28/2024	Hearing Date:	06/17/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



**Appearance for Bear Mountain Nursing Center
(Skilled Nursing Facility):**
Zach Goldman, 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:	Denied	Issue:	Nursing Home Discharge
Decision Date:	06/28/2024	Hearing Date:	06/17/2024
Skilled Nursing Facility's Rep.:	Zach Goldman, Administrator	Appellant's Rep.:	[REDACTED]
Hearing Location:	Springfield MassHealth Enrollment Center	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

The appellant received a 30-Day Notice of Intent to Discharge Resident (Discharge Notice) dated 05/14/2024. The notice stated that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to "[REDACTED]". The notice indicates the reason for the discharge is that "you have failed, after reasonable and appropriate notice, to pay for ... your stay in the nursing facility" (Exhibit 1). The appellant filed this timely appeal on 05/31/2024 (130 CMR 610.015(B); and Exhibit 2). A patient's discharge from a skilled nursing facility is valid grounds for appeal (130 CMR 610.028; 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.028 and other relevant statutes and regulations?

Summary of Evidence

The administrator of the skilled nursing facility appeared at the hearing with Donna Orchard, RN, Director of Nursing; Lael Klein, PT, Director of Rehabilitation; Heather Sirvo, LPN, Director of Minimum Data Set; Michelle Scully, Director of Admissions; and Sophie Robledo, LRSCW, Director of Social Work for the skilled nursing facility. The facility representatives appeared telephonically at the fair hearing, as did the appellant. Exhibits 1-4 were admitted to the hearing record.

The nursing facility administrator testified that the appellant was admitted to the skilled nursing facility on [REDACTED] from the acute hospital setting. He has diagnoses of spinal stenosis, post-laminectomy, Diabetes Mellitus, muscle weakness, diabetic neuropathy, back and leg pain. Since his admission, the appellant has made “fair progress with rehabilitation.” He no longer has a skilled nursing need, a physical therapy need, or an occupational therapy need. His diabetes is well controlled. He remains a fall risk but is independent with his activities of daily living. He is able to ambulate using a wheelchair and is able to take his own blood sugar and administer his own insulin.

The administrator testified that the appellant currently owes a balance of \$15,055.98 to the skilled nursing facility for payment for his care. The appellant has refused to pay for his care. By the end of June, the balance is expected to be \$29,947.01. The facility has encouraged the appellant to apply for MassHealth benefits; however, he has not done so, because he has made several transfers of money and he does not expect to be approved.

The facility has identified a local homeless shelter as a discharge location for the appellant. Care will be arranged in the community. The facility will arrange for equipment for safe ambulation and for the appellant’s prescriptions to be sent to the shelter. In addition, resources for continued care in the community will be provided to the appellant upon his discharge. The facility has also encouraged the appellant to apply for MassHealth community benefits.

The appellant testified that he has a weak leg. He has difficulty transferring to the bathroom and standing up to get dressed. He does not wish to be discharged to the homeless shelter. He is concerned about falling and whether he will have assistance transferring in and out of the wheelchair.

Findings of Fact

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

1. Appellant was admitted to the skilled nursing facility on [REDACTED] from the acute hospital setting. He has diagnoses of spinal stenosis, post-laminectomy, Diabetes Mellitus, muscle weakness, diabetic neuropathy, back and leg pain.
2. As of the date of the fair hearing, the appellant owes the skilled nursing facility \$15,055.98 for the care he has been provided.
3. The appellant has not paid the skilled nursing facility for his care, nor has he entered into a payment agreement or made other arrangements.
4. Since his admission to the skilled nursing facility, the appellant has made "fair progress with rehabilitation." He no longer has a skilled nursing need, a physical therapy need, or an occupational therapy need. His diabetes is well controlled. He remains a fall risk but is independent with his activities of daily living. He is able to ambulate using a wheelchair and is able to take his own blood sugar and administer his own insulin.
5. The appellant received a 30-Day Notice of Intent to Discharge Resident ("discharge notice") dated [REDACTED]
6. The discharge notice states that the facility seeks to discharge the appellant to "[REDACTED] on [REDACTED]. The notice indicates the reason for the discharge is that "you have failed, after reasonable and appropriate notice, to pay for ... your stay in the nursing facility."
7. In support of its decision to discharge and not re-admit the appellant, the nursing facility submitted a copy of the appellant's clinical record that documents his failure to pay for the care he receives at the skilled nursing facility.
8. The skilled nursing facility's discharge plan is to provide equipment for safe ambulation and transfers, transfer prescriptions, and provide community resources for the appellant's continued care.

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 in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (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 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 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 MassHealth agency 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.

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.

The clinical record in this case, as submitted by the facility representatives at the time of hearing, documents that the appellant has failed to pay his nursing facility bill and owes over \$15, 000.00 to the facility for the care he receives. At hearing, the appellant did not dispute the unpaid balance. He confirmed that he is aware of the balance and has not entered into a payment plan or made other arrangements with the skilled nursing facility. Thus, the underlying reason for the proposed discharge is supported by the evidence in the hearing record.

The facility has identified a local homeless shelter as a discharge location. Additionally, the discharge plan is to provide equipment for safe ambulation and transfers, transfer prescriptions, and provide community resources for the appellant's continued care. Because the appellant has no skilled nursing needs, no occupational or physical therapy needs, and is able to take his own blood sugar and administer his own medications, including insulin, the discharge location and discharge plan meet the above requirements as "safe and appropriate place." The nursing facility has provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge.

Although the appellant has expressed his dissatisfaction with the planned discharge to the homeless shelter, he has identified no reason why the shelter is not a safe and appropriate place. The skilled nursing facility has shown that care can be provided to the appellant in the

community. For the foregoing reasons, this appeal is denied. The facility may discharge the appellant pursuant to the 05/14/2024 discharge notice and the discharge plan, as submitted to the hearing record, assuming a bed is available. The facility representative is encouraged to address any of the appellant's concerns prior to his discharge.

Order for the Nursing Facility

Proceed with discharge pursuant to 05/14/2024 discharge notice and the MassHealth regulations. If necessary, ensure a bed is available at the discharge location, and discuss the discharge plan with the appellant and make adjustments as necessary.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Respondent: [REDACTED]