

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2408749
Decision Date:	7/31/2024	Hearing Date:	06/18/2024
Hearing Officer:	Kimberly Scanlon	Record Open to:	07/02/2024

Appearance for Appellant:

Via telephone

Pro se

Appearance for Nursing Facility:

Via telephone

Rodney Gonsalves, Regional Director of
Operations;

Mayla Soccola, 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:	30-Day Nursing Facility Discharge
Decision Date:	7/31/2024	Hearing Date:	06/18/2024
Nursing Facility's Reps.:	Rodney Gonsalves, Regional Director of Operations; Mayla Soccola, Director of Social Services	Appellant's Reps.:	Pro se
Hearing Location:	Taunton MassHealth Enrollment Center Room 2 (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 30-Day Notice of Intent to Discharge Resident dated May 21, 2024, the nursing facility informed the appellant of its intent to discharge him to a rest home on [REDACTED] because he has failed, after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1). The appellant filed this appeal in a timely manner on May 21, 2024 (130 CMR 610.015(F); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by the Nursing Facility

The nursing facility issued a 30-day notice of intent to discharge to the appellant.

Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the Appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility, RegalCare at Harwich, was represented telephonically by its Regional Director of Operations and Director of Social Services. The facility's Regional Director testified that the discharge notice was issued to the appellant for non-payment (Exhibit 1). Currently, the appellant owes the facility \$25,579.60 (Exhibit 3, p. 1). While the facility has received some partial payments from the appellant, he has not paid enough to further reduce his outstanding bill.¹ The facility's Regional Director explained that previous attempts were made to work with the appellant on a payment plan, to no avail. He stated that due to non-payment, the facility has been working with the appellant since last year to safely discharge the appellant to an appropriate location. The facility's Regional Director stated that a previous notice of intent to discharge the appellant was issued last year, however, due to telephonic issues that took place prior to the hearing, the facility rescinded its notice. Presently, the appellant is on MassHealth and has a monthly patient paid amount of \$1,502.20. The appellant declined to pursue a representative payee.

Additionally, the facility's Regional Director testified that the appellant was initially admitted to the facility in [REDACTED] for the following: hypoxemia, hyperlipidemia, hypertension, chronic obstructive pulmonary disease, arthritis, osteoarthritis, acute kidney failure, circulatory issues and a history of falling (Exhibit 3, pp. 215-216). He was discharged for a brief period and was re-admitted to the facility in [REDACTED] for depression and Type 2 Diabetes. *Id.* The Currently, the appellant does not require assistance with activities of daily living and ambulates using a rolling walker (Exhibit 3, p. 28).

With respect to the discharge plan, the facility's Social Services Director testified that the proposed discharge location is a rest home. As to permanent housing concerns, the appellant has been placed on several housing lists and is eligible to apply for senior housing lotteries. Additionally, the appellant has been regularly meeting with his case manager following his approval for the MassHealth Money Follows the Person (MFP) waiver program. The facility also applied for a housing unit located in [REDACTED] on the appellant's behalf. The facility was notified that this housing

¹ The facility's Regional Director testified that the facility received payments from the appellant in the amount of \$500.00 on 5 different occasions, which the record reflects. However, the record further reflects that the appellant made additional payments in the following amounts: \$497.80 and \$1,502.20 in March of 2024, \$1000 in April of 2024, and \$1000 in May of 2024.

location [REDACTED] currently has openings. The appellant has an interview next week to see if he meets the requirements. [REDACTED] would provide additional assistance to the appellant at securing permanent housing for him. The facility's Social Services Director noted the importance of the appellant being discharged to a place, such as [REDACTED] where housing would continue working with him.

The appellant testified on his own behalf. He stated that he has been paying the facility \$1,000.00 per month for the past 6 months so it is unclear to him how the facility calculated the amount owed.² He agreed that he is independent with all ADLs. Prior to his re-admission to the facility, the appellant explained that he was residing with his girlfriend at that time. He is no longer dating her. The appellant stated that his re-admission to the facility stemmed from a bicycle crash that resulted in his lung being compromised. He became septic thereafter. The appellant testified that he does not feel comfortable being discharged to the rest home because the rest home would take all his money and he would be stuck there with no money. Simply put, his life would be over. The facility's Social Services Director explained that the rest home follows the same process as a nursing home in terms of payments. Thus, the appellant could only keep \$72.80 per month of his income. The remainder of his income would be paid to the rest home.

Following the hearing, the record was left open for a brief period (Exhibit 5). At the conclusion of the record open period, the appellant notified this hearing officer that attempted settlements negotiations with the facility failed; however, he hopes to have secured housing beginning sometime in [REDACTED] (Exhibit 6).

Findings of Fact

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

1. The appellant is a resident at the nursing facility.
2. The appellant currently owes the nursing facility over \$25,000.00.
3. The appellant was previously approved for MassHealth benefits with a patient-paid amount of \$1,502.20.
4. On May 21, 2024, the facility notified the appellant of its intent to discharge him for nonpayment. The discharge location is a rest home.

² The record reflects that the appellant paid the facility \$1,000.00 on May 9, 2024, \$1,000.00 on April 5, 2024, and \$1,502.20 and \$497.80, respectively, on March 8, 2024. Prior to the March 8, 2024 payments, the appellant made two \$500.00 payments to the facility (totaling \$1,000.00) on August 17, 2023, two \$500.00 payments (totaling \$1,000.00) on July 19, 2023, and one \$500.00 payment on June 9, 2023 (See, Exhibit 3, p. 1).

5. The appellant has no skilled nursing needs, is independent with his ADLs and uses a rolling walker.
6. The facility has provided the appellant with billing statements.
7. The appellant filed a timely appeal on May 21, 2024.
8. The facility's social services department has continuously been working with the appellant to secure permanent housing.

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.³

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;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;

³ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

- (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.

(130 CMR 456.701(C)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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.

(See, 130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

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).

(130 CMR 456.701(B)).

In the present case, the issue on appeal is whether the appellant has failed, after reasonable and appropriate notice, to pay, or failed to have Medicaid or Medicare pay, for his stay at the nursing facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid denies the claim and the resident refuses to pay for his or her stay. (See, 42 CFR 483.15(c)(E)). The appellant does not dispute the allegation of nonpayment but maintains that he has made partial payments to the facility as an attempt to reduce the outstanding amount owed.

In addition to the MassHealth-related regulations discussed above, the nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads 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.⁴

Here, the facility proposes to discharge the appellant to a rest home. While it may not be an ideal situation for the appellant, given the costs associated therewith, the proposed discharge location is safe and appropriate. Through its testimony and documentation, the facility has demonstrated that the appellant is independent with his ADLs, ambulates using a rolling walker, does not require any skilled nursing care, and can safely live in the community. Further, the social services department has been actively engaging with the appellant in discharge planning and finding permanent housing. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, this appeal is denied.

Order for the Nursing Facility

Proceed with the planned discharge no less than 30 days after the date of this decision.

⁴ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc: Respondent: RegalCare at Harwich, Rodney Gonsalves, 111 Headwaters Drive, Harwich, MA 02645, 401-230-3129