

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2409084
Decision Date:	7/18/2024	Hearing Date:	06/27/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:

Pro se

Appearance for Respondent:

Robert Gardner, Social Services Director
Stacey Thomas, Administrator
Shandra Croce, Nurse Unit Manager

Interpreter:



*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:	7/18/2024	Hearing Date:	06/27/2024
Respondent's Rep.:	Robert Gardner Stacey Thomas Shandra Croce	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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 June 6, 2024, the nursing facility informed the appellant that he would be discharged to the [REDACTED] because the safety of the individuals in the nursing facility is endangered and the health of individuals in the nursing facility would otherwise be endangered. (130 CMR 610.028(A)(3); Ex. 1, pp. 1, 3). The appellant filed this appeal in a timely manner on June 7, 2024. (130 CMR 610.015(B); Ex. 2). Notice of discharge from a nursing facility is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by Nursing Facility

The nursing facility issued a notice of discharge to the appellant.

Issue

The appeal issue is whether the facility satisfied its statutory and regulatory requirements

pursuant to 130 CMR 610.028 when it issued the appellant the notice of intent to discharge.

Summary of Evidence

The nursing facility (facility) was represented telephonically at the hearing by the Social Services Director (Director), its Administrator and a Nurse Unit Manager (Unit Manager). Appellant also appeared by phone. All were sworn. There was no testimony as to the age of appellant. On June 6, 2024, the facility issued to appellant a less than 30-Days' Notice of Intent to Discharge Resident to the [REDACTED] (Ex. 1). Appellant timely appealed on June 7, 2024. (Ex. 2). The facility offered no documentary evidence, including the appellant's clinical record, other than the Notice of Intent to Discharge Resident with Less than 30 Days' Notice. (Ex. 1). The facility offered testimonial evidence. Appellant testified on his own behalf. The Director stated appellant has failed to abide by the facility's smoking policy, the food storage policy and a homelike atmosphere policy. He stated appellant had been given warnings and education. (Testimony). The Administrator stated appellant has been assessed as an independent smoker. This requires him not to have a lighter on his person inside the facility. He is provided with a smoking box and his own personal keys to that box. He is to retrieve the lighter when he goes outside to smoke and place the lighter back into the box when he finishes smoking and returns inside. She stated it is against policy and fire regulations for residents to have a lighter in their room. Regarding food storage and homelike atmosphere, the Administrator stated there is clutter in appellant's room and milk in his window. The Unit Manager stated she has done routine checks everyday on appellant's room since he was given the discharge notice, checking until the day before the hearing. She stated she found open food on his bed on multiple days. She found a vape in his charger. She stated milk was still on his window. She stated appellant was seen coming into the building every day and going straight to his room and not putting his lighter away in the smoking box. (Testimony). The facility did not offer any documentary evidence regarding a smoking policy or a food policy.

Appellant asked the Administrator when he was not storing the lighter. The Administrator replied that people had been monitoring him and keeping track of him after he finished smoking and appellant was identified and seen as not putting the lighter away and going back to his room with the lighter. Appellant was asked if he wanted to provide any other testimony and when he did not answer, the Administrator asked appellant if he felt he had been complying with the smoking policy. Appellant stated "sometimes." (Testimony).

Findings of Fact

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

1. On June 6, 2024, the facility issued to appellant a less than 30-Days' Notice of Intent to Discharge Resident to the [REDACTED] (Ex. 1).

2. Appellant timely appealed on June 7, 2024. (Ex. 2).
3. Other than the Notice of Intent to Discharge Resident with Less than 30 Days' Notice, the facility offered no other documentary evidence, including appellant's clinical record.
4. The facility did not offer any evidence that they provided sufficient preparation and orientation to appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. (42 CFR 483.15 (c)).

Analysis and Conclusions of Law

Per 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

130 CMR 610.028(A); 456.701(A).

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) (3) or (4).

130 CMR 610.028(B).

There are two issues on appeal. The first is whether the facility was correct in issuing the less than 30 days' notice of intent to discharge because the safety of individuals in the facility is endangered due to the clinical or behavior status of the resident and the health of individuals in

the nursing facility would otherwise be endangered.

Pursuant to regulation, when the facility 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. In this case, the documentation must be made by a physician. (130 CMR 610.028(B)). There was no clinical record provided by the facility at hearing and therefore, no documentation provided by a physician. The facility failed to properly comply with this regulation.

The second issue is whether the nursing facility has met the requirements of 42 CFR 483.15(c) and MGL Chapter 111, Section 70E in providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. “The Federal Centers for Medicare and Medicaid, during the times relevant here known as the Health Care Finance Administration, is the Federal agency charged with administering the Medicaid program and promulgating regulations. Sufficient preparation means, according to HCFA,¹ that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence.” [REDACTED]

[REDACTED] Here, the facility informed appellant where he is going via the written June 6, 2024 notice, but there is no evidence the facility took steps under its control to assure safe transportation or that the facility actively involved, to the extent possible, appellant and his family. There is no evidence that the discharge location is a safe and appropriate place for appellant. The facility failed to properly comply with this federal regulation.

The facility has failed to fulfill its obligations under the regulations and therefore, the appeal is approved.

Order for Respondent

Rescind the Notice of Intent to Discharge Resident with Less than 30 Days’ Notice dated June 6, 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

¹ The Health Care Finance Administration is now known as the Centers for Medicare and Medicaid Services.

receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Thomas Doyle
Hearing Officer
Board of Hearings

cc: Respondent: Royal Norwell, Attn: Robert Gardner, 329 Washington Street, Norwell, MA 02061, 781-740-6716