

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409518
Decision Date:	7/19/2024	Hearing Date:	07/18/2024
Hearing Officer:	Thomas J. Goode		

Appellant Representative:
Pro se

Nursing Facility Representatives:
Brian Texiera, Esq.
Josephine Ajayi, Executive Director
Dinamarie LaMarche, Business Office



*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:	7/19/2024	Hearing Date:	07/18/2024
Nursing Facility Reps.:	Brian Texiera, Esq., et al	Appellant's Rep.:	Pro se
Hearing Location:	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

On May 17, 2024, Royal Wood Mill Center ("the nursing facility") issued a "30-Day Notice of Intent to Transfer/Discharge Resident" because "[y]ou have failed, after reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing 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 June 18, 2024 (130 CMR 610.029(C), 456.703(B), and Exhibit 2). A 30-day notice of intent to discharge a nursing facility resident is valid grounds for appeal (130 CMR 610.015(B)).

Action Taken by the Nursing Facility

On May 17, 2024, Royal Wood Mill Center ("the nursing facility") issued a "30-Day Notice of Intent to Transfer/Discharge Resident" because "[y]ou have failed, after reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing facility."

Issue

The appeal issue is whether Royal Wood Mill Center ("the nursing facility") was correct in issuing a "30-Day Notice of Intent to Transfer/Discharge Resident" because "[y]ou have failed, after

reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing facility.”

Summary of Evidence

On May 17, 2024, Royal Wood Mill Center (“the nursing facility”) issued a “30-Day Notice of Intent to Transfer/Discharge Resident” because “[y]ou have failed, after reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing facility.” Appellant is [REDACTED] years old and was admitted to the nursing facility on [REDACTED], [REDACTED], following a cerebral infarction and subdural hematoma and period of hospitalization. Appellant’s current medical conditions include hemiplegia and hemiparesis following cerebral infarction affecting unspecified side, chronic obstructive pulmonary disease (COPD), vascular dementia, and bi-polar disorder. Appellant is wheelchair dependent. Appellant has been approved for MassHealth long-term care coverage. The nursing facility representatives testified that as of July 1, 2024, Appellant owes the nursing facility \$17,216 because she has refused to pay the Patient Paid Amount (PPA). The nursing facility representatives testified that on October 1, 2023, MassHealth calculated a \$1,526.20 PPA. The current PPA is \$1,737.20 per month (Exhibit 5, pp. 1-4).¹

The executive director of the nursing facility testified that Appellant has left-sided weakness from a stroke, but is alert and oriented, and highly functional, leaves the nursing facility on her own, and makes her own therapy appointments which she attends by Uber. She added that Appellant lived in a motel prior to admission to the facility. Counsel pointed to a Summary of Care dated 7/12/2024 which shows that Appellant is alert and oriented, and is independent with eating, bed mobility, toileting, transferring, is continent of bowel and bladder, and that there are no notable changes in ADLs (Exhibit 7, Tab 2). The discharge plan is to the Lowell Transitional Center, which the nursing facility representatives described as a homeless shelter that assists residents with finding appropriate housing. The executive director described the shelter as a medical model that is open during the day to provide assistance to residents and allow visiting nursing services to be arranged for Appellant. Counsel pointed to a letter from the Director of Social Services who recorded on July 12, 2024 that Appellant would prefer discharge to an extended stay motel, and the facility will coordinate transportation to the hotel of her choice, schedule VNA services, book PCP follow-up, and make an additional referral to AgeSpan for in-home assistance (Exhibit 7, Tab 7).

Appellant testified that other residents of the facility have tried to make partial PPA payments and

¹ The month-to-month PPA amount was not definitively established in testimony, and documentation of the current amounts calculated by MassHealth is not included in the nursing facility submissions; however, statements show monthly charges of \$1,685.20 for October 2023 through December 2023; \$1,737.20 per month for January 2024 through July 2024. The PPA amount is not at issue in this appeal. Appellant did not dispute the amount of the PPA owed to the facility and did not dispute that she has not paid any PPA since admission to the facility and does not intend to pay the PPA in arrears or going forward.

have been denied because the facility expects the entire PPA to be paid. Appellant testified that she refuses to pay her PPA because the facility will not accept partial payment. Appellant testified that she does not have the money to pay the PPA from her Social Security income. Appellant stated that she does not intend to pay the PPA she owes to the facility and does not intend to pay the PPA going forward. Appellant added that she will not assign her Social Security income to the nursing facility to pay the PPA. Appellant also testified that she does not want to be transferred to a shelter because she is [REDACTED] years old and uses a wheelchair. Appellant added that she does need assistance with ADLs, and when she was living in a motel her insurance paid for services to assist her. Appellant testified that she is leery of shelters.

Findings of Fact

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

1. On May 17, 2024, Royal Wood Mill Center ("the nursing facility") issued a "30 Day Notice of Intent to Transfer/Discharge Resident" because "[y]ou have failed, after reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing facility."
2. Appellant is [REDACTED] years old and was admitted to the nursing facility on [REDACTED] following a cerebral infarction and subdural hematoma and period of hospitalization.
3. Appellant's current medical conditions include hemiplegia and hemiparesis following cerebral infarction affecting unspecified side, chronic obstructive pulmonary disease (COPD), vascular dementia, and bipolar disorder.
4. Appellant is wheelchair dependent.
5. Appellant has been approved for MassHealth long-term care coverage with a patient paid amount.
6. As of July 1, 2024, Appellant owes the nursing facility \$17,216 because she has refused to pay the Patient Paid Amount (PPA).
7. Appellant does not intend to pay the PPA she owes to the nursing facility and does not intend to pay the PPA going forward.
8. Appellant has left-sided weakness from a stroke, but is alert and oriented, and highly functional, leaves the nursing facility on her own, and makes her own therapy appointments which she attends by Uber.

9. Appellant lived in a motel prior to admission to the facility.
10. A Summary of Care dated 7/12/2024 shows that Appellant is alert and oriented, and is independent with eating, bed mobility, toileting, transferring, is continent of bowel and bladder, and that there are no notable changes in ADLs (Exhibit 7, Tab 2).
11. The discharge destination is the Lowell Transitional Center, which is a homeless shelter that assists residents with finding appropriate housing, and is a medical model that is open during the day to provide assistance to residents and would allow visiting nursing services to be arranged for Appellant.
12. Appellant would prefer discharge to an extended stay motel, and the facility will coordinate transportation to the hotel of her choice, schedule VNA services, book PCP follow-up, and make an additional referral to AgeSpan for in-home assistance.

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.²

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 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

² 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. as well as corresponding federal government regulations.

(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.³

On May 17, 2024, Royal Wood Mill Center (“the nursing facility”) issued a “30-Day Notice of Intent to Transfer/Discharge Resident” because “[y]ou have failed, after reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing facility.” As of July 1, 2024, Appellant owes the nursing facility \$17,216 because she has refused to pay the Patient Paid Amount (PPA). The nursing facility is entitled to collect the patient-paid amount which is required to be paid to the facility.⁴ Failure to pay or establish a payor source is a valid reason to discharge a nursing facility resident, which unlike other valid reasons for discharge does not require physician documentation explaining the transfer in the medical record (130 CMR 456.701(A)(B)). Appellant does not have a right to remain in the nursing facility without paying the PPA. Appellant was clear in her testimony that she does not intend to pay the PPA currently in arrears, and does not intend to pay the PPA going forward should she stay at the nursing facility. Therefore, the nursing facility correctly initiated a 30-day notice of discharge from the facility for failure to pay. The May 17, 2024 notice lists the required elements of effective notice outlined in 130 CMR 456.701(C), and includes the discharge destination to Lowell Transitional Center (Exhibit 1).⁵

Appellant has left-sided weakness from a stroke, but is alert and oriented, and highly functional, leaves the nursing facility on her own, and makes her own therapy appointments which she attends by Uber.⁶ A Summary of Care dated 7/12/2024 shows that Appellant is alert and oriented, and is independent with eating, bed mobility, toileting, transferring, is continent of bowel and bladder, and that there are no notable changes in ADLs (Exhibit 7, Tab 2). The Lowell Transitional Center is a homeless shelter that assists residents with finding appropriate housing and is a

³ 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.

⁴ The Patient-paid Amount is calculated by MassHealth and is the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts. 130 CMR 515.001.

⁵ On April 17, 2024, a hearing was held on a 30-day discharge notice for failure to pay issued by the facility on March 6, 2024. The appeal was decided by hearing decision to Appellant’s favor because the nursing facility did not identify the discharge destination in the March 6, 2024 notice.

⁶ See Exhibit 7, Tab 6, p. 3, Social Service Note, 3/27/2024: “Resident continues to schedule medical appointments without MD order or consent. Resident scheduled Spinal MRI for 4/5/2024 @7:15 p.m. one day prior to dc notice.”

medical model that is open during the day to provide assistance to residents and would allow visiting nursing services to be arranged for Appellant. If Appellant would prefer discharge to an extended stay motel, the facility will coordinate transportation to the hotel of her choice, schedule VNA services, book PCP follow-up, and make an additional referral to AgeSpan for in-home assistance. After considering the evidence and testimony in the hearing record, this hearing officer concludes 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 a safe and appropriate place.

For the foregoing reasons, Appellant's appeal is DENIED.

Order for the Nursing Facility

Following a 30-day stay from the date of this hearing decision, proceed with the discharge plan pursuant to the May 17, 2024 "30 Day Notice of Intent to Transfer/Discharge Resident" because "[y]ou have failed, after reasonable and appropriate notice, to pay for (or to have Medicare or Medicaid pay for) your stay at the nursing facility."

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.

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: Respondent: Royal Woodmill Nursing & Rehab, Attn: Administrator, 800 Essex Street,
Lawrence, MA 01841

Respondent Attorney: Bryan J. Texiera, Esq., Cohen Cleary, P.C., 122 Dean Street, Taunton, MA
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