

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410786
Decision Date:	09/06/2024	Hearing Date:	08/01/2024
Hearing Officer:	David Jacobs		

Appearance for Appellant:



Appearance for MassHealth:

Scott Brewer, Administrator
Elizabeth Belinski, Director of Social Services
Christine Wilsey, Business Office Manager



*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 - Discharge
Decision Date:	09/06/2024	Hearing Date:	08/01/2024
Facility Rep.:	Scott Brewer, Elizabeth Belinski, Christine Wilsey	Appellant's Rep.:	
Hearing Location:	Board of Hearings (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 notice dated June 14, 2024, [REDACTED], a skilled nursing facility, notified the appellant of its plan to discharge him to [REDACTED], because it determined that he had failed to pay for his stay at the facility (Exhibit 1). The appellant filed this appeal in a timely manner on July 11, 2024 (130 CMR 610.015 and Exhibit 2). The discharge of a nursing home resident is valid grounds for appeal (130 CMR 610.028(A)).

Action Taken by MassHealth

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

Issue

Is the planned discharge correct pursuant to 130 CMR 610.029?

Summary of Evidence

The facility administrator testified primarily on behalf of the facility at the hearing. The appellant received the notice for intent to discharge for failing to pay his bill after reasonable notice on June 14, 2024 (Exhibit 1). The facility submitted the appellant's clinical record which include bills that show the appellant owes the facility \$162,342.00 going back to October 2023 (Exhibit 5). The administrator testified that the appellant was admitted on [REDACTED] for acute respiratory failure with hypoxia and has not paid for his stay at the facility since October 2, 2023. As such the facility intends to discharge the appellant for failure to pay after reasonable notice. The administrator explained that the choice of [REDACTED] was chosen as a default discharge location after discussions with the appellant for an alternative location broke down. The appellant hopes to move in with friends, but doing so would require at least two more months of preparation. The appellant raised no objections about the specific choice of [REDACTED] during the hearing.

The appellant was represented at the hearing by an ombudsman who conceded to the facts testified to by the facility. However, the appellant added that the facility was very unprofessional and hostile during the choice of discharge location discussions with him. Regardless, the appellant stated that he has money in a pension that he would be willing to take out and start working with the facility on a payment plan.

The facility administrator was open to working with the appellant on a payment plan and discussions began on what such a plan would look like. Ultimately, the appellant was unsure of how much money he would have access to and when he could get it. Therefore, the hearing officer decided that the record would be held open for one month while the parties worked out the details of a payment plan between themselves. The plan was that the facility would check in with the hearing officer on August 15, 2024 and August 29, 2024 to explain how the payment plan discussions were going (Exhibit 4, pg. 3). If the appellant was not being cooperative, the facility had the right to demand a decision from the hearing officer on either of those dates (Exhibit 4, pg. 3). However, the facility did respond by email on either of the prescribed dates (Exhibit 4, pgs. 1 and 2). On September 5, 2024, the administrator emailed the hearing officer the following: "I apologize for the delay, as I had a family emergency at the end of last week. The facility would like a decision to be made by the hearing officer on this appeal. The facility has received minimal payment from the appellant at this time." (Exhibit 4, pg. 1). The appellant did not respond to any emails concerning this matter.

Findings of Fact

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

1. The appellant was admitted to the facility on [REDACTED].

2. The appellant received a notice of intent to discharge for failure to pay your bill after reasonable notice on June 14, 2024.
3. At the time of the hearing, the appellant has past due bills for his stay at the facility from October 2023 to current in the amount of \$162,342. The appellant made no payments on these bills leading up to the date of the hearing.
4. The facility intends to discharge the appellant to the [REDACTED] as a default location after discussions with the appellant about a discharge location broke down.
5. The appellant raised no objections to the specific choice of [REDACTED] during the hearing.
6. During the hearing, the parties agreed to work out a payment plan.
7. The record was held open until August 29, 2024 for the parties to work out the details of the payment plan between themselves. The facility was instructed to check in with the hearing officer on August 15, 2024 and August 29, 2024 with updates on how discussions were going.
8. The facility did not check in with the hearing officer on either check-in date.
9. On September 5, 2024, the facility administrator emailed the hearing officer and explained that he was not able to respond to the hearing officer's emails due to a family emergency but wanted a decision on this matter because the appellant had made minimal payments.
10. The appellant did not respond to any of the emails concerning this matter.

Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility when the transfer or discharge is appropriate because the resident has failed to pay for a stay at the facility (130 CMR 610.028(A)(5)). A transfer or discharge on this ground must be documented by the resident's clinical record (130 CMR 610.028(B)).

130 CMR 610.028: 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 610.028(A)(4).

M.G.L. Ch. 111, § 70E states that,

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 first issue is whether the appellant's discharge is appropriate because he has failed to pay for his stay at the facility (130 CMR 610.028(A)(5)). Here, it is found that the facility has appropriate grounds to discharge the appellant. Although the facility failed to properly check in with the hearing officer on the prescribed check-in dates, the hearing officer accepts the facility administrator's excuse of a family emergency being the cause (Exhibit 4). It is uncontroverted that the appellant owes the facility for his stay in the amount of \$162,342 (Exhibit 5). Furthermore, it is uncontroverted that the appellant has failed to make any payments for this amount from October 2023 until the date of the hearing. During the hearing there was an agreement made for a payment plan to be

developed, but per the September 5, 2024 email from the facility, it appears that the appellant has not been making an earnest effort to hold up his side of the agreement (Exhibit 4, pg. 1). The facility administrator did not give specifics about the nature of the agreement or in what manners the appellant was deficient (Exhibit 4, pg. 1). Regardless, all emails discussing the matter have been copied to the appellant, who has chosen not to respond to the facility's characterization of the matter. This, combined with the appellant's history of non-payment of his bills to the facility leads to a finding that the facility has met its burden to discharge the appellant for non-payment of facility bills.

Thus, we move on to the second issue.

The second issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, 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.

The notice of discharge lists the appellant's discharge location as the [REDACTED]. A location chosen as a default when the facility and the appellant were unable to come to an agreement on discharge location. It is uncontroverted that the facility worked with the appellant in selecting a discharge location. Furthermore, the appellant raised no specific objections to the choice of [REDACTED] as his discharge location during the hearing. Therefore, the nursing facility's notice of discharge dated June 14, 2024 meets the requirements of MGL c.111, §70E.

Based on the record and the above analysis, the nursing facility has valid grounds to discharge the appellant per its notice dated June 14, 2024.

The appeal is thus DENIED.

Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 5 days from the date of this decision.

Implementation of this Decision

If this nursing facility fails to comply with the above order, 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.

David Jacobs
Hearing Officer
Board of Hearings

CC:

