

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2411072
Decision Date:	09/20/2024	Hearing Date:	September 10, 2024
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:

Pro Se

Facility Representative:

Lauryn Kmon, Administrator



***Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171***

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing Home Discharge
Decision Date:	09/20/2024	Hearing Date:	September 10, 2024
Facility Rep.:	Lauryn Kmon	Appellant Rep.:	Pro Se

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By a notice dated June 21, 2024, the respondent nursing home (the facility) planned on discharging the appellant because “The health of individuals in the facility would otherwise be endangered” (Exhibit 1). The appellant filed this appeal in a timely manner on July 15, 2024 (see 130 CMR 610.015 and Exhibit 2). A nursing facility initiated discharge is grounds for appeal (see 130 CMR 610.032).

On August 28, 2024, notice of the hearing was sent to the parties (Exhibit 3).

Action Taken by the Facility

The facility planned on discharging the appellant because “The health of individuals in the facility would otherwise be endangered.”

Issue

Pursuant to 130 CMR 610.028, does the facility’s discharge notice comply with the requirement to list the location of discharge?

Summary of Evidence

By notice dated June 21, 2024, the nursing facility planned on discharging the appellant because “The health of individuals in the facility would otherwise be endangered.” The location of discharge in the June 21, 2024 notice was to the “community” (Exhibit 1).

At the outset, the hearing officer informed the facility representative that the June 21, 2024 discharge notice was faulty because it did not specify a location of discharge. The facility representative explained that the June 21, 2024 notice was given to the appellant internally and that another discharge notice with the specific location of discharge had been previously given to the appellant and was included in the appellant’s resident record (Exhibit 4).

The appellant was admitted to the facility in late 2023 after falling and breaking his right leg (Id. a p. 1).

With regard to the prior discharge notice, on March 8, 2024, the facility notified the appellant that it planned to discharge him on April 8, 2024 to the Lowell Transitional Living Center because “Your health has improved sufficiently that you no longer need the services provided by the facility” (Id. at pp. 21-2). The facility representative explained that the place of discharge meant by the “community” in the current June 21, 2024 notice was the same Lowell Transitional Living Center.

The facility representative testified that it wants to discharge the appellant primarily because his frequent possession, use and intoxication from alcohol is a threat to others in the facility. He has been abusive to staff and has been sent to the hospital as a result of this behavior (Id. at pp. 5,6 & 8). The use and possession of alcohol is in violation of the facility’s policy prohibiting alcohol. This policy was acknowledged and agreed to by the appellant (Id. at pp. 9-10).

The facility representative also indicated that, on September 3, 2024, the facility’s physician medically cleared the appellant for discharge (id. at p. 62).

The appellant did not deny that he openly possesses and uses alcohol in the facility and that this is in violation of facility rules. However, he stated that he does this to “self-medicate” because the facility physician refuses to give him pain medication. However, he denied being ready for discharge and objected to the plan to discharge him to the Lowell Transitional Living Center.

Not discussed at hearing, but what was included in the resident record was a “Witness Statement Form” dated April 2, 2024, which indicated that the facility had rescinded the discharge notice of March 8, 2024 because “his insurance’s decision to cut him from skilled care was incorrect” (Id. a p. 23).

Findings of Fact

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

1. The appellant was admitted to the facility in late 2023 after falling and breaking his right leg (Exhibit 4).
2. By notice dated June 21, 2024, the nursing facility planned on discharging the appellant because “The health of individuals in the facility would otherwise be endangered.” The location of discharge in the June 21, 2024 notice was to the “community” (Exhibit 1).
3. Previously, on March 8, 2024, the facility notified the appellant that it planned to discharge him on April 8, 2024 to the Lowell Transitional Living Center because “Your health has improved sufficiently that you no longer need the services provided by the facility” (Exhibit 4).
4. On April 2, 2024 the facility rescinded the discharge notice of March 8, 2024 because “his insurance’s decision to cut him from skilled care was incorrect” (Exhibit 4).
5. It is undisputed that while a resident, the appellant possessed, used, and on multiple occasions was intoxicated from drinking alcohol (Exhibit 4).
6. The use and possession of alcohol is in violation of the facility’s policy prohibiting alcohol. This policy was acknowledged and agreed to by the appellant (Exhibit 4).
7. On September 3, 2024, the facility’s physician medically cleared the appellant for discharge (Exhibit 4).

Analysis and Conclusions of Law

With regard to discharges initiated by a nursing facility, a resident may be discharged when the health of individuals in the nursing facility would otherwise be endangered (130 CMR 610.028(A)(4)).

130 CMR 610.028(C)(4) provides that, 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.

In the instant case, I have found that the appellant was admitted to the facility in late 2023 after falling and breaking his right leg. By notice dated June 21, 2024, the facility planned on discharging the appellant because “The health of individuals in the facility would otherwise be endangered.” The location of discharge in the June 21, 2024 notice was to the “community.” No location of discharge was specified in the discharge notice.

A place of discharge was specified in a prior notice of March 8, 2024 when the facility notified the appellant that it planned to discharge him on April 8, 2024 to the Lowell Transitional Living Center because “Your health has improved sufficiently that you no longer need the services provided by the facility.” Unfortunately, this notice was rescinded by the facility on April 2, 2024 and cannot be used in conjunction with the June 21, 2024 notice to satisfy the notice requirements of 130 CMR 610.028(C)(4).

Accordingly, notwithstanding that the appellant has violated the facility’s no alcohol policy with his admitted multiple occasions of possession, use and intoxication, his appeal must be approved due to an insufficient discharge notice as there lacking a specified place of discharge.

I further rule that that the appeal is approved without prejudice- i.e., the facility may issue a new discharge notice at any time if the parties are unable to satisfactorily resolve the matter.

The appeal is therefore approved only because there has been an insufficient notice of discharge to the appellant.

Order for the Facility

Discharging the appellant is neither authorized based upon the June 21, 2024 notice nor the notice of March 8, 2024.

Notification of Your Right to Appeal to Court

If either party disagrees 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

