

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2411955
Decision Date:	09/19/2024	Hearing Date:	09/09/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



Appearances for Care One Skilled Nursing Facility:

James Medrano, Social Worker; Kristina Yuu, Director of Rehabilitation; and Jonathan Gonzalez, Director of Nursing



*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 Home Discharge – Improved Health
Decision Date:	09/19/2024	Hearing Date:	09/09/2024
Care One Skilled Nursing Facility's Reps.:	James Medrano, Social Worker; Kristina Yuu, Director of Rehabilitation; and Jonathan Gonzalez, Director of Nursing	Appellant's Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center	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

The appellant received a 30-Day Notice of Intent to Discharge (“discharge notice”) dated 08/02/2024. The notice states that Care One of Brookline (“the skilled nursing facility” or “the facility”) seeks to discharge the appellant to “The Pine Street Inn” on 08/31/2024. The notice indicates the reason for the discharge is that “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility” (Exhibit 1). The appellant filed this timely appeal on 08/02/2024 (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.028; 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

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

Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

Summary of Evidence

James Medrano, Social Worker; Kristina Yuu, Director of Rehabilitation; and Jonathan Gonzalez, Director of Nursing from the skilled nursing facility appeared at the hearing and testified telephonically. Prior to the hearing, the facility submitted the appellant's clinical record from the facility into evidence (Exhibit 4).

The facility representatives testified that the appellant was admitted to the facility in [REDACTED] from an acute care hospital setting. He has diagnoses that include cellulitis, lymphedema, atrial fibrillation, morbid obesity, alcohol dependence, depression, anxiety, gastro-esophageal reflux disease, alcoholic hepatitis, and gout. The representatives from the skilled nursing facility testified that, since admission to the facility, the appellant's condition has improved to the point that he no longer needs skilled nursing level of care. The director of rehabilitation testified that the appellant is independent with all mobility and transfers, he ambulates on his own, he can ascend and descend 12 stairs independently, and he is independent with activities of daily living, including dressing. The clinical record also indicates the appellant no longer requires or receives physical therapy or occupational therapy. The clinical record is noted by the appellant's physician on pp. 27 and 31 of the nursing facility's submission.

The director of nursing testified that the appellant's health care can be provided to him in the community setting. The discharge plan was to transfer the appellant to the [REDACTED] a homeless shelter; however, the appellant would not agree to that location. Other homeless shelters are being considered. The social worker testified that there is no discharge plan at the moment, because there is no discharge location that has been designated by the facility and agreed to by the appellant.

The appellant appeared at the fair hearing telephonically and he testified that he does not want to go to the [REDACTED]. He stated he has difficulty climbing stairs because he "has no energy or strength in [his] legs." He has blisters on his legs and neuropathy. He believes his legs are infected again because of the "warmth." The appellant stated that he wants to go home where he had 82 hours per week of PCA assistance.

Findings of Fact

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

1. Appellant was admitted to the facility in [REDACTED] from an acute care hospital. He has diagnoses that include cellulitis, lymphedema, atrial fibrillation, morbid obesity, alcohol dependence, depression, anxiety, gastro-esophageal reflux disease, alcoholic hepatitis, and gout.
2. The appellant received a 30-Day Notice of Intent to Discharge (“discharge notice”) dated 08/02/2024. The notice states that the facility seeks to discharge the appellant to “[REDACTED]” 08/31/2024. The notice indicates the reason for the discharge is that “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.”
3. The [REDACTED] is a homeless shelter.
4. According to the appellant’s clinical record, he no longer needs physical or occupational therapy, he is able to ambulate independently, and he is independent with his activities of daily living.
5. The appellant’s physician documented in his clinical record that he no longer requires nursing home level of care and that he can safely be discharged to the community.
6. There is no written discharge plan submitted by the facility.

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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident’s right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (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 MassHealth agency 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).

(C) 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.

Regulations at 130 CMR 610.029 Time Frames for Notices Issued by Nursing Facilities, state, in pertinent part:

- (A) ***The notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged*** or transferred, except as provided for under 130 CMR 610.029(B) and (C).
- (B) In *lieu* of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.
 - (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.
 - (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
 - (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
 - (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(Emphasis added.)

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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 facility's discharge notice is dated 08/02/2024 and it informs the appellant that the facility seeks to discharge him to "The Pine Street Inn" on 08/31/2024. The regulations above require that a discharge notice "must be made by the nursing facility at least 30 days before the date the resident is to be discharged." The 08/02/2024 discharge notice was made 29 days before the discharge date of 08/31/2024. Accordingly, the discharge notice is defective, and the facility will

not be permitted to discharge the appellant pursuant to the 08/02/2024 notice.

Moreover, the facility has presented no evidence that there is a discharge plan in place that complies with the above statute. The discharge location is to [REDACTED]. This, in itself, is not necessarily an unsafe discharge location, especially for a resident who no longer requires nursing services, occupation therapy, physical therapy, or assistance with ADLs. However, the representatives from the skilled nursing facility testified that since the appellant would not agree to be discharged to that location, they acknowledged that there “is no definite discharge plan” in place.

The above statute prohibits a discharge “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.” There is no evidence, either documentary or testimonial, that shows the appellant was provided with community resources available to him at his ultimate discharge location. Without a discharge plan in place, the facility may not discharge the appellant pursuant to the 08/02/2024 notice.

This appeal is therefore approved.

Order for the Nursing Facility

Rescind the discharge notice dated 11/09/2023.

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.

¹ The regulations require that the discharge notice include the facility include the location to which the appellant is to be discharged. The skilled nursing facility noted that the discharge location is [REDACTED]; however, the discharge notice does not include an address.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Respondent: CareOne at Brookline, Attn: James Medrano, 99 Park Street, Brookline, MA
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