

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



| | | | |
|-------------------------|-------------------|-----------------------|------------|
| Appeal Decision: | Approved | Appeal Number: | 2412717 |
| Decision Date: | 09/17/2024 | Hearing Date: | 09/13/2024 |
| Hearing Officer: | Christopher Jones | | |

Appearance for Appellant:



Appearance for Nursing Facility:

Susan Gauthier – Administrator



*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; Failure to pay |
| Decision Date: | 09/17/2024 | Hearing Date: | 09/13/2024 |
| Nursing Facility's Rep.: | Susan Gauthier | Appellant's Rep.: | |
| Hearing Location: | Telephonic | Aid Pending: | No |

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 30A, 111, and 118E, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a 30-Day Notice of Intent to Discharge dated August 2, 2024, the respondent-nursing facility informed the appellant that she would be discharged to her granddaughter's apartment "no less than 30 days from the date of this notice." (Exhibit 1.) The appellant filed this timely appeal on August 15, 2024. (Exhibit 2; 130 CMR 610.015(B).) Nursing facility residents have the right to appeal any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C).)

Action Taken by the Nursing Facility

The nursing facility seeks to discharge the appellant to her granddaughter's apartment because she "has failed, after reasonable and appropriate notice, to pay for (or failed to have [MassHealth] or Medicare pay for) a stay at the facility." (Exhibit 1.)

Issue

The appeal issues are whether: (1) the facility has valid grounds to discharge the appellant; (2) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028 and 610.029; and (3) the facility has provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place pursuant to MGL Ch. 111, § 70E.

Summary of Evidence

The appellant has been covered by MassHealth community benefits for many years. An application to convert the appellant's community benefits to long-term-care benefits was submitted to MassHealth in March 2024. There is no dispute that, if this application is approved, the entirety of the appellant's nursing facility care would be covered by MassHealth less the appellant's patient-paid amount ("PPA").

On or around July 8, 2024, MassHealth denied the appellant's application because she had not provided all requested information. The appellant appealed this denial, and a hearing regarding her application was scheduled for immediately before this discharge appeal. The MassHealth appeal was withdrawn prior to the hearing because the appellant had provided sufficient information for MassHealth to continue processing the application. MassHealth planned to issue a new notice, denying the application due to approximately \$7,000 in excess assets. This amount roughly corresponds to the amount of money the appellant would owe the nursing facility in PPA. The caseworker from MassHealth emailed the facility explaining that the appellant's application was still active, and the appellant would have 30 days to write a check to the facility for the excess asset amount and submit proof. The facility would also have to submit a letter explaining that they had received the money and applied it to this historical PPA. (Exhibit 7, p. 56.)

The nursing-facility administrator did not want to rescind its discharge notice because the facility has had a difficult time getting information out of the appellant's Power of Attorney. She also felt that, because MassHealth's case worker was still looking for financial records to document where the appellant's money was going, the appellant had not provided all missing verifications. She did not, therefore, feel comfortable rescinding the discharge notice where MassHealth benefits had not been approved.

The appellant's granddaughter testified that she was doing her best to work through this entire process, but that it was complicated. She has relied on the nursing facility for a lot of guidance and assistance in understanding what it was she needed to document and submit, and she had a hard time gathering documentation from the bank because it is 40 minutes from her home. She testified that she understood that she needed to prove that she closed out her grandmother's bank account and sent the facility the excess assets to cover the anticipated PPA. However, she did not have checks, and the facility wanted a cashier's check, so she needed to go back to the bank in order to complete the process. She testified that she would call the Board of Hearings to file another appeal regarding the excess assets denial to ensure that the application did not close before she could gather all the needed documentation to get her grandmother's MassHealth coverage approved.

When asked if the facility felt that the appellant's granddaughter's apartment was a safe and appropriate discharge location, the administrator testified that she believed the nursing notes indicated that the appellant was independent with her activities of daily living. She acknowledged

that the appellant is clinically appropriate for long-term-care services based upon her dementia. The appellant is also partially incontinent. The nursing facility administrator did not identify any medical opinions that it would be appropriate or safe to discharge the appellant to reside in the community with a relative. The appellant's granddaughter testified that her grandmother would not be able to safely reside with her.

Findings of Fact

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

- 1) The appellant is clinically eligible for long-term-care services based upon her dementia diagnosis. (Testimony by nursing facility administrator.)
- 2) The appellant filed a conversion application for MassHealth long-term-care benefits that would cover the entirety of the appellant's stay at the facility, less her PPA. (Exhibit 7, p. 56.)
- 3) This application was denied for missing verifications. (Exhibit 7, p. 56.)
- 4) Based upon this denial of MassHealth benefits, the nursing facility issued its discharge notice. (Exhibit 1.)
- 5) The appellant appealed the verifications denial, and the appeal was withdrawn prior to hearing because MassHealth received the verifications needed to continue processing the application. (Exhibit 7, p. 56.)
- 6) MassHealth has now denied the appellant's conversion application because she has excess assets roughly equivalent to the amount of PPA she will owe the nursing facility. (Exhibit 7, p. 56.)
- 7) The appellant has 30 days from the date of the asset denial notice to reduce her assets, or she could file another appeal in order to preserve her application date. (Exhibit 7, p. 56.)
- 8) The appellant cannot be safely cared for in her granddaughter's apartment at this time. (Testimony by the appellant's representative.)

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 both at 130 CMR 456.000 and 130 CMR 610.000.

A “discharge” is “the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual.” (130 CMR 456.002; see also 130 CMR 610.004.)

The requirements for a nursing facility discharge or transfer are:

(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 456.701(A)(1) through (5), 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 when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and

(2) a physician 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 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 Division'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;

(130 CMR 610.028(A)-(C) (emphasis added); see also 130 CMR 456.701(A).)

A nursing-facility resident who requests a hearing to dispute her discharge "pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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."¹ (MGL Ch. 111, § 70E.)

This appeal is APPROVED. The appellant has never ceased their efforts to get MassHealth to pay for their care at the facility. The appellant's application was denied, but the appellant has resolved that denial, and the MassHealth application is still pending. Furthermore, the application in question is able to cover the entirety of the appellant's stay at the nursing facility, less what is expected to be owed as her PPA.² Therefore, the facility does not have valid grounds, as set forth in their discharge notice, to discharge the appellant. The hearing did not review the adequacy of the facility's notice, but the appellant did allege that the facility had failed to prepare the appellant for a safe and orderly discharge to an appropriate place. At this time, based upon the facility's record, I agree with the appellant that the appellant's granddaughter's apartment is not a safe and appropriate discharge location pursuant to MGL Ch. 111, § 70E.

Order for Nursing Facility

The August 2, 2024 Discharge Notice is void. Do not attempt to discharge the appellant without issuing a new notice, with the attendant appeal rights.

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

¹ The term "referee" in the statute refers to a Board of Hearings hearing officer.

² Facilities often request that residents pay an "anticipated PPA" but there is no such thing under the regulations. The PPA is determined by MassHealth at the time the application is approved.

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

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.

Christopher Jones
Hearing Officer
Board of Hearings

