

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Denied | Appeal Number: | 2412945 |
| Decision Date: | 11/12/2024 | Hearing Date: | 10/10/2024 |
| Hearing Officer: | Kimberly Scanlon | Record Open to: | 10/16/2024 |

Appearance for Appellant:

Via telephone

Pro se

Appearance for Nursing Facility:

Via telephone

Scott Nickerson, Administrator;
Susan Durivage, Director of Social Services



*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

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| Appeal Decision: | Denied | Issue: | 30-Day Nursing Facility Discharge |
| Decision Date: | 11/12/2024 | Hearing Date: | 10/10/2024 |
| Nursing Facility's Reps.: | Scott Nickerson, Administrator; Susan Durivage, Director of Social Services | Appellant's Rep.: | Pro se |
| Hearing Location: | Tewksbury MassHealth Enrollment Center Room 3 (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 30-Day Notice of Intent to Discharge Resident dated August 17, 2024, the nursing facility informed the appellant of its intent to discharge him to [REDACTED] a homeless shelter on [REDACTED] 2024 because he has failed, after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1). The appellant filed this appeal in a timely manner on August 21, 2024 (130 CMR 610.015(F); Exhibit 2). On September 13, 2024, the Board of Hearings dismissed the appeal because the appellant failed to appear at the hearing scheduled on September 9, 2024 (Exhibit 4). On or about September 20, 2024, the Board of Hearings received the appellant's request to vacate the dismissal for good cause (Exhibit 5, p. 1). On September 25, 2024, the Board of Hearings approved the request to vacate the dismissal and scheduled a hearing. (Exhibit 5, p. 2; Exhibit 6). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by the Nursing Facility

The nursing facility issued a 30-day notice of intent to discharge to the appellant.

Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility, [REDACTED] was represented telephonically by its Administrator and Director of Social Services. The facility's Director of Social Services testified that the discharge notice was issued to the appellant for non-payment (Exhibit 1). Currently, the appellant owes the facility \$20,377.00 (Exhibit 8, p. 14). The facility has not received any payment from the appellant since the date of his admission. The facility has given the appellant monthly bills, all of which he refused to pay. The facility has been working with the appellant to safely discharge the appellant to an appropriate location. Presently, the appellant is on MassHealth and has a monthly patient paid amount of \$2,949.00 (Exhibit 8, p. 4). The appellant declined to pursue a representative payee.

The facility's Director of Social Services testified that the appellant was admitted to the facility in January of 2023 for the following: multiple subsegmental pulmonary emboli, hypertension, shortness of breath, chronic metabolic acidosis, and hyperlipidemia (Exhibit 8, p. 45). Additionally, the appellant received a knee replacement and had his appendix removed in June of 2024. *Id.* Currently, the appellant does not require assistance with activities of daily living and is able to ambulate without any assistive devices. The appellant chooses to use a rollator for his own comfort and ease (Exhibit 8, p. 1).

With respect to the discharge plan, the facility's Social Services Director testified that the proposed discharge location is a homeless shelter. She stated that the facility has researched other options, including the following: contacting the VA for availability of a transitional home, currently working with OCES for the DEMO program, completing a CHAMP application to assist with homeless status. *Id.* The appellant is currently on a wait list for a transitional home. Additionally, the appellant was approved for the MassHealth Money Follows the Person (MFP) waiver program. The appellant has limited community support and wishes to return to the community.

The appellant testified on his own behalf. He stated that he recently retired and has applied for

disability. Prior to his admission to the facility, the appellant was renting an apartment which he no longer has. The appellant received monthly bills from the facility and did not pay them due to his other bills. He stated that he can make a partial payment such as \$600.00, but he has other bills to pay. The appellant has not made any attempts to work with the facility to set up a payment plan. Following the hearing, the record was left open for a brief period for the facility to re-submit records into evidence (Exhibit 7). The facility's submission was timely received during the record open period (Exhibit 8).

Findings of Fact

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

1. The appellant is a resident at the nursing facility.
2. The appellant was previously approved for MassHealth benefits with a patient-paid amount of \$2,949.00.
3. The appellant has made no payments to the nursing facility.
4. The appellant currently owes the nursing facility over \$20,000.00.
5. The facility has provided the appellant with billing statements.
6. On August 17, 2024, the facility notified the appellant of its intent to discharge him for nonpayment. The discharge location is a homeless shelter.
7. The facility's social services department has been working with the appellant to secure permanent housing.
8. The appellant has no skilled nursing needs, is independent with his ADLs and uses a rollator.
9. The appellant filed a timely appeal on August 21, 2024.

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.¹

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;
- (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.

(130 CMR 456.701(C)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that a resident may be

¹ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

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.

(See, 130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

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).

(130 CMR 456.701(B)).

In the present case, the issue on appeal is whether the appellant has failed, after reasonable and appropriate notice, to pay, or failed to have Medicaid or Medicare pay, for his stay at the nursing facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid denies the claim and the resident refuses to pay for his or her stay. (See, 42 CFR 483.15(c)(E)). The appellant does not dispute the allegation of nonpayment. He has stated that he can only make partial payments to the facility, an offer the nursing facility has rejected. The record confirms that the appellant has failed to pay for his stay at the facility.

In addition to the MassHealth-related regulations discussed above, the nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.²

Here, the facility proposes to discharge the appellant to a homeless shelter. While it may not be an ideal situation for the appellant, the evidence demonstrates that the proposed discharge location is safe and appropriate. Through its testimony and documentation, the facility has demonstrated that the appellant is independent with his ADLs, does not require any skilled nursing care, and can safely live in the community. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, this appeal is denied.

Order for the Nursing Facility

Proceed with planned transfer, to be implemented no less than thirty (30) days after the date 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.

² 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.

Implementation

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

[REDACTED]