

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2413224
Decision Date:	09/19/2024	Hearing Date:	09/16/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearance for Facility:

Via telephone:

David Peterson, Asst. Administrator

Debra Morrissey, Social Worker

Melissa Mahoney, Dir. 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 Facility Discharge
Decision Date:	09/19/2024	Hearing Date:	09/16/2024
Nursing Facility's Rep.:	David Peterson; Debra Morrissey; Melissa Mahoney	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South	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 1, 2024, [REDACTED] (hereinafter, "the facility") informed the appellant of its intent to discharge her on September 1, 2024 because the move is necessary for her own welfare and her needs cannot be met within the facility (see 130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on August 26, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge or transfer an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge her because the move is necessary for her own welfare and her needs cannot be met within the facility.

Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The representatives for the facility and for the appellant all appeared at hearing via telephone. The appellant was represented by her HCP, brother, sister, and a social worker who has worked with the family since July 2022. The facility was represented by the assistant administrator, a social worker, and the director of nursing.

The facility testified as follows: it seeks to discharge the appellant for her own welfare and because her needs cannot be met within the facility. The facility seeks to discharge her to her condominium in the community. The appellant does not follow facility policies and is not compliant with her course of care. She leaves the building with her brother and goes to her own doctor's appointments that the facility is not notified of. She gets prescriptions filled outside of the facility that the facility also is not aware of. She also uses the stairs within the facility which is against policy. As a result, the facility moved her to a room on the first floor. She entered the facility in [REDACTED] for burns, back pain, repeated falls, and difficulty walking. She has no difficulty walking now. She uses a cane and/or walking sticks for support and has a wheelchair if needed. She has not been in occupational or physical therapy recently and is independent with her care needs and activities of daily living. She is alert and oriented times 3-4 and has no skilled nursing needs. At the time of hearing, the facility had not submitted any clinical documentation but testified that there was no physician documentation supporting the appellant's discharge.

The appellant's representatives explained that there were concerns regarding capacity and self-neglect which is why she ended up in the hospital with third-degree burns prior to her admission to the facility. In their pre-hearing submission, they included a fire department report showing that the fire department was called to her condominium building due to the smell of gas. The odor was coming from the appellant's unit and no one was home. The fire department had to force the door open and determined that the appellant had left the stove on. The appellant's representatives also submitted copies of abuse prevention orders protecting the appellant's brother (who currently lives in the condominium which is owned by the appellant and her siblings) from the appellant. The appellant can be emotionally and physically abusive toward him, making the condominium an unsafe place for the appellant to return to. Additionally, the condominium is on the third floor of the building and there is no elevator. The appellant does not walk well. She was a pedestrian when she was struck by a car about ten years ago and still has issues with her leg. She tires easily after walking ten to twenty minutes and then has to use a wheelchair. She also has had some falls. She can do the stairs in the condominium but with great difficulty and it is not safe. She needs to hold both railings, goes very slowly, and is unsteady. Her representatives felt the

discharge location was not safe and she would be a danger to herself and the community.

The facility stated that it has discussed discharging the appellant to the condominium over the course of the appellant's stay. The facility was aware of the situation between the appellant and her brother but was unaware of any other safety issues at the condominium. The facility stated it needs accurate information from the appellant and her representatives to ensure a safe discharge location. The appellant can be volatile but leaves the facility almost daily with her brother.

The facility submitted documentation after the hearing that will not be considered as part of the record; however, a review of the clinical records shows there is no physician documentation supporting the appellant's discharge. Additionally, the most recent physician notes in the documentation are dated July 25, 2024 and July 26, 2024 and make no mention of the appellant's discharge. Physician notes from June 2024 stated the appellant's need for 24-hour care and supervision.

Findings of Fact

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

1. The appellant entered the facility in [REDACTED] due to burns, back pain, repeated falls, and difficulty walking (Testimony).
2. On August 1, 2024, the facility issued a 30-Day Notice of Intent to Discharge because the move is necessary for her own welfare and her needs cannot be met within the facility (Testimony and Exhibit 1).
3. The proposed discharge location is a condominium in the community that is owned by the appellant and her siblings (Testimony and Exhibit 1).
4. The appellant's brother currently lives in the condominium and he has had abuse prevention orders taken out against the appellant in the past. The appellant can be volatile and has been emotionally and physically abusive toward her brother. (Testimony and Exhibit 4).
5. The facility did not timely submit the appellant's clinical records and testified that there was no physician documentation supporting the appellant's discharge (Testimony).

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 mirror the federal requirements concerning a resident's

right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 et seq. and in the Fair Hearing Rules at 130 CMR 610.000 et seq.

A “discharge” is “the removal from a nursing facility 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 610.004).

Here, the facility is attempting to discharge the appellant from the nursing facility to a noninstitutional setting (a condominium in the community) via its notice dated August 1, 2024.

The guidelines that apply in a determination of whether appellant can be so discharged are found in 130 CMR 456.701 and 130 CMR 610.028. This section of the regulations lists the only circumstances and conditions that allow for transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice. If these requirements are not met, the facility must permit the resident to remain in the facility.

130 CMR 610.028 sets forth the notice requirements for transfers and discharges initiated by a nursing facility, and provides in part 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 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 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 610.028(A)(1) or (2); and

(2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(3) or(4).

Emphasis added.

This appeal is APPROVED. When the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility, pursuant to 130 CMR 610.028(B)(1) the clinical record needs to include documentation by the appellant's physician supporting the necessity of the discharge. The facility did not provide any of the appellant's clinical records prior to hearing. The facility submitted clinical records after hearing; however, it had not been given a record open period to do so and that submission is not part of the hearing record. Even if this hearing officer were to accept those records, they do not include any documentation from the appellant's physician supporting the necessity of discharge. The most recent physician notes in the submission are dated July 25 and July 26, 2024 and make no mention of the appellant's discharge. Physician notes from June 2024 note the need for 24-hour care and supervision. The facility has failed to comply with 130 CMR 610.028(B)(1).

For these reasons, the appellant's appeal is approved.

Order for Nursing Facility

Rescind the 30-Day Notice of Intent to Discharge Resident dated August 1, 2024.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

[REDACTED]