

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2413721
Decision Date:	10/4/2024	Hearing Date:	09/23/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearances for Skilled Nursing Facility:
Katrina Gomes (SNF Social Services Director) &
Cory Beaudette (SNF 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:	SNF Discharge
Decision Date:	10/4/2024	Hearing Date:	09/23/2024
Skilled Nursing Facility's Reps.:	Katrina Gomes (Social Services Director) & Cory Beaudette (Administrator)	Appellant's Rep.:	██████
Hearing Location:	All Parties Appeared by Telephone		

Authority

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

Jurisdiction

Through a notice dated August 16, 2024, the nursing facility informed the appellant that he would be discharged on September 13, 2024 to "a community setting i.e. shelter" because he no longer requires the care provided and has failed to pay for his portion of a stay in this nursing facility. (130 CMR 610.028; Exhibit 1). The appellant filed this appeal in a timely manner on September 5, 2024. (130 CMR 610.015(B); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The nursing facility issued a notice of discharge to the appellant to a "community setting, i.e. shelter" because he no longer requires the care provided by the facility and has failed to pay his portion of a stay in the nursing facility.

Issue

Whether the nursing facility was correct, pursuant to 130 CMR 610.028, in notifying the appellant that it intended to discharge him to “a community setting, i.e. shelter” as he no longer requires the care provided by the facility and has failed to pay for his portion of a stay in the nursing facility.

Summary of Evidence

Two individuals from the skilled nursing facility (SNF), the Administrator and Social Services Director (SSD), appeared by telephone with the appellant. All three were in the same location. Documents submitted by the facility are incorporated into the hearing record as Exhibit 4.

The appellant was admitted into the skilled nursing facility (SNF) in [REDACTED]. The SSD testified that the appellant is eligible for MassHealth long-term care with a patient paid amount (PPA) of \$677.20. The SNF waived the PPA for a period and started charging the appellant a PPA in May 2024. As of September 1, 2024, the appellant had a balance due of \$3,735.40.¹ (Testimony; Exhibit 4). The appellant did not dispute the fact that he had not made payments to the SNF.

The facility issued a notice to discharge for failure to pay the amount due to the facility. Additionally, the facility determined that the appellant no longer requires the care provided by the facility. The discharge was to a “community setting, i.e. shelter”. (Testimony; Exhibit 1). As noted above, the notice is dated [REDACTED] with a discharge date of [REDACTED] 28 days after the date of the notice. (Exhibit 1). The discharge notice is addressed to the appellant alone. (Exhibit 1). The section of the notice entitled “Copy to Resident Representative” is blank. (Exhibit 1). The admission records for the appellant provide the name and contact information for the appellant’s health care proxy. No one indicated whether that individual was contacted about the discharge. The notice lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the “Local Legal Services Office” for the appellant’s service area. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office. The SSD testified that the records presented do not have a note from a physician indicating that the discharge would be safe and appropriate as the physician did not want to get involved with the discharge.

The SSD testified that the notice indicates that the appellant will be discharged to a “community setting, i.e. shelter” because they cannot secure a placement for the appellant until the date of discharge. The SSD testified that they will contact a shelter before the discharge date to secure a bed for the appellant. At hearing, the SSD offered to discharge the appellant to a hotel and the SNF would pay for one night of his stay at the hotel. The SSD testified that they cannot make referrals to agencies providing services in the community until they secure shelter for the appellant. As of the date of the hearing, none of those plans were in place. The SSD testified that

¹ A review of the records presented by the SNF show a PPA of \$677.20 and then an increase in the PPA to \$851.90 beginning August 2024.

prior to issuing the current discharge notice, representatives from the facility have tried to work with the appellant to transfer him to another SNF as the appellant has expressed dissatisfaction with his care at this facility. The appellant would not agree to transfer to another facility. The SSD testified that the appellant has also been referred to rest homes. Some would not admit the appellant until he was sober for at least one year, and others had stairs which the appellant could not utilize due to mobility issues.

The SSD testified that the appellant no longer receives wound treatment, IV antibiotics, physical therapy or skilled nursing services other than medication administration. The SSD testified that nursing notes from [REDACTED] indicate that the appellant is stable with chronic conditions. Records indicate that the appellant has had at least one hospitalization in the past 5 months and has experienced other illnesses for which he declined a recommendation for hospitalization. The most recent record of such recommendation was after the date of the discharge notice.

The appellant testified that he is having issues with receiving proper services at the facility including meals, clothing and transportation. The appellant argued that the facility should not receive payment until they provide proper treatment and services. The appellant testified that he needs to use a wheelchair to ambulate. The appellant did not feel comfortable utilizing this equipment outside of the facility. The appellant testified that he would like to be able to stand and walk more before he is discharged from the facility. The appellant acknowledged that representatives from the facility provided him with options to move to another long-term care facility. The appellant felt that this facility should make improvements to their services so he can remain and be provided the necessary treatment. The appellant acknowledged that he can perform all activities of daily living on his own. The appellant testified that he needs assistance with organizing his medications, but may be able to take them on his own if they are set up appropriately. The appellant testified that he has used the money that would go toward the patient paid amount to pay for housing and storage. The appellant did not intend to pay the facility until he received the services that he believed were appropriate. The services noted by the appellant included transportation, assistance with appointments and meals.

Findings of Fact

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

1. The appellant was admitted into the skilled nursing facility (SNF) in [REDACTED]
2. The appellant is eligible for MassHealth long-term care with a patient paid amount (PPA) of \$677.20.
3. The SNF waived the PPA for a period of time.

4. The SNF started charging the appellant a PPA in [REDACTED].
5. As of September 1, 2024, the appellant had a balance due of \$3,735.40.
6. On [REDACTED], the facility issued a notice to discharge for failure to pay the amount due to the facility.
7. The notice has a discharge date of September 13, 2024.
8. The facility determined that the appellant no longer requires the care provided by the facility.
9. The discharge is to a “community setting, i.e. shelter”.
10. The discharge notice is addressed to the appellant alone.
11. The discharge notice does not indicate that it was sent to a resident representative.
12. The appellant’s admission records list the name and contact information of the appellant’s health care proxy.
13. No one indicated whether that individual was contacted about the discharge.
14. The notice lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the “Local Legal Services Office” for the appellant’s service area.
15. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office.
16. The records presented at hearing do not have a note from a physician indicating that the discharge would be safe and appropriate.

Analysis and Conclusions of Law

Pursuant to 130 CMR 610.028(A) which governs the rules for actions initiated by a nursing facility, 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 Medicaid or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

In the present case, the facility indicated on the notice that the discharge was appropriate because the appellant's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. Additionally, the facility indicated that appellant has failed, after reasonable and appropriate notice, to pay for (or failed to have Medicaid or Medicare pay for) a stay at the nursing facility. While both are acceptable reasons for discharge, the facility did not meet the regulatory requirements related to discharging a resident.

Pursuant to 130 CMR 610.028(B), when a 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)(3) or (4).

In this case, the nursing facility determined that the transfer or discharge is appropriate because the appellant's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. (130 CMR 610.028(A)(2)). Therefore, the nursing facility should have provided documentation from the appellant's physician. When the representatives from the nursing facility were asked if there was documentation from the appellant's physician, they acknowledged that there was not as the physician did not want to get involved with the discharge.

Pursuant to 130 CMR 610.028(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, if the member has made such a person known to the facility, 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.

The notice on appeal is flawed for several reasons. First, it is dated August 16, 2024 and has a discharge date of September 13, 2024 which is 28 days from the date of the notice. Pursuant to 130 CMR 610.029(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). The exceptions listed under 130 CMR 610.029(B) and (C) refer to emergency discharges or failure to readmit following a hospitalization. Neither issue applies to this case. The appellant was entitled to receive a notice at least 30 days before the discharge or transfer.

Second, while the facility did deliver the appellant a notice of discharge, they failed to mail the notice to a designated family member or legal representative and the appellant's records did provide contact information for an individual named as his health care proxy. (130 CMR 610.028). Records presented by the facility regarding the appellant's history and condition, and testimony presented by the appellant at hearing provide indicators that the appellant would benefit from the notice being issued to the designated family member or legal representative

that the facility has on file. The regulations contain protective provisions such as this to protect the rights of this vulnerable population. If the designated family member or legal representative does not appear or the appellant chooses to proceed on his own, that is his decision, not that of the facility.

Third, the notice lists contact information for the Massachusetts Legal Assistance Corporation in Boston, Massachusetts as the “Local Legal Services Office” for the appellant’s service area. The Massachusetts Legal Assistance Corporation MLAC provides funding and support to civil legal aid organizations across the Commonwealth. It is not a local legal services office. The regulations at 130 CMR 610.028(C)(9) state that the notice should contain the address of the nearest legal services office.

Fourth, the facility does not indicate a location for discharge. Stating that the discharge is to a “community setting, i.e., shelter”, does not indicate a location. Pursuant to M.G.L. ch. 111, § 70E, 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 representatives from the facility clearly want to find a safe and appropriate location for the appellant and have an appropriate plan. However, they have not done so at this time. (MGL ch. 111 § 70E).

Federal regulations also require that a nursing facility provide and document sufficient preparation and orientation to ensure a safe and orderly discharge. (42 CFR 483.15(c)(7)). This orientation must be provided in a form and manner that the resident can understand. Federal regulations at 42 CFR 483.21(c)(1) speak to the discharge planning process. These regulations require the facility to involve the resident and resident representative in the development of the discharge plan and inform the resident and resident representative of the final plan. (130 CMR 483.21(c)(1)(v)). In this case, it would likely benefit all parties to involve the individual listed as the appellant’s health care proxy in the development of the discharge plan. Federal guidelines also state that the planning must ensure the discharge destination “meets the resident’s health and safety needs”. (State Operations Manual, Appendix PP). Testimony and evidence presented at hearing do not list any location so no one can determine if whatever “community setting” the facility intends to discharge the appellant to would meet the appellant’s health and safety needs.

This appeal is approved to ensure that the facility takes action in compliance with the law and regulations governing a nursing home discharge. The facility may issue a proper notice and take proper action at any time.

The appellant should be aware that the facility appears to have adequate grounds for discharge as he has failed to pay and did not present sufficient testimony or evidence to demonstrate that

he still requires the level of care provided in a skilled nursing facility. Simply making notice and planning errors does not make the reason for discharge incorrect, especially those that are not challenged by the appellant. While this appeal is approved, this approval does not guarantee that the appellant can continue to refuse payment of the patient paid amount determined by MassHealth.

Order for Nursing Facility

Rescind the discharge notice issued on August 16, 2024.

Compliance with 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, Office of Medicaid, 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

Respondent: [REDACTED]