

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2414076
Decision Date:	10/18/2024	Hearing Date:	09/26/2024
Hearing Officer:	Scott Bernard		

Appearances for Appellant:




Appearances for the Nursing Facility:

Michele Figucia (Administrator); Aliana
Rodriguez (Regional Business Office
Manager) *via* telephone



*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:	10/18/2024	Hearing Date:	09/26/2024
Nursing Facility's Reps.:	Michele Figucia; Aliana Rodriguez	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	N/A

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 September 12, 2024, the respondent notified the appellant that it was seeking to discharge him from their nursing facility to his home by October 12, 2024 because it had determined that the appellant had "...failed, after reasonable and appropriate notice, to pay for (or [had] failed to have Medicare or Medicaid pay for) your stay at the nursing facility..." (See 130 CMR 610.028 - 610.030 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner, also on September 12, 2024. (See 130 CMR 610.015(B) and Ex. 1). A nursing facility-initiated transfer or discharge is valid grounds for appeal. (See 130 CMR 610.032(C)).

Action Taken by the Respondent

The respondent notified the appellant of its intent to discharge him from its facility by October 12, 2024, because it determined that the appellant had failed to pay for his stay at the facility after reasonable and appropriate notice.

Issue

The appeal issues are whether the respondent was correct, pursuant to 130 CMR 610.028, in

determining that the appellant should be discharged from the nursing facility and whether the nursing facility followed the correct procedures to allow them to discharge the appellant from the nursing facility.

Summary of Evidence

The hearing was held telephonically. The nursing facility administrator and the regional business office manager represented the nursing facility. The appellant attended the hearing and was represented by the holder of his power of attorney.

The nursing facility administrator stated the following. On [REDACTED], 2023, the appellant was admitted to the nursing facility from an acute care hospital after experiencing a stroke. (Testimony; Ex. 4, p. 9). Since that date, the appellant has actively participated in his course of treatment at the facility, participated in rehabilitation, and had outside consultations as needed. (Testimony). It was the facility's understanding that the appellant's object from the beginning of his stay was to be discharged from the facility and return to his home. (Testimony). On July 12, 2024, MassHealth approved the appellant for Long Term Care (LTC) services with a patient paid amount (PPA) of \$2,720.20 per month beginning on February 1, 2024. (Testimony; Ex. 4, pp. 11-12). The facility billed the appellant for February through September 2024, and the appellant's liability for those months is \$18,161.60. (Testimony; Ex. 4, pp. 13-19). The appellant has not made a payment towards the total. (Testimony). On September 12, 2024, the facility hand-delivered the 30 day discharge notice that is under appeal to the appellant. (Testimony; Ex. 1; Ex. 4, pp. 20-23).

The nursing facility administrator continued by stating that discharge planning has been difficult. The appellant does have a home to which he can return. (Testimony). The appellant first requires that a ramp be installed and the appellant has been trying to get funding for this but has not been able to do so. (Testimony). Additionally, the appellant also requires 24 hour around the clock care, which has been difficult to secure. (Testimony). The facility, however, wanted to work with the appellant to get a payment plan in place while they work with the appellant to have him safely discharged. (Testimony).

The appellant's representative stated that the facility claimed the appellant owed \$18,161.60 in PPA since February. (Testimony). The appellant's representative argued, however, that this amount was incorrect, because the appellant was declared bankrupt on April 15, 2024, and any debts incurred prior to that date were discharged. (Testimony).

The nursing facility representatives acknowledged that they were aware of the appellant's bankruptcy but maintained that the appellant was still responsible for his monthly payments after that date. (Testimony). The appellant's representative and the appellant affirmed that the appellant was committed to meeting his financial obligations once he returns home and is able to work remotely. (Testimony).

Throughout the discussion, the parties disagreed as to whether a payment plan had been offered. (Testimony). The appellant's representative insisted that the appellant had requested a written payment plan multiple times but had not received one. (Testimony). The parties agreed to explore working out a payment plan after the hearing. (Testimony).

Findings of Fact

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

1. On [REDACTED] 2023, the appellant was admitted to the nursing facility from an acute care hospital after experiencing a stroke. (Testimony; Ex. 4, p. 9).
2. On July 12, 2024, MassHealth approved the appellant for LTC services with a PPA of \$2,720.20 per month beginning on February 1, 2024. (Testimony; Ex. 4, pp. 11-12).
3. The facility billed the appellant for February through September 2024, and the appellant's liability for those months is \$18,161.60. (Testimony; Ex. 4, pp. 13-19).
4. The appellant has not made a payment towards the total. (Testimony).
5. On September 12, 2024, the facility hand-delivered the 30 day discharge notice that is under appeal to the appellant. (Testimony; Ex. 1; Ex. 4, pp. 20-23).
6. The appellant is not presently ready to be safely discharged from the nursing facility. (Testimony).

Analysis and Conclusions of Law

The regulations concerning nursing home discharges are located at 130 CMR 610.028, 610.029 and 610.030. According to 130 CMR 610.028(A), a Nursing Facility resident may be transferred or discharged 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. (Emphasis added).

When the facility discharges a resident under any of the circumstance specified in (1)-(5), above, the resident's clinical record must be documented. (130 CMR 610.028(B)). Prior to discharge or transfer, 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 Nursing Facility 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. (130 CMR 610.028(C)).

Additionally, the notice must be made by the facility at least 30 days before the date the resident is to be discharged or transferred, except when the circumstances for an emergency discharge or emergency transfer are met. (130 CMR 610.029).

Further, Mass. Gen. Laws ch. 111, §70E provides that "[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.**” (Emphasis added). Finally, federal regulations require that a Nursing Facility provide sufficient preparation for a safe and orderly discharge. (See 42 CFR 483.12(a)(7)).

The appellant’s monthly PPA amount was determined by MassHealth and I have no jurisdiction over the calculation of the PPA. If the appellant feels his bankruptcy proceedings should have some effect on his PPA, he needs to raise such issue with MassHealth and the bankruptcy court. The PPA is the monthly amount owed to the nursing facility based on the appellant’s monthly income. The evidence supports that the appellant has not paid his PPA to the nursing facility and as of the date of hearing, he owed \$18,161.60. The nursing facility has satisfied the discharge criteria pursuant to 130 CMR 610.028(A) because the appellant 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.

However the nursing facility also needs to show that the discharge is safe. A letter from a physician supporting that the discharge to the appellant’s home was safe and appropriate was not submitted. A plan for setting up necessary community services was also not submitted. So although the nursing facility submitted evidence sufficiently showing that that the appellant has failed, after reasonable and appropriate notice, to pay for his stay at the nursing facility, the evidence does not show that the appellant has been provided sufficient preparation and orientation to ensure his safe and orderly discharge from the facility. For that reason, the appeal is APPROVED.

Order for the Nursing Facility

Rescind the September 12, 2024 notice. Do not discharge the appellant under this notice.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Scott Bernard
Hearing Officer

Board of Hearings

CC:

[REDACTED]

[REDACTED]

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