

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2414743
Decision Date:	11/4/2024	Hearing Date:	10/07/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:

Pro se

Appearance for Nursing Facility:

[Redacted]
[Redacted] Administrator
[Redacted] Director of Social Services
[Redacted] Director 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:	Denied	Issue:	Nursing Facility Discharge – 30 Day
Decision Date:	11/4/2024	Hearing Date:	10/07/2024
Nursing Facility Rep.:	[REDACTED]	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Board of Hearings, 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 notice dated 9/5/24, the [REDACTED] (“the nursing facility”) informed Appellant that it was seeking to discharge him to the community on [REDACTED] 24. See Exhibit 1; 130 CMR 610.029(B). On 9/25/24, Appellant filed a timely appeal of the discharge notice to the Board of Hearings. See 130 CMR 610.015(B)(4); Exhibit 2. A nursing facility’s attempt to discharge a resident is valid grounds for appeal. See 130 CMR 610.032(C).

Action Taken by Nursing Facility

The nursing facility notified Appellant that it intended to discharge him from the facility in 30 days because his health had improved sufficiently such that he no longer required nursing facility care.

Issue

The issue on appeal is whether the nursing facility complied with the requirements set forth in 130 CMR 610.00 *et. seq.*, 130 CMR 456.00 *et. seq.*, and MGL c. 111, § 70E in seeking to discharge Appellant to a non-institutional setting in the community with 30 days’ notice.

Summary of Evidence

At the hearing, the nursing facility was represented by its Administrator, Director of Social Services, and Director of Nursing (collectively “the nursing facility representatives”). Appellant represented himself, *pro se*. All parties appeared at the hearing remotely.

At the hearing, the nursing facility representatives, through oral testimony and documentary submissions, presented the following evidence: Appellant has resided in the nursing facility for over a year-and-a-half. See Exh. 3, p. 2. He was admitted to receive short-term rehabilitation after sustaining a right leg, below-the-knee amputation. Id. Appellant’s additional relevant medical history includes type 2 diabetes, congestive heart failure (CHF), hypertension, dyslipidemia, substance abuse, depression, and anxiety. Id.

Since his admission, Appellant has completed all rehabilitation programs including physical therapy (PT) and occupational therapy (OT). Id. at 21. He is fully independent with care, has no need for skilled nursing services, and is independent in performing his activities of daily living (ADLs). Facility progress notes indicate that Appellant is aware of, and capable of taking, his medications, including self-administering insulin injections, which he does routinely as reflected in the facility nursing notes. See e.g., id. at 2-21. Progress notes also reflect that Appellant frequently refuses nursing services, such as blood sugar tests when offered. See id. He is capable of walking independently with his prosthetic leg; and, for longer distances, has an electric scooter he can use.

On 09/05/2024, the nursing facility provided Appellant with a 30-Day Notice of Discharge, informing him that it sought to discharge Appellant to an address, which the facility explained is a homeless shelter, on [REDACTED] 24 because his “health improved sufficiently so the [he] no longer needs the services provided by the facility.” See Exh. 1, p. 2.

In an entry dated [REDACTED] 24, Appellant’s physician, [REDACTED], noted that Appellant was cleared by PT and OT for discharge, and that “patient is medically stable for discharge into the community.” Id. at 21. An [REDACTED] 24 physical examination of Appellant by [REDACTED] indicates that Appellant was stable, showed no signs of decompensation, and recommended that he continue his current treatments to manage his diagnoses of CHF, diabetes, hypertension, and dyslipidemia with periodic monitoring. Id. at 6-7.

Nursing facility representatives testified that the facility has been actively engaged in discharge planning efforts with Appellant for over a year. According to progress notes, facility staff held routine discharge planning meetings, which Appellant was given notice of, but did not attend. See e.g., id. at 3-20.

The nursing facility representatives testified that in July of 2023, the facility served Appellant with a prior discharge notice, citing the same grounds for discharge (medical improvement), and which

Appellant appealed to the Board of Hearings. The facility explained that, through a written decision, BOH approved the appeal based on Appellant's claim that he would be unable to manage his medications at a homeless shelter and thus it was not a suitable discharge location. Over the past year, Appellant has become fully aware of his medications and administers them independently, including his insulin injections, and this is supported by the nursing notes submitted into evidence. Id.

Facility representatives also testified that over the course of the past year, the facility has placed referrals to the appropriate agencies, including the Community Transition Liaison Program (CLTP) and the Massachusetts Rehabilitation Commission (MRC), which assist nursing facility residents in transitioning to the community and securing housing. See id. at 11 The representatives testified that, through these measures, Appellant was presented with alternative discharge locations, including a rest home option, which, at the time, he rejected because it was "too far." Appellant later became open to this option, but it was no longer available when revisited. Through MRC, Appellant was assigned a case worker from Victory Human Services to help him obtain a Social Security card needed to apply for public housing options. After initiating this process, it was discovered that Appellant had "open legal matters" that needed to be rectified to pursue this avenue, which caused Appellant to stop cooperating with the process. Id. However, Appellant was approved for Social Security benefits and now has a source of income to support himself and find an apartment. He also has local family members whom he remains in contact with and are available community support. According to the nursing facility representatives, Appellant has been given considerable time and resources to find an alternative discharge location, and the only option at this time was to proceed with the 30-day discharge notice.

The Director of Social Services testified that she is in frequent contact with the individual that handles intake at the shelter. Through her discussions, she has been assured that the shelter can, and does, accommodate residents who have complex medical conditions and who require taking multiple prescription medications, including insulin injections. The shelter also offers supports for helping individuals find housing. Appellant's physician has approved the discharge location based on his medical stability. Id. at 21.

Appellant appeared at hearing and testified that he opposes the discharge location and feels that a homeless shelter not a safe or appropriate discharge location. Appellant conceded that he is ready to leave the facility but argued that a homeless shelter is not going to work with all his medications. He takes 15 pills in the morning and 10 at night. He also takes insulin 3 times per day. Prior to being admitted to the nursing facility, Appellant was homeless. Although he is able to walk independently with his prosthetic, he has an electric scooter he uses for longer distances. Appellant testified that the nursing facility did not, as they claim, assist him in discharge planning, nor was he provided with numerous alternative discharge location options. According to Appellant, the facility should be required to do more to help find a more safe and appropriate location in the community. Appellant testified that he has community support who can assist him with his housing search. He has several family members in the area, including his

mother, a sister, and two brothers, who live as close as 15 minutes to the homeless shelter. While his family can help him look for apartments, he cannot stay with them due to their own living arrangements. Appellant testified that, while he is ready to leave, he opposes the discharge plan to transfer him to a homeless shelter.

Findings of Fact

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

1. Appellant was admitted to the nursing facility for short-term rehabilitation after sustaining a right leg, below-the-knee amputation; and, on admission, had additional diagnoses including type 2 diabetes, CHF, hypertension, dyslipidemia, substance abuse, depression, and anxiety.
2. Appellant's medication regimen includes taking 15 pills in the morning and 10 at night, as well as administering insulin 3 times per day, which he can do independently.
3. Appellant has completed PT and OT; he does not require assistance with ADLs; he is aware of, and capable of taking, all his medications; he does not require, nor receive, skilled nursing services; he ambulates independently using his prosthetic for short distances and has an electric scooter he can use to ambulate for longer distance.
4. For at least the past year, the facility has held routine discharge planning meetings for Appellant and coordinated with agencies such as CLTP and MRC to assist Appellant in finding a preferred discharge location; however, Appellant has been reluctant to cooperate in this process.
5. On 09/05/2024, the nursing facility provided Appellant with a 30-Day Notice of Discharge, informing him that the facility sought to discharge him to a nearby homeless shelter on [REDACTED] 24 because his "health improved sufficiently so the [he] no longer needs the services provided by the facility."
6. The homeless shelter is able to accommodate individuals that require taking multiple prescription medications, including insulin injections; and also offers supports for helping residents find housing.
7. In an entry dated [REDACTED] 24, Appellant's physician noted that Appellant was cleared by PT and OT for discharge, and that "patient is medically stable for discharge into the community."

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC §§ 1396r(c), guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. See 42 U.S.C. § 1396r; 42 CFR § 483.204 § 483.206. Massachusetts has enacted statutory and regulatory requirements that mirror the federal resident rights protections, which are found in M.G.L. c. 111 § 70E and MassHealth regulations at 130 CMR 456.000 et seq., and 130 CMR 610.00 et seq.

The applicable MassHealth regulations set forth the following notice requirements that a nursing facility must provide a resident to initiate a transfer or discharge:

(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.

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

When a transfer or discharge is necessary under subsections (1) or (2) above, the resident's clinical record must be documented by the "resident's physician." See 130 CMR 610.028(B)(1); 130 CMR 456.701(B)(1) (emphasis added). ¹

Based on the regulatory authority and in consideration of the evidence in the record, Appellant has not demonstrated that the facility issued the 9/5/24 discharge notice in error. The facility cited proper grounds for discharge under 130 CMR 610.028(A)(2); specifically, that Appellant no

¹ Fair Hearing Rules at 130 CMR 610.028(C) set forth requirements the facility must adhere to related to the format and content of the discharge notice. A review of the 9/5/24 notice at issue reflects the facility hand delivered the notice to Appellant; presented it in a readable format; included a description of the intended action, the basis for the discharge, the effective date of discharge, the location of discharge, and Appellant's right to appeal the discharge notice, among the other enumerated requirements. See 130 CMR 610.028(C). There is no evidence or claim that the facility failed to comply with any of these requirements.

longer has a medical need to remain at the nursing facility. The evidence shows that Appellant completed all PT and OT rehabilitation services; he does not have any need for skilled nursing services; he performs his own ADLs; and he is knowledgeable of, and capable of administering, his medications, including insulin injections. Appellant's physician has approved the discharge plan and has documented the grounds for discharge in Appellant's clinical record in accordance with 130 CMR §§ 610.028(B)(1), 610.028(B)(2) (listing grounds for a nursing facility discharge). See Exh. 3, p. 21.

Finally, before a nursing facility may discharge a resident, it must comply with the requirements set forth under M.G.L. c.111, §70E, which states the following:

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 evidence shows that the facility has been actively engaged in discharge planning efforts for over a year. This includes placing Appellant with community housing resources, including CLTB and MRC; helping Appellant take steps to secure Social Security income; ensuring that Appellant can administer his own medications; and communicating with the shelter to ensure it is able to accommodate the needs of individuals, like Appellant, that require taking numerous daily medications and insulin injections. The facility asserts, and Appellant agrees, that his condition has improved such that he is capable of being discharged to the community. Appellant's physician has deemed Appellant "medically stable" for release into the community and has authorized the discharge as described in the 9/5/24 notice. See Exh. 3, pp. 23-24. Given the length of time the Appellant has remained at the facility since discharge planning efforts began, as well as its coordination of resources to prepare Appellant for discharge, the facility has demonstrated that it met the requirements of G.L. c.111, § 70E, above.

The appeal is DENIED.

Order for Nursing Facility

Proceed with the discharge plan as described in the 9/5/24 notice, provided that the date of discharge takes place no sooner than 30 days from the date of this decision pursuant to 130 CMR 610.030(A).

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.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

[REDACTED]