

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2415491
Decision Date:	11/15/2024	Hearing Date:	10/23/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearances for Respondent:

Darby Joseph, Administrator
Khaled Sultani, Social Worker
Norma Robertson, Assistant 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:	Approved	Issue:	Nursing facility discharge – failure to pay
Decision Date:	11/15/2024	Hearing Date:	10/23/2024
Respondent's Rep.:	Administrator et al.	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown (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

By notice dated September 24, 2024, [REDACTED] ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on October 24, 2024. Exhibit 1. Appellant filed a timely appeal on October 5, 2024. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032.

Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

Summary of Evidence

Respondent, a skilled nursing facility licensed in Massachusetts, was represented by its administrator, social worker, and assistant director of nursing and submitted records in support, Exhibit 4. Appellant appeared by telephone. A summary of testimony and documentary evidence follows.

By hand-delivered letter dated [REDACTED] 2024, Respondent informed Appellant of its intent to discharge Appellant from the facility to a shelter. Exhibit 1. A copy of the notice was not provided to a representative on Appellant's behalf. The notice stated that Respondent sought to discharge Appellant on [REDACTED] because Appellant "has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Nonpayment applies if the resident does not submit the necessary paperwork for payment or if the claim is denied, the resident refused to pay for their stay." *Id.* The notice identified the administrator as the person responsible for supervising the discharge and explained Appellant's appeal rights. The last page of the notice was omitted from the hearing record. *Id.*, Exhibit 4.

Respondent's representatives testified that Appellant was admitted to the facility on [REDACTED] for short term rehabilitation after ulcer debridement and total metatarsal amputation (TMA) revision on her right foot. Exhibit 4 at 5, 62. Appellant has a history of type 2 diabetes with bilateral chronic diabetic foot ulcers and was using a wheelchair at the time of admission. *Id.* at 62. Respondent testified that Appellant was admitted on a short-term basis, and was evaluated by Elder Services. The Elder Services representative determined that Appellant qualified for long-term care, not a short-term stay. The records show that on August 7, 2024, Respondent's social worker met with Appellant to inform her that she was approved for long-term care. The social worker noted that Appellant was upset and refused to pay funds to the facility because she had to pay for her car. Appellant also refused to relinquish funds to pay for a rest home. Exhibit 4 at 87.

According to RMFS, Respondent's state database, Appellant owed a patient-paid amount (PPA) of \$1,377.20 per month beginning August 2024. Appellant has not paid and has accrued balance for the PPA from August through October 2024 totaling \$4,131.60. *Id.* at 4. Respondent did not receive a copy of MassHealth's notice setting the PPA. Respondent received the determination letter from Elder Services, but it is not included in Respondent's submission. Respondent's social worker testified that Elder Services had indicated that Appellant was eligible for long-term care because of the frequency of her hospitalizations, and that Appellant is not able to manage her clinical needs. Respondent's social worker testified that when he spoke to a representative at Elder Services, he was told that Elder Services will either approve or deny, and will not change the level of care.

Appellant testified that she has not paid the PPA to the facility and cannot pay due to her other expenses, including her vehicle. Appellant disputes that she should owe the facility the PPA, arguing that she should be considered eligible for a short-term stay. Appellant is under the age of 65 and testified that the law allows her to choose whether she wants to be screened short- or

long-term. Appellant testified that she never met with a representative from Elder Services. Appellant testified that she tried to call Elder Services herself, and had to jump through hoops. Appellant asked for a number to contact the person who made the decision at Elder Services on multiple occasions, and never received the phone number.

According to Respondent's social service notes, Appellant met with an Elder Services representative on June 7, 2024 and received a Section 8 application. Exhibit 4 at 89. These records do not note any other meeting or evaluation done by Elder Services following this date.

Appellant testified that she appealed the level of care decision to the Board of Hearings (BOH). On September 13, 2024, BOH received a request for fair hearing from Appellant (Appeal No. 2414167), challenging the August 7, 2024 level of care screening conducted by Elder Services Worcester Area. Exhibit 5 at 6. On her request for fair hearing, Appellant wrote "I don't want to be in a medical facility long term." *Id.* at 2. Appellant wrote that she would stay in her car if necessary. Appellant requested an in-person hearing. *Id.* On September 13, 2024, BOH dismissed Appellant's appeal and notified her in writing that the appeal was dismissed because Appellant was approved for coverage. *Id.* at 1. The notice instructs Appellant "[i]f you disagree with this dismissal and believe that there are remaining issues for appeal, please contact the Board of Hearings within 10 business days of the date of this letter." The notice does not provide whether Appellant had a right to appeal the dismissal pursuant to Mass. Gen. Laws ch. 30A. Appellant did not contact BOH to vacate the dismissal by the September 27, 2024 deadline. Appellant testified that she received the dismissal and tried to contact somebody about it, but was not able to reach someone on the phone.

Appellant testified that she did not get the notice from MassHealth regarding her obligation to pay. Appellant called MassHealth and spoke to someone about being short-term, and was told that the facility, not Appellant, had to request an extension of the short-term screen. Appellant argued that the facility, not Appellant, chose to have Appellant be long-term. Appellant does not need to be in the facility long-term. Appellant acknowledged that she was approaching her six-month date at the facility and testified that she understood that even if she was able to successfully challenge the level of care determination, she would become a long-term resident as of December 4, 2024.

Regarding discharge planning, records indicate that Respondent's representatives and Appellant met frequently to discuss housing and waivers. Exhibit 4 at 85-86. On July 11, 2024, the social worker met with Appellant to discuss discharge on August 9, 2024, the last day of approved MassHealth short-term care coverage. *Id.* at 88. Appellant planned to discharge to the shelter on that date, but was also looking to arrange housing with her significant other. *Id.* at 87-88.

Respondent's representatives acknowledged that while discharge to the shelter is not ideal, Appellant has resided in the same shelter on prior occasions. *Id.* at 88. Appellant is working with Massachusetts Rehabilitation Commission (MRC) to find housing or get a Section 8 voucher.

Respondent's representative testified that the shelter is the only place in the community that does not require payment. Regarding transportation, Appellant drives herself and goes on leaves of absence from the facility frequently, so she is able to transport herself to the shelter. Exhibit 4 at 69-72, 75. For medical services, Appellant goes to a wound clinic in the community and prefers outside services over the in-house care in the facility. Appellant is independent and does not need any other services in the community, such as a visiting nurse or personal care attendant.

Appellant argued that she cannot be discharged to the shelter because she is medically compromised if she goes there. Appellant argued that the shelter is not clean, and she cannot take a shower. Appellant testified that she cannot eat and is not supposed to hold her own medication, though she opts to keep her medications in her car to avoid the line and process. Appellant testified that with her boot, she cannot lay down on the mat on the floor to sleep, as the shelter has no beds. Appellant would rather sleep in her car and still has open wound on left foot. Respondent's representatives disputed this, arguing that Appellant is seen walking without her boot. Exhibit 4 at 65, 68, 73. Appellant's medications are locked and administered by the facility, which is the same process as the shelter. Appellant acknowledged being noncompliant with her boot at times, testifying emotionally that she wants to use her feet while she still has them. Records show that Appellant had indicated that she planned to discharge to the shelter after her stay at the facility, but was also searching for housing. *Id.* at 85-90.

Appellant testified that she received incorrect information when she stayed in the shelter the previous winter. Appellant was told if she stayed for four months, she would be eligible for services. She was at the shelter from January through April, 2024, but was told that they cannot provide services or housing help. Appellant never had Section 8 housing and had a dispute with emergency housing over the presence of her PCA on the property. Appellant had to challenge this dispute in court. Exhibit 4 at 88-89.

Findings of Fact

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

1. Appellant was admitted to the facility on [REDACTED] for short term rehabilitation after ulcer debridement and TMA revision on her right foot. Appellant has a history of type 2 diabetes with bilateral chronic diabetic foot ulcers and was using a wheelchair at the time of admission. Exhibit 4 at 5, 62.
2. On June 7, 2024, Appellant met with an Elder Services representative on and received a Section 8 application. No other meeting with Elder Services is noted in Respondent's records. Exhibit 4 at 89.
3. On August 7, 2024, Elder Services notified Appellant that she was approved for long-term care coverage. Exhibit 4 at 87, Exhibit 5 at 6.

4. On September 13, 2024, BOH received a request for fair hearing from Appellant (Appeal No. 2414167), challenging the August 7, 2024 level of care screening conducted by Elder Services Worcester Area. Exhibit 5 at 6.
5. On her request for fair hearing, Appellant wrote “I don’t want to be in a medical facility long term.” *Id.* at 2. Appellant wrote that she would stay in her car if necessary. Appellant requested an in-person hearing. *Id.*
6. On September 13, 2024, BOH dismissed Appeal No. 2414167 and notified her in writing that the appeal was dismissed because Appellant was approved for coverage. The notice instructs Appellant “[i]f you disagree with this dismissal and believe that there are remaining issues for appeal, please contact the Board of Hearings within 10 business days of the date of this letter.” The notice does not provide whether Appellant had a right to appeal the dismissal pursuant to Mass. Gen. Laws ch. 30A. Appellant did not contact BOH to vacate the dismissal by the September 27, 2024 deadline. *Id.* at 1.
7. Appellant testified that she was not able to reach someone at BOH to challenge the dismissal of Appeal No. 2414167.
8. According to RMFS, Respondent’s state database, Appellant owed a PPA of \$1,377.20 per month beginning August 2024.
9. Appellant has not paid and has accrued balance for the PPA from August through October 2024 totaling \$4,131.60. *Id.* at 4.
10. By hand-delivered letter dated [REDACTED] Respondent informed Appellant of its intent to discharge Appellant from the facility to a shelter. A copy of the notice was not provided to a representative on Appellant’s behalf. Exhibit 1.
11. The notice stated that Respondent sought to discharge Appellant on [REDACTED] because Appellant “has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Nonpayment applies if the resident does not submit the necessary paperwork for payment or if the claim is denied, the resident refused to pay for their stay.” *Id.*
12. The notice identified the administrator as the person responsible for supervising the discharge and explained Appellant’s appeal rights. The last page of the notice was omitted from the hearing record. *Id.*, Exhibit 4.
13. Appellant filed a timely appeal of this discharge notice on October 5, 2024. Exhibit 2.
14. Respondent’s representatives met with Appellant frequently to discuss housing and waivers.

Exhibit 4 at 85-86.

15. On July 11, 2024, the social worker met with Appellant to discuss discharge on August 9, 2024, the last day of approved MassHealth short-term care coverage. Appellant planned to discharge to the shelter on that date, but was also looking to arrange housing with her significant other. *Id.* at 87-88.
16. Appellant drives herself and goes on leaves of absence from the facility frequently, including going to her off-site wound clinic independently. Exhibit 4 at 69-72, 75.
17. Records show that Appellant had indicated that she planned to discharge to the shelter after her stay at the facility, but was also searching for housing. *Id.* at 85-90.

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 some of 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.*

Per 130 CMR 456.701(A) and 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.

Prior to discharge or transfer, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative (if the resident 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.

130 CMR 610.028(C).

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), when the discharge is being made on an emergency basis. *See also* 130 CMR 456.702(A).

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.” Finally, federal regulations require that a nursing facility “provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This

orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7).

Appellant challenges the nursing facility’s action in discharging her for failure to pay. Appellant’s obligation to pay the PPA arises from Elder Service’s August 7, 2024 determination that Appellant is clinically eligible for long-term care, and not a short-term stay. Appellant has the right to challenge a level-of-care determination within 60 days of having received the notice. 130 CMR 610.015(B)(1) and 610.032(A)(5).

Appellant requested a fair hearing on her level-of-care determination on September 13, 2024. Despite Appellant’s right to challenge the level of care, BOH dismissed Appeal 2414167. Though Appellant did not reach someone at BOH to request to vacate the dismissal, Appellant’s October 5, 2024 request for hearing is timely to challenge the August 7, 2024 level-of-care determination. For this reason, Appeal 2414167 may be reopened and scheduled for hearing with a representative from Elder Services. The parties were notified by email of the status change of the earlier appeal. Exhibit 6.

Additionally, Appellant testified that she did not receive a notice from MassHealth setting forth the PPA, and no such notice is contained in the record. Appellant would have 120 days from the date of a MassHealth action to appeal that action if MassHealth fails to send written notice of the action. 130 CMR 610.015(B)(2)(c). Even assuming MassHealth issued its eligibility decision after the August 7, 2024 clinical eligibility approval, Appellant’s October 5, 2024 appeal is also timely to challenge MassHealth’s determination.

Given that Appellant has filed timely appeals of MassHealth’s actions leading to the decision that she owes a patient liability, and that substantive decisions have not yet been made as to Appellant’s level-of-care and the calculation of the PPA, there has not yet been a failure on Appellant’s part to have MassHealth pay for the nursing home stay. Accordingly, this appeal is approved, and Appellant may not be discharged pursuant to the September 24, 2024 notice.

Order for Respondent

Rescind the September 24, 2024 notice of discharge.

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 Board of Hearings.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: Respondent:

[REDACTED]

[REDACTED]