

Office of Medicaid BOARD OF HEARINGS

Appellant Name and
Address:



Appeal Decision:	Denied	Appeal Number:	2415947
Decision Date:	11/4/2024	Hearing Date:	10/31/2024
Hearing Officer:	David Jacobs		

Appearance for Appellant:
Pro se



Appearance for MassHealth:
Ladan Azarm, Administrator
Lacey Ackerman, Director of Social Services
Amber Dubois, Business Office Manager



*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
Decision Date:	11/4/2024	Hearing Date:	10/31/2024
Facility Rep.:	Ladan Azarm, Lacey Ackerman, Amber Dubois	Appellant's Rep.:	Pro se, [REDACTED]
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 October 7, 2024, [REDACTED] a skilled nursing facility, notified the appellant of its plan to discharge her to [REDACTED] on [REDACTED] 2024, because it determined that her health had improved sufficiently so that she no longer requires the services provided by the facility and that she failed, after reasonable and appropriate notice, to pay for her stay at the facility (Exhibit 1). The appellant filed this appeal in a timely manner on October 17, 2024 (130 CMR 610.015 and Exhibit 2). The discharge of a nursing home resident is valid grounds for appeal (130 CMR 610.028(A)).

Action Taken by MassHealth

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.029?

Summary of Evidence

The facility administrator, director of social services, and office manager appeared telephonically for the facility. The facility administrator testified primarily on behalf of the facility at the hearing. The appellant was admitted to the facility in June 2024 due to pain in her left foot that made her unable to walk (Exhibit 4, pg. 9). The appellant underwent physical therapy at the facility and has become independent in all aspects of her care according to her primary physician (Exhibit 4, pg. 8). Furthermore, the appellant has accrued bills for her stay from July to current in the amount of \$4,816.80 (Exhibit 4, pg. 42). The facility delivered three bills for August, September, and October to her room and facility staff has spoken to the appellant about the past due amount (Exhibit 4, pgs. 42-44). However, as of the time of the hearing the appellant has yet to make any payments.

The appellant appeared telephonically at the hearing along with her case manager. The appellant testified that she is still unable to walk due to pain in her left foot and should continue to receive physical therapy. She argued that the facility has stopped helping her and that she has to rely on her friends at the facility to complete tasks that would otherwise require her to walk. Her primary concern is that she does not want to be discharged to a shelter while being in a wheelchair. As for the bills, the appellant conceded that she was aware she owed the facility past due bills. However, she argued that she only received one bill, not three, and has only been spoken to recently about the issue. She further argued that she was under the impression she did not have to pay for her stay at the facility for the first six months. Regardless, she testified she would be willing to work out a payment plan with the facility but could only offer \$10.00 a month due to her fixed income.

The facility administrator responded that the facility offered skilled nursing services. However, according to her doctor the appellant had reached her benchmarks and now only required custodial services that she could receive in the community (Exhibit 4, pg. 8). Moreover, the appellant was found ineligible for surgery on her left foot that could possibly require additional skilled nursing services due to her non-compliance with off-loading and continued tobacco use (Exhibit 4, pg. 45). In response to the appellant's testimony on the bills, the administrator testified that it had been explained to the appellant that while it is true that she was in a program whereby she did not have to pay for the first six months at a facility, the appellant had used that benefit at a different, prior facility. The benefit did not extend to every facility the appellant stayed at after that. The appellant did not counter the facility's argument. Furthermore, this misunderstanding had already been discussed with the appellant and should have been cleared up. As for the appellant's offer of a payment plan of \$10.00 a month, the facility was unable to accept as the administrator argued it would take decades for the past due amount to be paid back at that rate.

Lastly, the parties discussed the choice of [REDACTED] as a discharge location. [REDACTED] is a homeless shelter located in [REDACTED] MA. The administrator testified that the matter of discharge location was discussed with the appellant and [REDACTED] was chosen because the appellant had no friends nor family with whom she could stay. The appellant conceded to these facts, but argued she was greatly concerned with her ability to function well at a homeless shelter while being confined to a wheelchair. She further argued she has mental health issues which may impede her ability to function at a homeless shelter.

Findings of Fact

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

1. The appellant was admitted to the facility in June 2024 for left foot pain that makes her unable to walk.
2. The appellant received a notice of intent to discharge on October 7, 2024.
3. At the time of the hearing, the appellant has past due bills for her stay at the facility from June 2024 to current in the amount of \$4,816.80. The appellant has made no payments on these bills leading up to the date of the hearing.
4. The appellant offered a payment plan of \$10.00 a month due to her fixed income.
5. The facility rejected the appellant's payment plan as it would take decades for the appellant to pay back the past due amount at that rate.
6. The appellant is independent with her care and is well enough to be discharged.
7. The facility intends to discharge the appellant to [REDACTED] homeless shelter, due to the appellant having no friends or family to stay with.
8. The appellant is concerned about her ability to function at a homeless shelter due to being in a wheelchair and her mental health.

Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility when the transfer or discharge is appropriate because the resident has failed to pay for a stay at the facility (130 CMR 610.028(A)(5)). A transfer or discharge on this ground must be documented by the resident's clinical record (130 CMR 610.028(B)).

130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility

(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 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)(4).

M.G.L. Ch. 111, § 70E states 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.

The facility has notified the appellant they intend to discharge her on two separate grounds.

The first is whether the appellant's discharge is appropriate because her health has improved sufficiently so that she no longer requires services provided by the facility (130 CMR 610.028(A)(2). Here, it is found that the facility has appropriate ground to discharge the appellant. The facility

submitted a progress note from the appellant's primary physician that states that she is independent in all aspects of care and can be discharged (Exhibit 4, pg. 8). The appellant argues that she is still in a wheelchair and requires physical therapy. Moreover, the facility is not offering her the help she needs and must rely on the assistance of her friends. The facility administrator argued that the appellant does still require care, but that care is custodial in nature and can be received outside the facility. The progress report from the appellant's doctor, which I find credible, supports the administrator's testimony (Exhibit 4, pg. 8). Moreover, the appellant's argument that she been managing without assistance from facility staff cuts against her argument that she still requires skilled nursing services. Therefore, it is found that the facility has met its burden.

The second is whether the appellant's discharge is appropriate because she has failed to pay for her stay at the facility (130 CMR 610.028(A)(5)). Here, it is found that the facility has appropriate grounds to discharge the appellant. The facility submitted the bills in question into the record (Exhibit 4, pgs. 42-44) and the administrator testified that the past due amount had been discussed with the appellant several times. The appellant argued that she only received one bill, had only been spoken to about the issue recently, and was under the impression she could stay at the facility for six months without paying. I find credible the facility's testimony that facility staff delivered the bills at issue to the appellant, discussed the lack of payment, and cleared up any misunderstandings there may have been about the necessity to pay. Importantly, the appellant does not dispute that she has failed to pay the facility a debt of which she has been made aware. Therefore, it is found that the facility has met its burden.

Thus, we move on to the last issue.

The last issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, reads as follows:

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 notice of discharge lists the appellant's discharge location as [REDACTED]. The appellant concedes that facility staff discussed discharge options and [REDACTED] was the only feasible choice due to the appellant having no friends nor family with whom to stay. The appellant argued that she did not want to be discharged to a homeless shelter in a wheelchair and with her mental health concerns but offered no testimony as to why the shelter was specifically unsafe. Further, the record confirms that the appellant is independent with all her care. Therefore, the nursing facility's notice of discharge dated October 7, 2024, meets the requirements of MGL c.111, §70E.

Based on the record and the above analysis, the nursing facility has valid grounds to discharge the appellant per its notice dated October 7, 2024.

The appeal is thus DENIED.

Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 30 days from the date of this decision.

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.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]