

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2416817
Decision Date:	12/12/2024	Hearing Date:	12/02/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearances for MassHealth:

Corey Beaudette, Administrator,
Katrina Gomes, LSW

Interpreter:

N/A



*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 Home Discharge, Failure to Pay
Decision Date:	12/12/2024	Hearing Date:	12/02/2024
MassHealth's Reps.:	Corey Beaudette, Katrina Gomes	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 8, 2024, [REDACTED] (hereinafter "the nursing facility" or "facility") issued a 30-Day Notice of Intent to Discharge Resident to [REDACTED] for the specific reason: "The residence has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) as [sic] 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 refuses to pay for their stay" (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1). The Appellant filed this appeal in a timely manner on November 1, 2024 (130 CMR 610.015(F); Exhibit 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by MassHealth

The nursing facility issued a 30-Day Notice of Intent to Discharge Resident for the specific reason: "The residence has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) as [sic] 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 refuses to pay for their stay" (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701, in issuing to the Appellant a 30-Day Notice of Intent to Discharge Resident for the specific reason: “The residence has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) as [sic] 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 refuses to pay for their stay” (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

Summary of Evidence

The Appellant is an individual over the age of 65 who is seeking appeal of a 30-Day Notice of Intent to Discharge Resident for the specific reason: “The residence has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) as [sic] 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 refuses to pay for their stay,” (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1). A street address, only, was listed on the Notice for the location for discharge (Exhibit 1).

The nursing facility was represented telephonically at the hearing by its Administrator, as well as a Licensed Social Worker. The facility’s representatives stated that attempts were made to have the Appellant pay, but the attempts have been unsuccessful (Testimony). The Billing Statement as well as records of the conversations the Facility has had with the Appellant are included within the Facility’s submission (Exhibit 4).

Within the submission by the Nursing Facility, there are multiple statements listing an amount due. For purposes of this appeal, with a Notice date of October 8, 2024, the relevant Statement indicates that the Appellant had a previous balance of \$3,735.40 (Exhibit 4, pg. 20). The Statement also shows \$00.00 payments have been made (Exhibit 4, pg. 20). Adding the current charges for October of 2024, the new balance due was \$4,587.30 in the October 1, 2024, Statement¹ (Exhibit 4, pg. 20).

In a Billing Note dated May 24, 2024, it is memorialized that the Facility attempted to explain the Appellant’s financial responsibility through a Patient Paid Amount (PPA) (Exhibit 4, pg. 24). In the same Billing Note, the Appellant indicated that he was going to wait until MassHealth coverage was reinstated, because he did not believe that he would have any financial responsibility (Exhibit 4, pg. 24). In a Billing Note dated June 10, 2024, it is noted that approval for MassHealth was received along with the PPA amount (Exhibit 4, pg. 24). When the PPA amount and the

¹ Billing Statements for November and December are also included within the facility’s submission. (Exhibit 4)

Appellant's financial responsibility were explained to the Appellant,, the Appellant responded that he could not afford to pay because he needed to pay for a storage unit (Exhibit 4, pg. 24). On August 13, 2024, a meeting, which the Appellant requested, was held with the facility representatives (Exhibit 4, pg. 24). During the meeting, it was noted that the Appellant refused to pay (Exhibit 4, pg. 24). Based upon the Appellant's refusal to pay, the Appellant was informed that the Facility would issue a 30-day notice for discharge due to nonpayment (Exhibit 4, pg. 24).

No testimony was offered regarding the appropriateness of the discharge location. The location listed on the Notice is a numbered street address. Within this Record, it is unclear what type of facility or building is located at the numbered street address (Exhibit 1). Although there are voluminous medical records within the facility's submission (Exhibit 4), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking within the facility's submission is documentation regarding any preparation or orientation provided to the Appellant (Exhibit 4).

The Appellant testified that he received the October 8, 2024, Notice which is the subject of this appeal (Testimony, Exhibit 1). The Appellant stated he believed that he received the Billing Statements (Testimony). The Appellant confirmed that he has not made a payment to the facility (Testimony). The Appellant explained that the Facility has sent him to the hospital multiple times, and billed his insurance, which he stated was unnecessary as he did not need to go the hospital (Testimony). The Appellant took issue with various staff members of the facility and indicated that one staff member had accused him of drinking and being drunk (Testimony). The Appellant described one such event multiple times: a facility employee stated that the Appellant was observed with an "hourglass shaped bottle" and was drunk (Testimony). The Appellant testified that this observation prompted the facility to send the Appellant to the hospital (Testimony). The Appellant testified that at the hospital he was proven to not have been drinking (Testimony). The Appellant indicated that he was going to file a grievance against the facility after the Hearing for the harassment towards him (Testimony).

Findings of Fact

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

1. The Appellant is an individual over the age of 65 who is seeking appeal of a 30-Day Notice of Intent to Discharge Resident for the specific reason: "The residence has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) as [sic] 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 refuses to pay for their stay" (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1).
2. In a Billing Note dated May 24, 2024, it is memorialized that the Facility attempted to explain

the Appellant's financial responsibility through a Patient Paid Amount (PPA). (Exhibit 4, pg. 24). In the same Billing Note, the Appellant indicated that he was going to wait until MassHealth coverage was reinstated, because he did not believe that he would have any financial responsibility (Exhibit 4, pg. 24).

3. In a Billing Note dated June 10, 2024, it is noted that approval for MassHealth was received along with the PPA amount (Exhibit 4, pg. 24). When the PPA amount and the Appellant's financial responsibility were explained, , the Appellant responded that he could not afford to pay because he needed to pay for a storage unit (Exhibit 4, pg. 24).
4. On August 13, 2024, a meeting, which the Appellant requested, was held with the facility (Exhibit 4, pg. 24). During the meeting, it was noted that the Appellant refused to pay (Exhibit 4, pg. 24). Based upon the Appellant's refusal to pay, the Appellant was informed that the Facility would issue a 30-day notice for discharge due to nonpayment (Exhibit 4, pg. 24).
5. No testimony was offered regarding the appropriateness of the discharge location. The location lists a street address (Exhibit 1). Within this Record, it is unclear what type of facility or building is located at the numbered street address (Exhibit 1). Although there are voluminous medical records within the facility's submission (Exhibit 4), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking is documentation regarding any preparation or orientation provided to the Appellant (Exhibit 4).
6. The Appellant confirmed he received the 30-Day Notice of Intent to Discharge Resident for the specific reason: "The residence has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) as [sic] 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 refuses to pay for their stay" (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1). (Testimony)
7. The Appellant confirmed that he did not make a payment to the Facility (Testimony, Exhibit 4, pg. 24).

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 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.²

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 a notice written in 12-point or larger type that contains, in a language the member understands, the following, as codified within 130 CMR 456.701(C):

- (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 Division's Board of Hearings 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 456.702; and
 - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 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. s. 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.

² The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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.

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (4), the resident's clinical record must contain documentation to explain the transfer or discharge. Pursuant to 130 CMR 456.701(B), the documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities:³

³ See also 130 CMR 610.029: Time Frames for Notices Issued by Nursing Facilities

(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).

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician. (emphasis added)
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are emergency discharges or emergency transfers.

(1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.

(2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.

(3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.

(4) The resident has not resided in the nursing facility for 30 days immediately prior to receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429, must comply with the requirements set forth in 130 CMR 456.701 and must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending

notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

(C) If the request for a hearing is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, if the request for a hearing is received within the applicable time period as described in 130 CMR 456.703(B)(3), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

The nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.⁴

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

⁴ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

In this case, the facility initiated the discharge proceedings because it determined that the Appellant had failed, after reasonable and appropriate notice, to pay for (or failed to have MassHealth or Medicare pay for) a stay at the nursing facility (Exhibit 1). The Record adequately supports the facility's position regarding nonpayment (Exhibit 4). The facility has notified the Appellant of the debt owed and these efforts constitute reasonable and appropriate notice of the debt owed to the Facility (Exhibit 1, Exhibit 4, Exhibit 4, pg. 24, Testimony). The Appellant does not dispute that he has failed to pay the facility (Testimony). Rather, the Appellant takes issue with the facility and the times when the facility sent him to the hospital, and did not offer him an apology. These issues that the Appellant has with the facility does not relieve the Appellant of his financial responsibility to the facility for his care.

However, payment is not the sole consideration in this appeal. The facility has specific regulatory requirements that must be met before an Appellant may be discharged. Specifically, the facility must also comply with G.L. c. 111, § 70E. Per this statutory provision, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. No testimony was offered regarding the appropriateness of the discharge location. The location lists a numbered street address for discharge (Exhibit 1). Based upon this Record, it is unclear what type of facility or building is located at the street address (Exhibit 1). Although there are voluminous medical records within the facility's submission (Exhibit 4), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking is documentation regarding any preparation or orientation provided to the Appellant⁵ (Exhibit 4). These statutory requirements must be met prior to discharge of a resident. Within this Record, based upon the testimony from the facility as well as the documentary evidence submitted, the requirements of G.L. c. 111, § 70E have not been met.

On this Record, the Appellant has met his burden, by a preponderance of evidence, to show the invalidity of the administrative determination. Accordingly, this appeal is APPROVED.

⁵ In the facility submission, a Care Plan is included (Exhibit 4, pg. 416-430) which mentions the goal to discharge the Appellant to an appropriate location. This appears to be dated information included within the goals from his initial admission. The information does not include any specificity related to the instant attempt to discharge the Appellant, nor does it discuss the facility's chosen location for discharge.

Order for Nursing Facility

Rescind the November 8, 2024, 30-Day Notice of Intent to Discharge Resident.

Implementation of this Decision

If this nursing facility fails to implement 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.

Patrick Grogan
Hearing Officer
Board of Hearings

CC: [REDACTED]