

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418466
Decision Date:	12/19/2024	Hearing Date:	12/16/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:

Pro se

Appearances for Skilled Nursing Facility:

Michelle Clark, Administrator; Stacy Sullivan,
Social Work; Erica Olson, Substance Abuse
Counselor



*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 Home Discharge – Endangering the Safety of Others
Decision Date:	12/19/2024	Hearing Date:	12/16/2024
Skilled Nursing Facility Reps.:	Michelle Clark, Administrator; Stacy Sullivan, Social Work; Erica Olson, Substance Abuse Counselor	Appellant’s Rep.:	Pro se
Hearing Location:	Springfield MassHealth Enrollment Center	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 30-Day Notice of Intent to Discharge Resident dated 11/11/2024, Southeast Rehabilitation and Skilled Care Center (“the nursing facility”) notified the appellant of its intent to discharge her to the Father Bill’s Mainspring Shelter, [REDACTED] (“Father Bill’s” and/or “shelter”). The nursing facility indicated that the discharge is necessary because the safety of the individuals in the nursing facility is endangered (130 CMR 610.028; Exhibit 1). An appeal was filed in a timely manner on the appellant’s behalf on 12/03/2024 (130 CMR 610.015(B); Exhibit 2). Notice of intent to transfer or discharge a nursing home resident is valid grounds for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The skilled nursing facility intends to transfer the appellant from the skilled nursing facility to the Father Bill's shelter

Issue

Has the nursing facility complied with relevant statutes and regulations in its planned discharge of the appellant?

Summary of Evidence

The appellant and the representatives from the nursing facility participated in the fair hearing by telephone. The nursing facility was represented by the administrator, a social worker, and a substance abuse counselor. The nursing facility submitted a packet of documents prior to the hearing, which was marked as Exhibit 4. The record contains a copy of a discharge notice dated 11/11/2024 from the nursing facility to the appellant informing her of its intent to transfer her to the Father Bill's on [REDACTED]. The packet provided by the nursing facility contains the appellant's clinical record of the appellant (Exhibit 4).

Representatives from the nursing facility testified that the appellant was admitted to the skilled nursing facility in summer [REDACTED]. She has diagnoses that include hyponatremia, anemia, hypothyroidism, diabetes mellitus, hyperglycemia, hypotension, COPD, kidney failure and major depression. Since her admission, the appellant has repeatedly violated the facility's smoking policy by smoking during non-permitted hours, carrying her own cigarettes and smoking paraphernalia on her person instead of in a locked box, and having smoking paraphernalia in her room. The nursing facility administrator testified that having smoking materials on her person and in her room and violating the smoking policy endangers the safety of the appellant and others in the facility.

The representatives from the nursing facility testified that they plan to discharge the appellant to a homeless shelter. The social worker testified that the appellant does not need physical therapy or occupational therapy, is ambulatory without an assistive device, requires no assistance with activities of dialing living, and her medical needs can be met in the community.

The appellant appeared at the fair hearing and testified telephonically by her own request. She acknowledged that she has violated the skilled nursing facility's smoking policy but does not believe she should be discharged [REDACTED] as a result.

Findings of Fact

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

1. The appellant was admitted to the nursing facility in Summer [REDACTED] (Testimony; Exhibit 4).
2. The appellant is independent with activities of daily living.
3. The appellant has repeatedly violated the skilled nursing facility's smoking policy by smoking during hours when smoking is not permitted, by carrying cigarettes and smoking paraphernalia on her person and in her room (Testimony; Exhibit 4).
4. The skilled nursing facility plans to discharge the appellant to a homeless shelter and arrange for her medical care in the community (Testimony).
5. Through a 30-Day Notice of Intent to Discharge Resident dated 11/11/2024, the nursing facility notified the appellant of its intent to discharge her to Father Bill's shelter. The nursing facility indicated that the discharge is necessary because the safety of the individuals in the nursing facility is endangered (Testimony; Exhibits 1 and 4).
6. In support of the proposed discharge, the nursing facility representatives submitted a clinical record documenting several instances of smoking violations (Testimony; Exhibit 4).
7. The appellant acknowledged violating the smoking policy.

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 initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (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 MassHealth agency 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).

(C) 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:

(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.

(Emphasis added.)

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.

Through a 30-Day Notice of Intent to Discharge Resident dated 11/11/2024, the nursing facility notified the appellant of its intent to discharge her to the Father Bill's shelter on [REDACTED]. The nursing facility indicated that the discharge is necessary because the safety of the individuals in the nursing facility is endangered. In support of its decision to discharge the appellant, the nursing facility submitted a copy of the appellant's clinical record that documents several instances of smoking violations.

The appellant acknowledged that she violated the smoking policy. The facility's documentation of the incidents, especially the number of diverse incidents and the severity of the incidents, supports the intended discharge. Additionally, the discharge notice meets the above regulatory requirements. The facility has also provided an adequate discharge plan, given the fact the appellant is independent with her activities of daily living, is ambulatory without an assistive device, and she has no therapy or skilled nursing needs. Accordingly, the skilled nursing facility has complied with its regulatory and statutory requirements with regard to this discharge. The skilled nursing facility will be permitted to discharge the appellant in accordance with this Discharge Notice.

This appeal is therefore denied.

Order for the Nursing Facility

The nursing facility may discharge the appellant pursuant to the Discharge Notice no sooner than 30 days after 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Respondent: Southeast Rehab & Skilled Care Center, Attn: Administrator, 184 Lincoln Street, North Easton, MA 02356