

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Denied | Appeal Number: | 2419216 |
| Decision Date: | 02/15/2025 | Hearing Date: | 01/06/2025 |
| Hearing Officer: | Kimberly Scanlon | Record Open to: | 02/11/2025 |

Appearance for Appellant:



Appearances for Nursing Facility:

Kevin Kaczynski, Administrator;
Maryna Dias, Business Office Manager;
Robin Therrien, Social Services Director



*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

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| Appeal Decision: | Denied | Issue: | 30-Day Nursing Facility Discharge |
| Decision Date: | 02/15/2025 | Hearing Date: | 01/06/2025 |
| Nursing Facility Reps.: | Kevin Kaczynski, Administrator; Maryna Dias, Business Office Manager; Robin Therrien, Social Services Director | Appellant's Rep.: | ██████ |
| Hearing Location: | Taunton MassHealth Enrollment Center Room 3 (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 30-Day Notice of Intent to Discharge Resident dated December 12, 2024, the nursing facility informed the appellant of its intent to discharge her home on January 11, 2025 because she has failed, after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1). The appellant filed this appeal in a timely manner on December 17, 2024 (130 CMR 610.015(F); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by the Nursing Facility

The nursing facility issued a 30-day notice of intent to discharge the appellant.

Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility, [REDACTED] was represented telephonically by its Administrator, Business Office Manager, and Director of Social Services. The appellant was admitted to the facility on [REDACTED]. She was admitted to the facility for rehabilitation and wound care.

The facility's Administrator testified that the discharge notice was issued to the appellant for non-payment (Exhibit 1). Currently, the appellant owes the facility \$8,958.40 (Exhibit 4, p. 8). By June 24, 2024, the appellant had exhausted her 100 Medicare days and continued to stay at the facility under Medicaid (Exhibit 4, p. 10). Because the appellant was on Medicaid at the previous facility for longer than 3 months, MassHealth sent the facility a long-term care conversion package. *Id.* The facility began the process for long-term care conversion in July of 2024, and explained to the appellant that she will owe the facility a patient paid amount (PPA) of \$1,301.20 each month. *Id.* In August of 2024, the facility delivered the first statement with resident portion (PPA) to the appellant's room.

The appellant stated that she did not have any money to pay her bill. *Id.* The appellant told the facility that they could contact her son, who oversees her finances. The facility contacted the appellant's son; he informed the facility that he would not pay the facility and inquired about the discharge process. The facility has delivered monthly statements to the appellant since August. The facility received one payment from the appellant in the amount of \$149.00 on December 13, 2024 (Exhibit 4, p. 9). The appellant offered to pay \$150 per month to the facility; the facility declined that offer (Exhibit 4, p. 10). Currently, the appellant requires a skilled nursing level of care because she has wound care that requires a wound vac.

With respect to the discharge plan, the facility's Social Services Director testified that the appellant was approved for MassHealth's Money Follows the Person (MFP) waiver program. A coordinator from the MFP waiver program is working with the appellant and Social Services Director to order an electric bed, a Hoyer lift, bed commode, and a specialized mattress for the appellant's home. Additionally, the facility has set up doctor's appointments for the appellant and home care to treat

her wounds. The facility is also researching whether the appellant will benefit from personal care attendant (PCA) services to ensure her safety in her home.

The appellant testified on her own behalf. She stated that the MFP coordinator began to implement renovations in her bathroom at home. The facility's Social Services Director added that a wheelchair ramp has been installed at her home. The appellant stated that she feels safe discharging to her home. The facility's Social Services Director added that she and the appellant have been working with the MFP program and have set the discharge date in approximately 3 weeks; this date is the earliest date that the renovations can be successfully completed for the appellant to return home.

The appellant did not dispute non-payment to the facility. She explained that she cannot pay her PPA due to her household expenses. The appellant stated that she is on a fixed income that she receives from Social Security, her son is in school, and she is a single parent. She testified that the appellant does not dispute non-payment and is not looking to stay at the facility. Rather, the appellant simply wants to ensure that she can safely discharge to her home.

Following the hearing, the record was left open for a brief period for the appellant to check on the status of the home renovations with the MFP program in anticipation of her discharge (Exhibit 5). The Board of Hearings received a copy of an email dated January 15, 2025, sent by a waiver program coordinator to the facility's Social Services Director, which reads as follows: "Home MOD still working on her house, there are Asbestos Abatement, Mold Remediation, Plumbing repairs and bathroom modification. Also, I need to inform TA so she can start to purchase household items. We will need 30 days to have things done. If discharge can be extended to [one month] would be appreciate it. Thank you, [Waiver Program Coordinator II] (Exhibit 6, p. 2). Additionally, handwritten notations were included, which read as follows: "She has electric bed ordered, wheelchair, chucks ordered, the MFP program is asking for additional time for this to be done" [Social Services Director]. *Id.*¹ On February 13, 2025, the facility's Administrator notified the Board of Hearings, in part, as follows: "...The worker setting up home services stated that all of the home renovations are done." (Exhibit 9, p. 1). The appellant did not dispute this assertion, even after inquiry from the hearing officer.

¹ Upon inquiry, the Administrator responded on February 3, 2025, as follows: "the facility is not in receipt of any extension request. In any case, it would not be granted unless his program or the state is going to cover the time this nonpaying resident is taking up one of the beds. As her bill crests \$12,000, I am going to have to go the route of discharging her as soon as possible" (Exhibit 7, p. 1). Upon further inquiry, the Social Services Director responded on February 10, 2025, as follows: "We at Chicopee rehab are not in receipt of any extension request from the waiver Program. He verbally informed us that he wanted to extend the date to [one month] (Exhibit 8, p. 1).

Findings of Fact

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

1. The appellant is a resident of a skilled nursing facility.
2. The appellant has been on MassHealth since June 2024, and since August 2024, has had a monthly PPA obligation of \$1,301.20.
3. In December 2024, the appellant made one payment to the nursing facility in the amount of \$150.00.
4. The appellant currently owes the nursing facility over \$8,958.40.
5. The facility has provided the appellant with billing statements.
6. On December 12, 2024, the facility notified the appellant of its intent to discharge her to her home for nonpayment; the appellant timely appealed this notice.
7. The appellant has been approved for MassHealth's MFP waiver program.
8. The facility's social services department has been working with the MFP waiver program and the appellant to ensure she can safely discharge home.
9. On January 15, 2025, the MFP waiver program contacted the facility's social service department to request an extension on the appellant's discharge date.
10. On February 13, 2025, the facility confirmed that all home renovations have been completed.

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

² The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such

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 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.

(130 CMR 456.701(C)).

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

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.

- 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); 130 CMR 456.701(A)). (emphasis added).

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. 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 456.701(B)).

In the present case, the issue on appeal is whether the appellant has failed, after reasonable and appropriate notice, to pay, or failed to have Medicaid or Medicare pay, for her stay at the nursing facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid denies the claim and the resident refuses to pay for his or her stay. (See, 42 CFR 483.15(c)(E)). The appellant does not dispute the allegation of nonpayment. She stated that she cannot afford to pay the facility due to her fixed income and household expenses. The appellant made one payment to the facility in the amount of \$149.00. She offered to pay the facility \$150 per month, an offer the nursing facility has rejected. The record confirms that the appellant has failed to pay for her stay at the facility.

In addition to the MassHealth-related regulations discussed above, 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.³

Here, the facility proposes to discharge the appellant to her home. The appellant has been approved for MassHealth's MFP waiver program, which is evidence that she is safe to transition back into the community with supportive services. The appellant's home renovations had not been completed as of the date of the hearing. During the record-open period, however, the facility confirmed that the home renovations have now been completed. The appellant did not dispute this assertion. On this record, the evidence demonstrates that the proposed discharge location is safe and appropriate. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, this appeal is denied.

Order for the Nursing Facility

Proceed with planned transfer, to be implemented no less than thirty (30) days after the date 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.

³ 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.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

Respondent: Chicopee Rehab & Nursing Center, Attn: Administrator, 44 New Lombard Road,
Chicopee, MA 01020, 413-366-5906