

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1407261
Decision Date:	9/26/14	Hearing Date:	08/21/2014
Hearing Officer:	Marc Tonaszuck		

Appellant Representatives:

Nursing Facility Representative:

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Nursing Home Witnesses:



*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
Decision Date:	9/26/14	Hearing Date:	08/21/2014
Nursing Facility Rep.:		Appellant Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center		

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 May 30, 2014, The Highlands (“Highlands” or “the facility”) informed Appellant of its intent to discharge her from the facility (130 CMR 610.028; Exhibit 1). Appellant filed a timely appeal on June 13, 2014 (130 CMR 610.615; Exhibit 2). Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by Nursing Facility

Highlands informed Appellant of its intent to discharge her from the facility.

Issue

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

Summary of Evidence

The Highlands, a skilled nursing facility licensed in Massachusetts, was represented at hearing by

Albert Gordon, Esq. Attorney Gordon submitted a packet of information in support of Appellant's planned discharge from the facility, including bills and medical records (Exhibit 6). Appellant was represented by her power of attorney (POA) and attorney Nancy Catalini Chew, Esq.

Appellant is a 90-year-old female whose diagnoses include dementia and legal blindness due to glaucoma. She requires total assistance to complete her daily activities of living (Exhibit 6). Appellant was admitted to Highlands on December 20, 2013. The facility seeks to discharge Appellant because it has not been paid the full amount for Appellant's care. The facility has received funds from Social Security and a pension, but alleges that Appellant also has an annuity from which she receives income (Testimony). The facility submitted documents showing a balance of \$67,454.14 (Exhibit 6).

Appellant's attorney, Nancy Catalini Chew, Esq., explained that the Appellant had applied for MassHealth benefits and originally received a denial based on failure to verify (Testimony). Appellant appealed this denial but withdrew the appeal (Appeal No. 1407258) when the MassHealth caseworker confirmed that MassHealth had received everything needed to make an eligibility determination (Testimony). Subsequently, Appellant received another denial based on allegedly disqualifying transfers, which she has also appealed (Appeal No. 1409465). That appeal is still pending. The only matter at issue here is the notice of intent to discharge Appellant from the facility.

The May 30, 2014 discharge notice states that the facility seeks to discharge Appellant to her former residence, her POA's home, on July 2, 2014 (Exhibit 1).¹ Social service progress notes contained in Exhibit 6 indicate that the POA's residence is an apartment he shares with his 3 year old son. The facility's witnesses testified that the facility has attempted to place Appellant in a different facility, as documented in social service progress notes submitted as part of Exhibit 6. However, these attempts have been unsuccessful because of the lack of a payor source (Testimony and Exhibit 6). According to the notes, these attempts are documented beginning June 2, 2014, after the notice to discharge was issued (Exhibit 6). The notes also state that only a long term care facility would be an appropriate placement for Appellant due to her level of care (Exhibit 6). At hearing, the facility's witness admitted that Appellant is not physically able to return to the address listed on the discharge notice (Testimony). The facility's witness stated that there is no discharge plan in place and admitted that the proposed discharge location is not an appropriate setting (Testimony).²

¹ The notice cites the Board of Hearings address as 2 Boylston Street, Boston, MA 02116. Effective October 2010, the Board of Hearings moved to its current address, 100 Hancock Street, Quincy, MA 02170. Although this change was not reflected on the notice, Appellant's request for a fair hearing was timely filed at the correct address.

² Essentially, the facility conceded that the notice at issue is defective. However, the facility's representative insisted on receiving a written decision, asserting that such a decision would be necessary in subsequent actions. The Board of Hearings is aware of no such requirement, and is not a forum to entertain appeals on nursing home discharges that lack a substantive basis.

Findings of Fact

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

1. Appellant resides at the Highlands, which is a licensed skilled nursing facility.
2. Appellant was admitted to the facility on December 20, 2013 with diagnoses that include dementia and legal blindness due to glaucoma (Exhibit 6).
3. Appellant has applied for MassHealth and was previously denied for failure to verify (Appeal No. 1407258). This appeal was withdrawn.
4. Subsequently, Appellant received another denial based on allegedly disqualifying transfers, which she has also appealed (Appeal No. 1409465). This appeal is pending.
5. On May 30, 2014, the facility issued a letter indicating its plan to discharge Appellant on July 2, 2014 to a residential address in Ashby, MA, which is her former residence and where her POA lives with his son (Exhibits 1 and 6).
6. As reason for the proposed discharge, the facility states that Appellant has “failed, after reasonable and appropriate notice, to pay for (or failed to have Medicaid or Medicare pay for) a stay in the facility” (Exhibit 1).
7. Appellant received notice of an unpaid balance of \$67,474.14 for the period through September 30, 2014 (Exhibit 6).
8. Appellant is not physically able to return to the address listed on the notice (Testimony).

Analysis and Conclusions of Law

Regulation 130 CMR 610.028(A) states 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.

Regulation 130 CMR 610.028(C) states 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.

Here, the facility seeks to discharge Appellant because she has “failed, after reasonable and appropriate notice, to pay for (or failed to have Medicaid or Medicare pay for) a stay in the facility” (Exhibit 1). However, Appellant has applied for MassHealth benefits and her application is still open pending the outcome of Appeal No. 1409465. Thus, even though the facility has provided notice of an outstanding balance, it is premature to conclude that there has been a failure to pay while Appellant’s MassHealth application remains open.

Additionally, 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**” (emphasis added). In addition, federal regulations require that a nursing facility provide sufficient preparation for a safe and orderly discharge. See 42 CFR 483.12(a)(7).

At hearing, the facility’s witness testified that Appellant is not physically able to return to the address listed on the discharge notice. As such, there is no evidence in the record to show that the residence is a safe and appropriate place for Appellant, nor evidence that the facility has provided sufficient preparation and orientation to Appellant to ensure a safe and orderly discharge to the residence. Finally, while the facility’s witness testified that there have been documented attempts to transfer Appellant to another facility, these attempts have been unsuccessful to date. Thus, based on the documentation and testimony in the record, I conclude that the facility has failed to evidence that it has provided sufficient preparation and orientation to Appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place, as is necessary pursuant to the above statute.

The appellant’s appeal is APPROVED.

Order for the Nursing Facility

Rescind the May 30, 2014 Notice of Intent to Discharge.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: