

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Numbers:	1501584 and 1501589
Decision Date:	4/23/15	Hearing Dates:	3/3/2015 and 4/21/2015
Hearing Officer:	Cynthia Kopka	Record Open to:	03/17/2015

Appellant Representatives:

Nursing Facility Representative:
Robert Abbene, 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:	Approved	Issue:	Nursing facility discharge
Decision Date:	4/23/15	Hearing Dates:	3/3/2015 and 4/21/2015
Nursing Facility Rep.:	Robert Abbene	Appellant Rep.:	
Hearing Location:	Quincy Harbor South		

Authority

The hearings were conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notices dated February 6, 2015, Everett Rehab & Nursing Center (“the facility”) informed Appellants of its intent to discharge them from the facility (Exhibits 1 and 1A). 130 CMR 610.028. Appellants filed timely appeals on February 12, 2015 (Exhibits 2 and 2A). 130 CMR 610.615. Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal. 130 CMR 610.032. Per 130 CMR 610.073, the hearings were consolidated due to the commonality of the factual issues and with the consent of both parties.

Action Taken by Nursing Facility

The facility informed Appellants of its intent to discharge them from the facility.

Issue

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

Summary of Evidence

Appellants are husband and wife and reside at Everett Rehab & Nursing Center (“the facility”). A representative from the facility appeared in person and testified as follows. By notice dated February 6, 2015, the facility notified Appellants of its intent to discharge Appellants due to nonpayment. Specifically, the notice directed to Appellant wife states the reason for discharge as “nonpayment of Appellant’s patient paid amount between April 2014 and December 2014 amounting to \$3033.20” (Exhibit 1). The notice directed to Appellant husband states the reason for discharge as “nonpayment of Appellant’s patient paid amount between April 2014 and December 2014 amounting to \$3033.20” (Exhibit 1).

The notices state that the facility seeks to discharge Appellants on March 7, 2015 and lists Appellants’ daughter’s residence as the discharge location (Testimony and Exhibit 1). The notices contain statements regarding Appellants’ right to request a hearing and enclose a fair hearing request form listing the correct contact information for the Board of Hearings (Exhibits 1 and 2). The notices also provide the name of the person at the facility who may assist with the appeal and to whom to direct questions (Exhibit 1). Finally, the notices list contact information for the local long term care ombudsperson, the disability law center, and the local legal service office (Exhibit 1). The facility delivered the 30 day notices to discharge to Appellants in person and emailed to Appellants’ representatives (Testimony). Appellants’ representatives confirmed that they received the notices (Testimony).

Appellant wife has been a resident of the facility for several years receiving MassHealth long-term care benefits (Testimony). Appellant husband was a member of the community until June 2014 when he was also admitted to the facility. In the prior year, MassHealth terminated Appellant wife’s benefits for failing to provide required information, but in October 2014 reinstated Appellant wife’s benefits with a patient paid amount (PPA) retroactive to February 2014 (Testimony). The facility representative testified that since October 2014, the facility has made many attempts to collect the PPA for both Appellants from the family, including by phone and in person (Testimony). The facility is now the representative payee (“rep payee”) for Appellants’ accounts, which means Appellants’ incomes are now directed to the nursing home.

Appellants’ representatives, their daughters and legal guardians, appeared via telephone and testified as follows. Appellants’ representatives admit to receiving the facility’s invoices but demanded a “breakdown” of the charges, which they did not receive to their satisfaction (Testimony). Appellants’ representative testified that they never received more than an invoice and did not want to pay such a large bill without knowing what the charges represented (Testimony). Appellants’ representatives argue that the invoice is not sufficient notice

(Testimony). The facility representative explained that the invoices itemize the PPA that Appellants owe each month, an amount set by MassHealth. Appellants' representatives state that they have attempted to contact MassHealth and Social Security and both entities told Appellants' representatives to speak to the facility (Testimony). Appellants' representatives stated that they depend on the facility to give them the information they need. Appellants' representatives testified that they did not receive notice that there was a PPA until they received the notices of discharge. They admit to receiving the invoices as early as November 2014 (Testimony). During Appellants' presentation of evidence, Appellants' representatives confirmed that the address listed on the discharge notice is the daughter's residence, and did not argue that the location is not a safe and appropriate place for Appellants. Appellants' representatives also did not deny that the nursing facility representative has met with them in person to discuss the outstanding balance resulting in the discharge notice.

Appellants' representatives do not dispute the fact that Appellants owe money (Testimony). Appellants' representatives state that they do not receive notices from MassHealth and the notices go straight to the nursing home (Testimony). Appellants' representatives testified that they have attempted retrieving the information from MassHealth, but MassHealth does not have their names on file. Appellants' representatives state that in February 2015, Appellants did not receive their social security checks and Appellants' representatives were not notified of the rep payee change (Testimony). The facility representative admits that he did not inform Appellants' representatives that the facility exercised its right to file for rep payee to receive the social security checks (Testimony).

The facility produced packets of documents in support of its position, including letters addressed to Appellants' representatives, clinical records, and the MassHealth notices regarding the PPA (Exhibits 4 and 4A). Appellants' representative admitted to receiving the packet of documents in advance of the hearing (Testimony). Appellants' representatives continued to argue that they have not been given a proper explanation as to why the nursing home is charging the amount due. Appellants' representatives were given an opportunity at the hearing to ask the facility representative any questions they had. Appellants' representatives asked where the balance of the social security check will be going now that the facility is rep payee. The facility representative testified the social security check going straight to the nursing facility covers the PPA minus the personal needs allowance and there is no balance remaining (Testimony). Appellants' representatives expressed concern that the PPA was calculated incorrectly due to Appellant husband's life insurance being deducted. However, any challenge to the PPA must be directed to MassHealth.

The documents contained in Exhibits 4 and 4A include the invoices issued to Appellants. One is an invoice directed at Appellant husband with an amount due of \$4,635.40 by December 25, 2014 (Exhibit 4A). Another invoice is directed at Appellant wife with an amount due of \$5,825.72 by December 25, 2014. Both invoices include entries for each month labeled "Patient

Liability/Social Security” denoting the PPA (Exhibits 4 and 4A). The invoice directed to Appellant wife also includes a charge for a period of time when MassHealth did not provide coverage (Testimony). At hearing, the facility representative expressed a willingness to waive the additional, non-PPA charge from Appellant wife’s invoice in an effort to resolve the dispute. Appellant’s representative also expressed a willingness to settle the matter, and the record was held open until March 17, 2015 (Exhibit 5). By March 17, 2015, all parties reported that an agreement had not been reached (Exhibit 6).

The hearings were reconvened on April 21, 2015 to discuss the discharge plan. As stated above, the discharge address on both notices is Appellants’ daughter’s residence. Appellants’ daughter testified that she will not be residing at that address as of April 30, 2015. Appellants’ representative testified that her lease ends on April 30, 2015 and she is not aware whether the apartment will be rented or sold after that time (Testimony).

The facility representative sent a letter in support of the facility’s position (Exhibit 7). The facility representative states that the facility has made attempts to contact Appellants’ representatives to discuss discharge and have not had success. The facility representative testified that Appellants’ representatives are not making an effort to engage in the discharge planning despite attempts made by the facility representative and the facility’s social worker (Testimony). Appellants’ representatives testified that they have been in touch with the social worker and are trying to move Appellants from Everett to East Point, a different facility (Testimony). However, East Point does not currently have a long-term care bed available (Testimony).

The facility representative testified that the facility is working to ensure that discharge is safe, but he cannot do his job if he cannot communicate with the family. The facility has not arranged for Appellants’ care following the discharge, such as securing services for Appellants in the community (Testimony).

Findings of Fact

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

1. Appellants are residents at Everett Rehab & Nursing Center, a skilled nursing facility.
2. Appellant wife has been a resident of the facility for several years and was most recently admitted to the facility from the hospital on March 25, 2013 (Testimony and Exhibit 4). Appellant wife has diagnoses that include cerebral aneurysm, depression, dementia, puerperal sepsis, pneumonitis, dysphagia, hypercholesterolemia, dementia, and depressive disorder. Per the medical records, Appellant wife is totally dependent in nearly all

activities of daily living (ADLs) and instrumental activities of daily living (IADLs) (Exhibit 4).

3. Appellant husband was admitted to the facility on June 5, 2014 with diagnoses that include dementia with behavior disturbance, depressive disorder, hypothyroidism, chronic kidney disease, esophageal reflux, hypertension, hyperlipidemia, spinal stenosis, and a history of cerebrovascular disease and abdominal aortic aneurysm. Per the medical records, Appellant husband requires assistance with ADLs due to cognitive loss and being unaware of his needs (Exhibit 4A).
4. On February 6, 2015, the facility issued Appellants 30 day notices of intent to discharge (Exhibits 1 and 1A).
5. The notices cite as the reasons for discharge “nonpayment of Appellant [wife]’s patient paid amount between April 2014 and December 2014 amounting to \$3033.20” and “nonpayment of patient paid amount June 2014 through January 2015 amounting to \$5,297.60” (Exhibits 1 and 1A).
6. The notices contain:
 - a. a statement regarding Appellants’ right to request a hearing and enclose a fair hearing request form listing the correct contact information for the Board of Hearings;
 - b. the name of the person at the facility who may assist with the appeal and to whom to direct questions
 - c. the contact information for the local long term care ombudsperson, the disability law center, and the local legal service office (Exhibits 1 and 1A).
7. The facility delivered the 30 day notices of intent to discharge to Appellants in person and emailed them to Appellants’ representatives (Testimony). Appellants’ representatives confirmed that they received the notices (Testimony).
8. The notice states that the facility seeks to discharge Appellants on March 7, 2015 and lists Appellants’ daughter’s residence as the discharge location (Testimony and Exhibits 1 and 1A).
9. Appellants’ representatives admit that they have received invoices from the facility as early as November 2014 (Testimony).
10. Appellants’ representatives admit that the facility has not received payment of either invoice (Testimony).

11. No one from Appellants' family will be residing at the discharge location as of April 30, 2015 (Testimony).
12. To date, Appellants' representatives and the facility have not cooperated with each other to secure the safe and orderly discharge of Appellants to another safe and appropriate place.

Analysis and Conclusions of Law

According to 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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) a stay at the nursing facility;
- or
- (6) the nursing facility ceases to operate.

Additionally, if the nursing facility transfers or discharges a resident due to nonpayment, the resident's clinical record must be documented. 130 CMR 610.028(B).

Prior to discharge or transfer, 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.

130 CMR 610.028(C).

Further, 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.” Finally, federal regulations require that a nursing facility provide sufficient preparation for a safe and orderly discharge. See 42 CFR 483.12(a)(7).

Here, the facility has met its obligations with regard to the notice. The facility has also demonstrated that Appellants have failed, after reasonable and appropriate notice, to pay for their stay at the facility. The undisputed evidence shows that Appellants have not paid their PPA and I find that Appellants’ representatives were given ample notice of the charges. While Appellants may take issue with how the PPA was calculated, that is not the subject of this appeal.

While the facility sets forth a valid basis for discharge, it has not met its obligation to provide sufficient preparation and orientation to Appellants to ensure the safe and orderly discharge to another safe and appropriate place. The evidence does not demonstrate that the discharge location is a safe and appropriate place, as it is unknown who, if anyone, will be residing in the

residence after April 30, 2015. Further, the facility has not secured any services or otherwise arranged for Appellants' care in the community. While I understand the facility's position that the lack of cooperation from Appellants' family has hindered its efforts, the facility could proceed with a discharge plan to another safe and appropriate place regardless of the family's participation. I cannot find based on the evidence presented that Appellants can be safely discharged to the address listed on the notice.

In sum, I find that Appellants have failed, after reasonable and appropriate notice, to pay for or have a third party pay for their stay at the facility and thus may be discharged.¹ However, I find that as of the date of this decision, the facility has not provided sufficient preparation and orientation to Appellants to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. Accordingly, this appeal is approved.

Order for Nursing Facility

Rescind the February 6, 2015 30-Day notices of intent to discharge Appellants and do not discharge under these notices.

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.

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.

Cynthia Kopka
Hearing Officer

¹ Appellants' representatives should be on notice that the facility can develop a discharge plan and where the debts owed have been found to exist and not been paid, proceed successfully on a subsequent intent to discharge. Appellants' social security benefit is due to the facility as the patient paid amount and should promptly be paid.

Board of Hearings

cc: