

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1513371
Decision Date:	11/30	Hearing Date:	11/17/2015
Hearing Officer:	Thomas J. Goode		

Appellant Representative:

Pro se

Nursing Facility Representative:

Tom Sullivan, Administrator



*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:	11/30	Hearing Date:	11/17/2015
Nursing Facility Rep.:	Tom Sullivan, Administrator	Appellant Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 1		

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 7, 2015, The Brentwood Rehab. & Healthcare Center (the “nursing facility”) notified Appellant of its intent to discharge her to the community on November 6, 2015 for failure to pay (see 130 CMR 610.028, 610.029, 456.429, 456.701, and Exhibit 1). Appellant timely filed an appeal on October 23, 2015 (see 130 CMR 610.015(B) and Exhibit 2). Notice of a discharge action initiated by a nursing facility is a valid ground for appeal (see 130 CMR 610.032).

Action Taken by the Nursing Facility

Through a notice dated October 7, 2015, The Brentwood Rehab. & Healthcare Center notified Appellant of its intent to discharge her to the community on November 6, 2015 for failure to pay.

Issue

The appeal issue is whether the nursing facility can, pursuant to 130 CMR 610.028, 610.029, 456.701, and 456.702, proceed to discharge Appellant to the community.

Summary of Evidence

The nursing facility was represented by the facility administrator who testified that the October 7, 2015 notice of discharge was issued to Appellant for failure to pay the patient paid amount calculated by MassHealth. Appellant was admitted to a skilled nursing facility on October 8, 2014. Appellant was screened eligible on a short-term basis for the period April 20, 2015 through July 20, 2015. Appellant's income consists of \$1,182 Social Security income. The nursing facility representative stated that Appellant currently owes the facility \$5,080.20 in unpaid patient paid amount. The nursing facility representative testified that for April 2015, Appellant was charged \$128.20. In May 2015, Appellant was charged \$1,109.20. In June 2015 and July 2015, Appellant was again charged \$128.20. Appellant was also charged \$1,109.20 per month for the period August 2015 through November 2015. Appellant made a partial payment of \$512 in August 2015, and made two payments of \$128.20 in October 2015, and one payment of \$128.20 in November 2015. Because Appellant has not paid the full patient paid amount, the facility elected to discharge her to her former address in the community.

Appellant appeared by telephone, and testified that she was admitted to the nursing facility on a short-term basis, and that she continues to reside at the same nursing facility following a series of medical setbacks that resulted in an extended stay. Appellant was approved by MassHealth on a short-term basis for the period April 20, 2015 through July 20, 2015. Because the approval was for a short-term period, MassHealth allowed a \$981 deduction for the maintenance of the former home, in addition to a \$72.80 personal needs allowance, to arrive at a patient paid amount of \$128.20. Appellant remained in the nursing facility after July 20, 2015, and received multiple notices including a second approval notice dated July 15, 2015 for short-term eligibility extended through October 20, 2015. She added that she also received a notice dated October 13, 2015 that stated she was clinically eligible for nursing facility services on a short term basis through January 13, 2016. Appellant appealed the MassHealth determination of the patient paid amount, and is awaiting a hearing decision.

Findings of Fact

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

1. On October 7, 2015, the nursing facility issued a notice of discharge to Appellant for failure to pay the patient paid amount calculated by MassHealth.

2. Appellant was admitted to a skilled nursing facility on October 8, 2014.
3. Appellant was eligible for MassHealth benefits on a short-term basis for the period April 20, 2015 through July 20, 2015 with a patient paid amount of \$128.20.
4. Appellant received a second short-term eligibility notice dated July 15, 2015 for short-term eligibility through October 20, 2015.
5. Appellant received a notice dated October 13, 2015 that stated she was clinically eligible for nursing facility services on a short term basis through January 13, 2016.
6. Appellant's income consists of \$1,182 Social Security income.
7. Appellant was charged a patient paid amount of \$128.20 for April 2015.
8. Appellant was charged a patient paid amount of \$1,109.20 for May 2015.
9. Appellant was charged a patient paid amount of \$128.20 in June 2015 and July 2015.
10. Appellant was charged a patient paid amount of \$1,109.20 per month for the period August 2015 through November 2015.
11. Appellant paid \$512 in August 2015, and made two payments of \$128.20 in October 2015, and one payment of \$128.20 in November 2015.

Analysis and Conclusions of Law

The appeal issue is whether the nursing facility is in compliance with state and federal laws and regulations in its attempt to discharge appellant to her former residence. The following regulations govern the requirements of a nursing facility seeking to transfer or discharge a resident:¹

Regulation 130 CMR 456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility:

- (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;

¹ See also: 130 CMR 610.028, 610.029, and 610.030.

- (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.

(B) 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).

(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 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.

(D) A nursing facility's failure to readmit a resident following a medical leave of absence shall be deemed a transfer or discharge (depending on the resident's circumstances). The nursing facility must issue notice to the resident and an immediate family member or legal representative in accordance with 130 CMR 456.701(A) through (C), 456.702(C), 610.028, and 610.029.

Pursuant to G.L. Chapter 111 Section 70E, 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 (*See also* 42 U.S.C. §483.12(a)(7)).

Upon review of the nursing facility's notice of intent to discharge Appellant, I find that the notice complies with notice requirements outlined at 130 CMR 456.701 and 130 CMR 610.028. However, the notice fails on the substantive determination that Appellant has failed to pay for her stay at the nursing facility due to an outstanding balance of \$5,080.20. While issues involving MassHealth's calculation of the patient paid amount will be adjudicated in a separate appeal to which the nursing facility is not a party, it is clear that the nursing facility's calculation of the amount owed by Appellant is incorrect regardless of the outcome of Appellant's pending appeal of the patient paid amount. Appellant was eligible for MassHealth benefits on a short-term basis for the period April 20, 2015 through July 20, 2015 with a patient paid amount of \$128.20. Appellant was charged a patient paid amount of \$128.20 for April 2015. However, Appellant was charged a patient paid amount of \$1,109.20 for May 2015. Appellant was then charged a patient paid amount of \$128.20 in June 2015 and July 2015. On these facts, the patient paid amount charged for May 2015 is incorrect; and therefore, the amount the nursing facility asserts that Appellant owes is also incorrect. Although the nursing facility is not a party to Appellant's appeal of the patient paid amount, it would benefit the parties to the instant appeal to await adjudication of the patient paid amount, and adjust any outstanding balances accordingly.

The appeal is APPROVED.

Order for the Nursing Facility

Rescind the October 7, 2015 notice of discharge, and do not discharge Appellant pursuant to the October 7, 2015 notice.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc