

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision: Denied

Appeal Number: 1800544

Decision Date: 2/12/18

Hearing Date: 01/24/2018

Hearing Officer: Sara E. McGrath

Appearances for Appellant:

Appearances for Nursing Facility:



*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 Facility Transfer
Decision Date:	2/12/18	Hearing Date:	01/24/2018
Appearances for Nursing Facility:		Appearances for Appellant :	
Hearing Location:	Tewksbury 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

Through a notice dated December 1, 2017, the skilled nursing facility, Genesis HealthCare, Wakefield Center ("the facility"), informed appellant of the facility's intent to discharge her to 56 Emerson Street, Wakefield, MA 01880 because she failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility (130 CMR 610.028 and Exhibit 1). Appellant filed a timely appeal with the Board of Hearings on January 8, 2018 (130 CMR 610.015(B); 130 CMR 456.703; and Exhibit 1). Challenging a notice of transfer or discharge initiated by a nursing facility is a valid ground for appeal to the Board of Hearings (130 CMR 610.032(C)).

Action Taken by Nursing Facility

The nursing facility notified appellant that it sought to discharge her due to her failure to pay for her stay.

Issue

The appeal issues are, pursuant to the governing state and federal regulations which include but are not limited to 130 CMR 610.028 and 130 CMR 456.701, whether: (1) appellant has failed to pay, or have Medicaid or Medicare pay, for her stay at the facility, (2) the nursing facility has given appellant reasonable and appropriate notice of this issue regarding the alleged failure to pay, and (3) the nursing facility can appropriately discharge appellant to the location on its notice.

Summary of Evidence

Appellant's two daughters participated in the hearing by telephone. The facility's attorney, business office manager, and director of nursing appeared in person.

Appellant was admitted to the facility on September 11, 2015. United Healthcare paid for appellant's stay from September 11, 2015 through September 30, 2015. Appellant privately paid for her stay from October 1, 2015 through April 5, 2016. According to the facility attorney, appellant initially submitted an application for MassHealth long-term care coverage on or about May 2016. The attorney stated that appellant submitted a second MassHealth application on or about December 2016, after the appointment of a conservator. On September 27, 2017, MassHealth denied the application due to disqualifying transfers of resources, with a resulting penalty period of 3,295 days, or until April 13, 2025 (Exhibit 3, p. 8). The facility's business office manager stated that she believes the transfers involved three properties, which may have been transferred on or about 2014 to family members. The facility has received no payment since April 6, 2016, other than appellant's income, which it has only been receiving consistently since July 2017. The facility has billed appellant for this time period, but to date has not received any payment (Exhibit 3, pp. 29-47). The current debt as of the end of January 2018 is \$118,631.40 (Medicaid rate) and \$258,335 (private rate). Appellant's daughters testified that their father, who died in January 2017, was appellant's sole provider and was responsible for all of the payments to the facility. They explained that they only started receiving bills from the facility after their father's death. They feel that the debt belonged to their father, and should not be their burden.

The facility's business office manager pointed to a physician progress note dated January 22, 2018 from the medical director of the facility which provides in relevant part as follows:

This eighty-one year old female is receiving end of life care in hospice for advanced progressive dementia. Her Functional Assessment Staging of Alzheimer's (FAST) score is 7E representing the most severe end stage dementia. The patient is dependent for all activities of daily living and has progressive weight loss despite aggressive nutritional care by staff and hospice. After discharge the patient will continue in hospice and will have twenty-four hour care provided by a home health agency. This plan meets all of the patient's ongoing needs for comfort care (Exhibit 2, p. 3).

The facility's director of nursing testified that the facility's discharge plan is as follows: The discharge location is appellant's daughter's home, where the daughter lives with her husband and other family members. Because appellant requires twenty-four hour care and is dependent for all activities of daily living, the facility will pay for all care needed for 30 days after discharge. This will include transportation to the daughter's home, and will include twenty-four hour care by two certified nurse assistants. A hospice nurse will visit twice per week, or more as needed. Further, because appellant is transferred by Hoyer lift, the facility will pay for the lift for this time period, and will be for an additional caregiver to be present to assist with transfers when transfers are needed. Appellant is completely dependent, incontinent, and receives a bed bath, so the existence of a bathroom on the floor where appellant resides is not relevant. Further, because appellant is immobile will likely not leave the home, the existence of steps into appellant's home is not a relevant factor.

Appellant's daughters strenuously objected to the discharge plan, stating that the home is not appropriate for someone with severe dementia. They explained that two children live in the home, and it would not be appropriate for them to be around a person with dementia or around caregivers. Further, the daughters testified that they do not have the means to pay for twenty-four hour care for appellant after the facility discontinues payment. They explained that neither the transferred properties, nor the proceeds from any property sales, are available.

Findings of Fact

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

1. Appellant was admitted to the facility on September 11, 2015.
2. Appellant's stay at the facility was covered by United Healthcare through September 30, 2015.
3. Appellant privately paid for her stay from October 1, 2015 through April 5, 2016.
4. Appellant applied for MassHealth long-term care benefits at some point.
5. On September 27, 2017, MassHealth ultimately denied the application due to disqualifying transfers of assets with a penalty period through April 13, 2025 (Exhibit 3, p. 8). There is no evidence that appellant appealed this determination.
6. The facility has received no payment since April 6, 2016, other than appellant's income, which it has only been receiving consistently since July 2017.
7. The facility has billed appellant for this time period, but to date has not received any payment (Exhibit 3, pp. 29-47).
8. The current debt as of the end of January 2018 is \$118,631.40 (Medicaid rate) and \$258,335 (private rate).

9. Appellant's daughters have indicated that the home is not an appropriate transfer location because of appellant's diagnosis and the fact that children reside in the home.

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 mirror the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 et seq. and in the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.002 apply:

"Nursing facility" - a Medicare skilled nursing facility or Medicaid nursing facility licensed by the Department of Public Health to operate in Massachusetts, or a distinct Medicaid- or Medicare-certified unit within a facility.

"Discharge" - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.

"Transfer" — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;
- (2) a Medicaid-certified bed to a Medicare-certified bed;
- (3) a Medicare-certified bed to a Medicaid-certified bed;
- (4) one nursing facility to another nursing facility; or
- (5) a nursing facility to a hospital, or any other institutional setting.

A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

Based on the above definitions, the facility is attempting to discharge appellant to from a nursing facility via its notice dated December 1, 2017 (Exhibit 1 and 130 CMR 456.002).

130 CMR 456.701 sets forth the notice requirements for transfers and discharges initiated by a nursing facility, and provides in part 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 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) (130 CMR 456.701(A) and (B)).

In this case, the facility is seeking to discharge appellant for failing to pay for her stay at the facility.

I find that the facility notified the appellant of the debt owed to the facility (Exhibit 3, pp. 29-47). I find that the efforts of the facility constitute reasonable and appropriate notice of the debt owed to the facility by appellant (130 CMR 456.701(A)(5)).

I find that the facility has demonstrated that the appellant has failed to pay for her stay at the facility. (Exhibit 3). It is undisputed that appellant has not paid the facility since April 6, 2017, other than payment of her income, which the facility has only been consistently receiving since July 2017. Appellant did not dispute the facility's statements regarding appellant's two MassHealth applications, MassHealth's denial of the applications, and MassHealth's calculation of a penalty period running through 2025 (Exhibit 3, p. 8). Further, there is no evidence that appellant appealed the MassHealth denial, thus foreclosing her ability to challenge this determination. Per the evidence and unrefuted testimony, appellant's debt to the facility as of the date of hearing was over \$118,000 (Exhibit 3; testimony). As of the date of hearing, appellant had not paid the facility any portion of this debt (testimony).

In addition to the MassHealth-related regulations discussed above, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute provides 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.

In this case, the discharge location is appellant's daughter's home, where the daughter lives with other family members. The facility has agreed to pay for all of appellant's care needs for 30 days, including all equipment and twenty-four hour care. I find that this offer exceeds the facility's obligations set forth in M.G.L. c.111, §70E. Appellant's daughters expressed concern about the discharge location given appellant's diagnosis; appellant's physician, however, has confirmed that twenty-four hour care by a home health agency will meet appellant's needs (Exhibit 3, p. 3). Appellant's daughters expressed concern regarding other young family members in the home; this concern is not relevant to whether the facility has met its regulatory and statutory obligations related to the discharge. Lastly, the daughters indicated that there is no payment source for the twenty-four hour care appellant needs once the facility discontinues payment. This concern is again not relevant to whether the facility has met its regulatory and statutory obligations.¹ I find that the facility has provided sufficient preparation and orientation to appellant to ensure a safe and orderly transfer and has met the requirements of M.G.L. c.111, §70E.

The appellant's appeal is DENIED.

Order for the Nursing Facility

Proceed with the planned transfer no sooner than 30 days after the date of this decision, in accordance with 130 CMR 610.030(A).

¹ Appellant's daughters stated at hearing that they are not obligated to pay for appellant's stay at the facility. This statement is true; appellant is responsible to pay for her stay at the facility, and has not done so. The source of payment for appellant's care post-discharge is not relevant here.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: