

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1805159
Decision Date:	3/21/18	Hearing Date:	March 6, 2018
Hearing Officer:	Stanley M. Kallianidis	Record-Open Date:	March 13, 2018

Appellant Representative:

Pro Se

Facility Representative:

Aimee Rizzo



**Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171**

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Nursing Home Discharge
Decision Date:	3/21/18	Hearing Date:	March 6, 2018

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

In a notice dated February 23, 2018, Franklin Health & Rehabilitation Center (the "facility") planned on discharging the appellant because, "Your health has improved sufficiently so that you no longer need the services provided by the facility." Also, "You have failed, after reasonable and appropriate notice, to pay for your stay at the nursing facility." (See 130 CMR 610.028 and Exhibit 1). The appeal was timely filed on February 27, 2018 (see 130 CMR 610.015). A nursing facility initiated-discharge is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by the Facility

The facility plans on discharging the appellant for the primary reason that he does not need the services of a nursing facility.

Issue

Is the appellant's discharge from a nursing facility to a homeless shelter authorized and in accordance with the requirements of 130 CMR 610.028?

Summary of Evidence

The appellant's clinical record was submitted into the record. This included records submitted just prior to and at the hearing (Exhibit 3).

A representative from the facility testified that the appellant is a 65-year old male admitted to the facility on January 19, 2018, following a short stay at Tufts Hospital. Before going to Tufts, the appellant resided in Virginia. His admitting diagnoses included atherosclerotic heart disease, ischemic heart disease, muscle weakness, angina and hypertension (Exhibit 3).

The facility is planning the appellant's discharge because he does not need the services of a nursing facility. The representative testified that he does not have a skilled nursing need and is independent in all activities of daily living. Additionally, the facility is planning the discharge because the appellant has yet to pay for his stay at the facility. The place of discharge is the Pine Street Inn shelter in Boston. This homeless shelter has indicated that it is both willing and able to safely house the appellant. Previously, it had been planned for the appellant to be discharged to the Barbara McInnis House, a facility associated with the Pine Street Inn. However, once it became apparent that the Barbara McInnis House would not accept the appellant for the reason that there was no medical need for him to be there, the place of discharge was changed to the Pine Street Inn (Exhibit 3).

According to a letter from the appellant's physician, "a discharge plan to a shelter would be both safe and feasible. His medical care, appointments, etc., can be safely orchestrated from the community" (Exhibit 3).

The appellant testified that he is indeed independent in all activities of daily living and does not need the skilled care of a nursing home. He feels, however, that it would be unsafe for him to be discharged to a shelter. He rather would go to an assisted living center. He testified that his chief complaints are chest pain, shoulder pain and ankle pain. He believes that the facility is at fault for not gathering all of his prior medical records and further evaluating his medical conditions.

The record was left open for one week for the appellant to submit any supportive medical documentation into the hearing record. A request to extend the time period for submission was denied. Submitted was an MRI report dated July 3, 2017 which indicated that the appellant has degenerative disc disease at L 4-5 (Exhibits 4-6).

Findings of Fact

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

1. The appellant is a 65-year old male admitted to the facility on January 19, 2018, following a short stay at Tufts Hospital. Before going to Tufts, the appellant resided in Virginia (Exhibit 3).
2. The appellant's admitting diagnoses included atherosclerotic heart disease, ischemic heart disease, muscle weakness, angina and hypertension. The appellant has also been diagnosed with degenerative disc disease (Exhibits 3 & 5).
3. In a notice dated February 23, 2018, the facility planned on discharging the appellant because he no longer needs the services provided by the facility, and also because he has failed, after reasonable and appropriate notice, to pay for his stay (Exhibit 1).
4. The facility is planning on discharging the appellant to the Pine Street Inn shelter in Boston (Exhibit 1).
5. The Pine Street Inn is both willing and able to safely house the appellant (testimony).
6. Previously, the facility had been planning for the appellant to be discharged to the Barbara McInnis House, a facility associated with the Pine Street Inn. The Barbara McInnis House indicated that it would not accept the appellant for the reason that there was no medical need for him to be there (Exhibit 3 and testimony).
7. The appellant is independent in all activities of daily living and does not need the skilled care of a nursing home (Exhibit 3 and testimony).
8. According to the appellant's physician, "a discharge plan to a shelter would be both safe and feasible. His medical care, appointments, etc., can be safely orchestrated from the community" (Exhibit 3).
9. The appellant has yet to pay or have Medicare or Medicaid pay for his stay at the facility (testimony).

Analysis and Conclusions of Law

130 CMR 610.028 states that with regard to nursing facility-initiated discharges, a resident may be discharged when:

(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 MassHealth agency 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 610.028(A)(1) or (2), the resident's clinical record must be documented by the resident's physician.

(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 MassHealth agency...

In the instant case, I have found that on February 23, 2018, the facility planned on discharging the appellant to the Pine Street Inn shelter in Boston because he no longer needs the services provided by the facility, and also because he has failed, after reasonable and appropriate notice, to pay his for his stay there.

The appellant is a 65-year old male admitted to the facility on January 19, 2018, following a short stay at Tufts Hospital. Before going to Tufts, the appellant resided in Virginia. The appellant's admitting diagnoses included atherosclerotic heart disease,

ischemic heart disease, muscle weakness, angina and hypertension. The appellant has also been diagnosed with degenerative disc disease. To date, the appellant has not made any payment to the facility for his stay there.

Notwithstanding that the appellant wants the facility to further medically evaluate him, and that he does not want to go to a shelter, by his own admission he does not need the medical care that such a nursing facility provides. The parties are in full agreement that the appellant has no skilled nursing need and is independent in all activities of daily living. Moreover, the fact that the Barbara McInnis House, which offers some skilled care to its residents, refuses to admit the appellant due to his lack of medical need, is further proof that he does not the services of a skilled nursing facility. Lastly, the Pine Street Inn has indicated that it is willing and able to house the appellant and this location of discharge has been approved by the appellant's physician who indicated that the appellant can be safely discharged there.

Based upon the above findings, I conclude that the facility has met its burden under 130 CMR 610.028 (A), (B) and (C) that the planned discharge of the appellant to the Pine Street Inn is warranted. I need not therefore delve into the issue of whether the appellant's discharge for non-payment is also appropriate as discharge is already authorized under 130 CMR 610.028 (A)(1) and (2).

The appeal is denied accordingly.

Order for the Facility

Proceed with the appellant's discharge as indicated.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc: