

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1805691
Decision Date:	3/16/18	Hearing Date:	03/12/2018
Hearing Officer:	Samantha Kurkji		

Appellant Representative:
Pro se

Nursing Facility Representatives:



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

Appeal Decision:	Denied	Issue:	Nursing Facility Discharge/Transfer
Decision Date:	3/16/18	Hearing Date:	03/12/2018
Nursing Facility Reps.:		Appellant Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center	Aid Pending:	No

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 of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal) ("Notice of Intent") dated March 2, 2018, Hunt Nursing & Rehab ("the facility") notified the appellant that it was planning to discharge her to "Motel 6 65 Newbury St. Danvers, MA 01923" on March 5, 2018 for the following reason: "Patient/Resident/Your health has improved sufficiently that you no longer need the services provided by the facility[.]" (Exhibit 1.) The appellant filed this appeal in a timely manner on March 2, 2018. (130 CMR 610.015(B); Exhibit 2.) Discharge of a nursing facility patient is a valid ground for appeal. (130 CMR 610.032(C).)

Action Taken by the Nursing Facility

The facility notified the appellant that it seeks to discharge her to the community on March 5, 2018.

Issue

Whether the facility provided proper notification of its intent to discharge the appellant to the community on March 5, 2018.

Summary of Evidence

The representatives of the facility appeared in person and testified that the appellant was admitted to the facility on January 19, 2018. On March 2, 2018, the facility hand-delivered a Notice of Intent to the appellant, indicating that she would be discharged to Motel 6 in Danvers, MA on March 5, 2018. A copy of the notice was mailed to the appellant's daughter and the local ombudsman received a copy on March 9, 2018. The appellant submitted an appeal to the Board of Hearings on March 2, 2018.

The facility representatives explained that the appellant's last Medicare day was February 14, 2018. The appellant appealed Medicare's decision to stop coverage unsuccessfully. On February 23, 2018, she had a second, internal appeal and also was unsuccessful. The Notice of Intent was given to the appellant after this second appeal. The facility representatives explained that the appellant had already been discharged from the facility at the time of the hearing because they were unaware that an appeal had been submitted. The appellant was to be discharged to the Motel 6 in Danvers, MA, where she was living prior to her admissions, but the facility learned that the appellant was unable to return there or to several other hotels/motels because of "no admittance." (Exhibit 4, p. 68.) The appellant was actually discharged to the Plaza Inn in Peabody, MA, and the facility paid for her stay until March 10, 2018.¹ The facility representatives stated that several rest homes were called on behalf of the appellant and the facility had several conversations with the appellant about her discharge plan. The appellant was encouraged to apply to two rest homes and she is on a waitlist for one. The facility also provided the appellant with a list of information for rest homes, rooming houses, and shelters she could go to as part of her discharge plan.

The facility representatives testified that the appellant was admitted to the facility for left ankle pain and left ankle fracture due to a fall. She previously was admitted to another facility and then had a voluntary psychiatric admission. She was admitted to the facility from the hospital. At the facility, she was on rehabilitation five times per week for both physical therapy ("PT") and occupational therapy ("OT"). She was independent with activities of daily living ("ADLs") and incidental activities of daily living ("IADLs") before she went to Blueberry Hill. Prior to admission to the facility, the appellant was independent with ambulation using a rollator, and the facility's goal was to at least get the appellant to that baseline. The facility stated that the appellant surpassed that baseline. She progressed to be independent with transfers, bed mobility, stairs, and ambulation. She was full weight-bearing at the time of discharge. She was discharged from the facility because she met her goals for rehabilitation, according to the PT notes found on page 109 and the OT notes found on page 140 of Exhibit 4.² Those goals included, *inter alia*, the completion of stand pivot transfers, ambulating for 31-40 feet with the rolling walker, performing home management tasks, and dressing. Upon discharge, she was provided with a cane, rolling walker, reacher, and a rollator.³ The facility representatives added that the appellant maintained her independence outside of the

¹ There was a dispute at hearing as to whether the Plaza Inn is located in Danvers or Peabody. A simple internet search reveals that the Plaza Inn is in Peabody. This issue was of concern to the appellant because she stated if she left Danvers she would not get her Veterans check.

² One of the goals listed, managing footrests to address edema while in a wheelchair, was discontinued. (Exhibit 4, p. 109.) The facility offered no explanation as to why this goal was discontinued.

³ The facility representatives stated that the only item purchased with insurance was the rolling walker.

facility and was able to attend doctor appointments on her own.

One of the facility representatives read from the physician discharge summary located on page 32 of Exhibit 4. She testified that the summary states that the appellant came to the facility for rehabilitation and was no longer benefiting from the services provided by the facility. She had met her goals. She was weight-bearing after seven weeks of PT and was provided with rehabilitation equipment on discharge.⁴

The appellant appeared telephonically and stated that the testimony given by the facility representatives was untrue. She stated she was not only in the facility for her ankle fracture, but also for issues with her spine and back as well as other things. The one time she attempted stairs in the facility, she could not walk up stairs properly; she needed to lean over the railing and pull herself up. She never walked to the bathroom by herself, and had to sit on the toilet in order to wash her face because the water for the shower was not turned on. She used her rolling walker and standing walker in order to get to the bathroom. She stated that when she left the facility for doctor appointments she went by herself, using her wheelchair and an ambulance chair car. Currently, she can walk a few feet with the assistance of her walker but then she needs to stop. She can take small side steps with the walker.

She expressed concern about the medication she was taking and stated that she is not supposed to be taking anti-depressants because they make her feel worse. She stated that her primary care physician recorded that the appellant is allergic to antidepressants. The medications she's taking make her shake and depressed, and she is in constant pain. The medications confuse her, and she loses track of days and when she's taken them. She stated that she called her primary care physician but that the physician is currently out of the office.⁵ She sees her nurse once a week. The nurse wrote out directions for her regarding her medications and she can't read most of them. The appellant stated she doesn't think she was given her blood pressure pills at all while she was in the facility.

The appellant stated that she transfers out of bed by rolling off the bed. She uses the cane to stand and the nightstand and wall to balance when ambulating to the bathroom, and then uses the counter as support. It is difficult for her to get into the bathroom, and there is no room to use the walker. She needs assistance taking a shower and washing her hair. The PT informed her it was not safe to get into the bathtub, as there is no grab bar. Instead, the appellant takes a sponge bath. She has not been able to use her rollator at the Plaza Inn because there is no room.

She acknowledged that she was given information on a few places to stay, including Lynn Rooming House, which she stated was a "wet shelter." She noted that the last place for which she filled out

⁴ I see no mention of the appellant coming primarily for rehabilitation or no longer benefiting from the services of the facility/meeting her goals in the physician discharge summary. There appears to be a page missing from Exhibit 4, which is the second copy of the packet submitted by the facility because the first copy was also missing pages.

⁵ The appellant was advised to follow up with her primary care physician, speak to her nurse and social worker, or go to the emergency room if she is concerned about her medications.

an application had a one-and-a-half year waitlist. The shelter suggested to her is not handicap-accessible, and she would have to leave in the morning and wouldn't be allowed to return until evening. The appellant stated she is not well enough to wander around town for eight hours and then stand in a line to get a bed. The appellant stated that the Plaza Inn is not big enough for use of the rollator. She stated that her PT and OT came over and told her the space was too small. Her visiting nurse called Elder Protective Services and the appellant overheard the phone call. She testified that the nurse stated that the Plaza Inn was not safe and the appellant could not get food while there. She questioned how the facility expected her to pay for the Plaza Inn. She also stated that, contrary to what the facility claims, she was not given a list of shelters to look into.⁶

The facility representatives responded that they brought the appellant her rollator the day after discharge and were able to wheel it past her bed at the Plaza Inn and put it in a corner.⁷ They noted she was independent with toileting in the facility and did not need to use a device to negotiate the room,⁸ which was approximately a 20-foot walk to the bathroom. The OT Discharge Summary states that "[p]t has demonstrated ability to perform all ADL and IADL tasks independently with variable pain report, though no functional limitation noted. Not further skilled OT services are indicated at this time." (Exhibit 4, p. 141.) After discharge, the appellant was also provided with a visiting nurse ("VNA"), PT, OT, and nursing to help with her medications. Nursing was not providing support for ADLs after the appellant reached her rehabilitation goals.⁹ They stated that the Lynn Shelter is wheelchair-accessible and also has a day center.

The appellant had an appointment scheduled with her primary care physician on March 8, 2018. Residents are discharged with the medications they have and if they need more, prescriptions are given up until the point of the primary care physician follow-up. The facility representatives noted that psychiatric services was not the primary reason for the appellant's admission, rehabilitation was. However, they did have psychiatric services follow the appellant and any medication administered for such services, even if the appellant had been taking such medications long-term in the community, would have necessitated a conversation with psychiatric services and a signed consent form.

Findings of Fact

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

1. The appellant was admitted to the facility on January 19, 2018 for injuries status post fall. (Exhibit 4; Testimony.)

⁶ The facility representatives maintained that they had given the appellant such information, but agreed to provide it to her again via mail.

⁷ The appellant stated this statement was a lie.

⁸ The appellant stated this statement was a lie.

⁹ The appellant stated that the facility representatives' testimony that she did not need help with her ADLs was a lie.

2. She had been at Blueberry Hill and then on a voluntary psychiatric admission before her arrival at the facility. (Exhibit 4; Testimony.)
3. On March 2, 2018, the facility hand-delivered a Notice of Intent to the appellant, indicating that she would be discharged to Motel 16 in Danvers, MA on March 5, 2018. The appellant was in fact discharged to Plaza Inn in Peabody, MA. (Exhibit 1; Exhibit 4; Testimony.)
4. The appellant submitted a timely appeal to the Board of Hearings on March 2, 2018. (Exhibit 2; Testimony.)
5. At the facility, the appellant received rehabilitation services five times per week for both PT and OT. (Exhibit 4; Testimony.)
6. She was independent with ADLs and IADLs before she went to Blueberry Hill. Prior to admission to the facility, the appellant was independent with ambulation using a rollator. (Exhibit 4; Testimony.)
7. She progressed to be independent with transfers, bed mobility, stairs, and ambulation. She was full weight-bearing at the time of discharge. (Exhibit 4; Testimony.)
8. The appellant could leave the facility to attend doctor's appointments on her own using a wheelchair. (Testimony.)
9. The appellant met her goals for rehabilitation, which included, *inter alia*, the completion of stand pivot transfers, ambulating for 31-40 feet with the rolling walker, performing home management tasks, and dressing. (Exhibit 4; Testimony.)
10. The appellant is independent for ADLs and IADLs. (Exhibit 4; Testimony.)
11. Upon discharge, the appellant was provided with a cane, rolling walker, reacher, and a rollator. (Exhibit 4; Testimony.)

Analysis and Conclusions of Law

Pursuant to 130 CMR 610.028, Notice Requirements Regarding Actions 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;

(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) through (5), the resident's clinical record must be documented. The documentation must be made by:

(1) **the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and**

(2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(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 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...¹⁰

(emphasis added).

The testimony as stated above is incorporated by reference herein. The issue in this case is whether the facility correctly discharged the appellant because her health has improved to the point where she no longer needed facility services. The appellant's baseline before her fall indicates that she was independent for ADLs and IADLs and could ambulate independently while using a rollator. The medical records submitted documented that the appellant had met her stated goals or had no functional limitations, was independent with ADLs and IADLs, and was weight-bearing on her left foot after receiving rehabilitation. Her doctor at the facility noted the fact that she was weight-bearing in his discharge summary, and also documented as such in a medical note dated February 20, 2018. (Exhibit 4; p. 31.) While the appellant disputed her abilities as stated by the representatives of the facility, I find the testimony of the facility representatives credible, as their testimony aligns with the medical documentation provided.

The appellant expressed several concerns regarding her medication. However, she was discharged with a VNA, OT, PT, and nursing to help her with her medications. There was also a social worker made available to her. In addition, the appellant has been in touch with her primary care physician's office after discharge. She was not left without resources. If she is having difficulty with her medications, it is an issue she may address with her nurse and primary care physician, or, if necessary, a hospital emergency room.

Although the Notice of Intent indicates that the appellant was to be discharged to the Motel 6, she was discharged to Plaza Inn because she was a "no admittance" at Motel 6 and several other hotels/motels. I do not see an issue with this discrepancy. The records show that the appellant was encouraged to seek housing before discharge and was given the resources to do so but did not always take initiative and was not willing to consider all of the housing options available. The Interdisciplinary Progress Notes at pages 66-68 of Exhibit 4 indicate that the rollator was in fact able to fit inside the appellant's room at Plaza Inn. The Interdisciplinary Progress Notes also indicate that the appellant "was provided with a packet of local resources and information regarding places-rest [*sic*] homes and rooming houses she has already applied for." (Exhibit 4.) It appears, based on the evidence presented, including the limitations on where the appellant could go for housing, that Plaza Inn was an appropriate discharge location.

¹⁰ Accord 130 CMR 456.701.

Because the appellant's health did improve sufficiently so that she no longer needed the facility services, the facility provided proper notification of its intent to discharge the appellant to the community on March 5, 2018.

The appeal is denied.

Order for Nursing Facility

None.

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.

Samantha Kurkijy
Hearing Officer
Board of Hearings

cc: