

**Office of Medicaid
BOARD OF HEARINGS**

Appeal Decision:	Approved	Appeal Number:	1808737
Decision Date:	7/31/18	Hearing Date:	06/21/2018
Hearing Officer:	Christopher Jones	Record Open to:	06/29/2018

Appearance for Appellant:

Nursing-Facility Representative:



*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 Home Discharge
Decision Date:	7/31/18	Hearing Date:	06/21/2018
Nursing Facility Rep.:		Appellant's Rep.:	
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 dated March 22, 2018, the nursing facility informed the appellant of its intent to discharge her on April 21, 2018 to her son's residence for failing to pay for her care. Exhibit 3. The appellant filed a timely appeal on March 30, 2018.¹ 130 CMR 610.015(B); Exhibit 3. An attempt to discharge a nursing facility resident is valid grounds for appeal. 130 CMR 610.032(C).

Action Taken by Nursing Facility

The nursing facility sought to discharge the appellant for failing to pay, or have MassHealth to pay, for the appellant's nursing facility care.

¹ This case was originally scheduled for hearing on May 11, 2018. The appellant's representative had requested that the case be telephonic. He later changed the telephone number at which he could be reached. The hearing officer in that case was not updated with the new telephone number, and the case was dismissed for failing to appear. The appellant's representative requested that the dismissal be vacated, and this hearing was scheduled. See Exhibit 2.

Issue

The appeal issues are whether the nursing facility properly notified the appellant that she would be discharged, pursuant to 130 CMR 456.701 and 130 CMR 610.028, and whether the intended discharge location is a safe and appropriate place for the appellant pursuant to MGL Ch. 111, § 70E.

Summary of Evidence

The nursing facility representative appeared telephonically and explained that the appellant was admitted to the nursing facility on July 18, 2016, and an application for MassHealth long-term-care benefits was submitted in April 2017. See Exhibit 4.² The nursing facility administrator explained that the appellant's son had hired a Medicaid application specialist to help him with the application, but he was very uncooperative during the application process. This application was denied for failing to provide verifications. The nursing facility's records reflect conversations with the Medicaid specialist detailing that the appellant's son regularly cancelled meetings at the last minute and refused to provide her with bank records needed to complete the MassHealth application. By the time the final denial notice was issued, the Medicaid specialist confirmed that there remained \$335,000 in money taken by the appellant's son that was unaccounted for, and that the application process could not go forward with the appellant's son any longer due to his unwillingness to cooperate.³

The appellant's son testified that he had spent all of the money on his mother, and that he did not understand why the application was denied because he had given the Medicaid specialist everything he had. He testified that he is now effectively homeless, and he is living in a house that is owned by a friend. Furthermore, his mother's condition had recently deteriorated and she had been converted to a hospice patient within the nursing facility. However, he acknowledged that he did not have good records to explain how he managed to spend \$335,000 over the course of two-to-three years, and that he generally washed his hands of the application once he hired the Medicaid specialist, and he regularly cancelled meetings with her.

It was pointed out that there were several deficiencies in the nursing facility's notice: it is not clear from its caption whether it was a discharge or a transfer, and it was labeled an expedited discharge, even though failure to pay does not create grounds for expedited discharge. See Exhibit 3. However, the more pressing issue was whether or not the nursing facility had made any attempts to confirm that the appellant's son's residence was a safe and appropriate discharge location pursuant to MGL Ch. 111, § 70E.

The nursing facility representative testified that they had engaged in discharge planning and they intended to put the appellant in contact with home health agencies that could provide visiting

² The nursing facility submitted Exhibit 4 via email during the hearing. The nursing facility representative testified that it had been submitted for the original hearing, but appears to have been left out of the archived file when the case was closed.

³ There is a note in the nursing facility's case file that they initiated proceedings to appoint a conservator, but the nursing facility representative confirmed that they did not go forward with the appointment proceedings.

nursing and home health aide services to her in her son's home. However, the nursing facility representative confirmed that they did not have any clinical documentation indicating that the appellant's son's home, even with these community supports, would be a safe location for the appellant to reside. Furthermore, the nursing facility representative confirmed that the facility had not taken any steps to investigate the appellant's son's residence to confirm that the appellant could be safely housed there, or whether or not the community support agencies would provide care given the fact that the appellant would not have a clear payment source.

The record was left open for the nursing facility administrator to submit clinical documentation that the appellant could be safely discharged to her son's community residence. The record is now closed and the nursing facility provided no additional medical records.

Findings of Fact

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

1. On March 22, 2018, the nursing-facility issued a discharge notice, seeking to discharge the appellant to her son's residence on April 21, 2018. The reason for the discharge written on the notice is that the appellant had failed to pay for, or have Medicaid pay for, her care. Exhibit 3.
2. The appellant appealed on March 30, 2018. Exhibit 3.
3. At the hearing, the nursing facility's administrator acknowledged that it had no clinical evidence documenting that the appellant's son was a safe and appropriate place for the appellant. Testimony of the nursing facility representative.
4. The appellant's condition has deteriorated since the discharge notice, and she is now receiving hospice services in the nursing facility. Testimony of the appellant's representative.
5. The record was left open following the hearing for clinical evidence to be submitted; none was provided. Exhibit 5.

Analysis and Conclusions of Law

A nursing facility may only discharge or transfer a resident for one of six reasons:

- (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.

130 CMR 610.028(A); see also 130 CMR 456.701(A).

When the transfer or discharge is for one of the first five reasons, the nursing facility must also document the basis for the transfer or discharge in the resident's clinical record. 130 CMR 610.028(B); 130 CMR 456.701(B).

Furthermore, a nursing-facility resident who requests a hearing to dispute her discharge "pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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." MGL Ch. 111, § 70E.

The nursing facility has failed to show sufficient preparation and orientation or that the discharge location is a safe and appropriate place as is required by MGL Ch. 111, § 70E. Therefore, this appeal is APPROVED.

Order for Nursing Facility

Rescind the March 22, 2018 discharge notice. If still seeking to discharge the appellant, issue a new notice and provide clinical documentation in compliance with 130 CMR 456.701(A), 130 CMR 610.028(A), and MGL Ch. 111, § 70E.

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

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Christopher Jones
Hearing Officer
Board of Hearings