

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1607197
Decision Date:	7/8	Hearing Date:	06/20/2016
Hearing Officer:	Sara E. McGrath		

Appearance 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:	7/8	Hearing Date:	06/20/2016
Appearance for Nursing Facility:		Appearance for Appellant :	Power-of-Attorney
Hearing Location:	Taunton 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 April 28, 2016, the skilled nursing facility, Baypointe Rehabilitation & Skilled Nursing Center (“the facility”), informed appellant of the facility’s intent to transfer her to Southeast Rehabilitation & Skilled Nursing Center because she failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicaid or Medicare pay for) services rendered at the facility (130 CMR 610.028 and Exhibit 1). Appellant filed a timely appeal with the Board of Hearings on May 24, 2016 (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 transfer 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 transfer appellant to the location on its notice.

Summary of Evidence

Appellant appeared at hearing in person along with her son/power-of-attorney. The facility's administrator and office manager appeared on behalf of the facility.

Appellant was admitted to the facility on August 2, 2014 and has remained a resident continuously since that date and without interruption; there have been no medical leaves of absence. Appellant's stay at the facility was covered by Medicare through September 20, 2014. According to the facility administrator, appellant filed an application for MassHealth long-term care coverage in October 2014. Appellant had hired counsel to assist her with this process, and in March 2015, MassHealth notified appellant that her application had been approved with a coverage start date of December 1, 2014. The facility has billed appellant for time period for which appellant did not have any insurance coverage (September 21, 2014 through November 30, 2014), but to date has not received any payment. The current debt is approximately \$24,000 (Exhibit 3, p. 1; Exhibit 6). The facility attempted to negotiate the debt with appellant, but was not successful (testimony).

The appellant's son testified at hearing and submitted a written summary of appellant's position (Exhibit 5). Appellant's position is that she hired an attorney to facilitate the MassHealth application and the spend-down of appellant assets. Appellant's son testified that each time the attorney directed him to write a check and pay a bill, he did so. He testified that appellant does not have any more funds and is unable to pay the outstanding balance. He does not feel that his mother should be punished for the attorney's mistakes (testimony).

Findings of Fact

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

1. Appellant was admitted to the facility on August 2, 2014 and has remained a resident continuously since that date and without interruption; there have been no medical leaves of absence.
2. Appellant's stay at the facility was covered by Medicare through September 20, 2014.

3. Appellant hired counsel to assist with the MassHealth application process.
4. MassHealth approved appellant's application with a coverage start date of December 1, 2014.
5. Appellant had no insurance coverage for her stay at the facility from September 21, 2014 through November 30, 2014.
6. The current debt is approximately \$24,000, and appellant has been notified (Exhibit 3, p. 1; Exhibit 6).
7. The facility attempted to negotiate the debt with appellant, but was not successful (testimony).
8. The facility's record includes a Board of Hearings fair hearing decision, Appeal No. 1511721. That decision contains the following factual findings:
 - a. Appellant filed an application for MassHealth long-term care benefits on October 30, 2014.
 - b. On December 12, 2014, MassHealth denied the application because appellant failed to submit requested verifications.
 - c. Appellant did not appeal the December 12, 2014 denial notice.
 - d. Appellant submitted the outstanding verifications in December 2014.
 - e. On December 19, 2014, MassHealth denied the application for excess assets.
 - f. Appellant did not appeal the December 19, 2014 excess asset notice.
 - g. Appellant spend down her excess assets.
 - h. On March 12, 2015, MassHealth approved appellant's application with a December 1, 2014 start date.
 - i. Appellant did not appeal the March 12, 2105 approval notice.
 - j. On August 6, 2015, MassHealth approved appellant's application with a March 1, 2015 start date.
 - k. Appellant timely appealed the August 6, 2015 notice, and at hearing MassHealth acknowledged that the August 6, 2015 notice was issued in error, and agreed to restore the start date of December 1, 2014.

(Exhibit 3, pp. 81-87).

9. The hearing officer concluded in Appeal No. 1511721 that the Board had no jurisdiction to address the start date MassHealth established via the March 12, 2015 approval notice (Exhibit 3, p. 86).
10. The facility confirmed that Southeast Rehabilitation & Skilled Nursing Center in Easton will accept appellant to the next available bed, contingent on her continuing need for skilled nursing or long-term care, and her continuing MassHealth eligibility (Exhibit 3, p. A3/12).
11. Appellant has stated her preference to either remain at the facility or to be transferred to a different facility in Stoughton (testimony).

12. Appellant's son has indicated, without specific evidence to substantiate his claims, that the transfer location is not well-maintained and not spacious enough for appellant to move around in her motorized wheelchair. He also fears that she will not be well cared for at this facility (Exhibit 5).

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:¹

"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 transfer appellant to from one nursing

¹ The regulatory language in the MassHealth Nursing Facility Manual has near-identical regulatory counterparts within the Commonwealth's Fair Hearing Rules under 130 CMR 610.000 et seq., as well as federal regulations found under 42 CFR 483.000 et seq.

facility to another nursing facility via its notice dated April 28, 2016 (Exhibit 1 and 130 CMR 456.002).

The guidelines that apply in a determination of whether appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations lists the only circumstances and conditions that allow for transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice -- if these requirements are not met, the facility must permit the resident to remain in the facility.

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 the 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, p. 1; Exhibit 6). I find that the efforts of the facility constitute reasonable and appropriate notice of the debt owed to the facility by appellant (Exhibit 3).

I find that the facility has demonstrated that the appellant has failed to pay for her stay at the facility. (Exhibit 3; testimony). While it is undisputed that appellant's MassHealth long-term care coverage commenced on December 1, 2014 and continues to date, it is also undisputed that there is a gap in coverage from the date appellant's Medicare coverage ended on September 20, 2014 until her

MassHealth long-term care coverage began on December 1, 2014. From the record, it appears that appellant did not appeal the MassHealth notice dated March 12, 2015 (the notice that established the December 1, 2014 start date), thus foreclosing her ability to challenge this date (Exhibit 3, pp. 81-87).² I note appellant's argument that she relied on her attorney to facilitate the MassHealth application and the spend-down of her assets, but find that this reliance does not change the fact that appellant did not challenge the MassHealth start date and, as a result, the facility was not paid for over two months. Per the evidence and unrefuted testimony, appellant's debt to the facility as of the date of hearing was over \$24,000 (Exhibit 3; Exhibit 6). 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, facility confirmed that Southeast Rehabilitation & Skilled Nursing Center will accept appellant to the next available bed, contingent on her continuing need for skilled nursing or long-term care, and her continuing MassHealth eligibility (Exhibit 3, p. A3/12). While I note appellant's son's concerns about both appellant's preferences and about adequate space, maintenance, and care at the transfer location, I find that appellant did not substantiate these concerns in any way. Without more, I find that the facility has provided sufficient preparation and orientation to appellant to ensure a safe and orderly transfer. I find that the facility 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).

² Appellant's counsel decision not to appeal this notice may or may not have been intentional.

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: