

**Office of Medicaid  
BOARD OF HEARINGS**

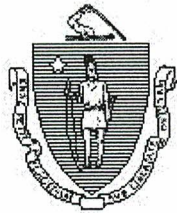
**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1811962
<b>Decision Date:</b>	7/9/18	<b>Hearing Date:</b>	06/18/2018
<b>Hearing Officer:</b>	Samantha Kurkky		

**Appellant Representative:**  
Pro se

**Nursing Facility Representatives:**

**Interpreter:**



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Discharge/Transfer
<b>Decision Date:</b>	7/9/18	<b>Hearing Date:</b>	06/18/2018
<b>Nursing Facility Reps.:</b>		<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Chelsea 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 30-Day Notice of Intent to Discharge/Transfer Resident (“Notice of Intent”) dated April 27, 2018, Chelsea Center (“the facility”) notified the appellant that it was planning to discharge her to Pine Street Inn, 444 Harrison Ave., Boston, MA 02118 on May 27, 2018 for the following reasons: “Your health has improved sufficiently so that you no longer need the services provided by the facility[ ]” and “You have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility....” (Exhibit 1.) The appellant filed this appeal with the Board of Hearings on May 25, 2018. (130 CMR 610.015(B); Exhibit 2.) Discharge/transfer 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 Pine Street Inn on May 27, 2018.

## Issue

Whether the facility properly sought to discharge the appellant.

## Summary of Evidence

The appellant was admitted to the facility on January 10, 2018. The representatives from the facility appeared in person and testified that the appellant, who is 60-years-old, is being discharged from the facility because she no longer has a skilled need and has not paid for the services rendered by the facility. On April 27, 2018, a Notice of Intent was hand-delivered to, and translated for, the appellant, who speaks Creole. A copy was not mailed to a representative, as there is no healthcare proxy or emergency contact on file at the facility. The representatives of the facility stated that they speak to the appellant's son when they need information. The Notice of Intent states that the facility intends to discharge the appellant to the Pine Street Inn on May 27, 2018 because her health has improved and she no longer needs the facility's services and she has failed to pay for her stay at the facility.<sup>1</sup> The appellant appealed the Notice of Intent to the Board of Hearings on May 25, 2018.

The facility representatives explained that the appellant did not have a private payment source and was Medicaid-pending when she was admitted to the facility. She was determined not eligible for MassHealth benefits due to her immigration status. The appellant owed the facility \$63,026.20 as of the date of the hearing.

The facility representatives testified that when the appellant entered the facility, she had a fractured knee. She worked with rehabilitation until she became ambulatory again. The facility representatives stated that the doctor's documentation that the appellant is fit to be discharged from the facility "should be under the IPC<sup>2</sup> notes" which begin on page 14 of the packet the facility submitted into evidence (Exhibit 4). The facility representatives testified that the doctor's order says that everything the appellant is doing can be done at home, as she is only taking medications by mouth.<sup>3</sup>

The facility representatives testified that the facility had several meetings with the appellant and her

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<sup>1</sup> The Notice of Intent does not contain the name of the person at the facility who is available to answer questions and assist the appellant with her appeal. In addition, the phone number of the local long-term care ombudsman is missing.

<sup>2</sup> IPC Healthcare, Inc.

<sup>3</sup> Exhibit 4 contains a letter written by the appellant's nurse practitioner dated April 25, 2018 that states the appellant can ambulate without assistance and does not need any skilled nursing.

son to discuss discharge planning. The appellant cannot go back to the place she was living before she was admitted to the facility and she has some emergency housing applications pending. The appellant's son has been trying to secure an apartment in the community for the appellant while she waits for other housing. The facility gave the appellant information on resources in the community that can help with start-up costs and paying rent. The appellant had polio as a child and one leg is shorter than the other, so she needs crutches to ambulate. The facility gave information about the appellant's disability to Revere Housing Authority, which is processing an emergency housing application for the appellant.

The appellant appeared in person with her sister and testified that she had been living with her niece before she was admitted to the facility, but her niece has since moved. She stated she cannot climb stairs, and listed her various health issues. The appellant's sister also referenced the appellant's difficulty climbing stairs and also stated the appellant cannot cook for herself. The appellant did not dispute that the facility hasn't been paid, and stated she did not have a job and is not able to pay the facility.

## **Findings of Fact**

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

1. On January 10, 2018, the appellant was admitted to the facility for a fractured knee. She worked with rehabilitation until she became ambulatory again. (Exhibit 4; Testimony.)
2. On April 27, 2018, the facility issued a Notice of Intent, which stated that the facility intends to discharge the appellant to the Pine Street Inn on May 27, 2018 because her health has improved and she no longer needs the facility's services and she has failed to pay for her stay at the facility. (Exhibit 1; Exhibit 4; Testimony.)
3. The appellant submitted a timely appeal to the Board of Hearings on May 25, 2018. (Exhibit 2.)
4. The Notice of Intent does not contain the name of the person at the facility who is available to answer questions and assist the appellant with her appeal. In addition, the phone number of the local long-term care ombudsman is missing. (Exhibit 1; Exhibit 4.)
5. Exhibit 4 contains a letter written by the appellant's nurse practitioner dated April 25, 2018 that states the appellant can ambulate without assistance and does not need any skilled nursing. (Exhibit 4.)

6. The appellant has not paid privately for her stay at the facility and is not eligible for MassHealth benefits. (Exhibit 4; Testimony.)

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all nursing facility 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 follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and the Fair Hearing Rules at 130 CMR 610.000 et seq.

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 handdeliver 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....**

(Emphasis added) (Accord 130 CMR 456.701).

As a threshold matter, every discharge or transfer notice must comply with 130 CMR 610.028(C). The Notice of Intent does not contain the name of the person at the facility who is available to answer questions and assist the appellant with her appeal. In addition, the phone number of the local long-term care ombudsman is missing. Both of these items are required to be on the Notice of Intent, as noted above. Pursuant to the regulations, the Notice of Intent is insufficient and an approval in this case is supported by this issue alone.<sup>4</sup>

The facility seeks to discharge the appellant on two grounds: non-payment and because her health has improved and she no longer needs the facility's services. The regulations call for documentation in the appellant's clinical record by her physician when she is being discharged under 130 CMR 610.028(A)(2). The facility representatives stated at hearing that the appellant's physician documented that the appellant is fit to be discharged from the facility in the IPC notes, and that the physician's order says that everything the appellant is doing can be done at home, as she is only taking medications by mouth. I see no such documentation in the IPC notes, and the facility representatives did not indicate any other page number where such documentation may be found. The packet submitted into evidence by the facility contains, at page 220, a letter written by the appellant's nurse practitioner (and not her physician, as required by the regulations) dated April 25, 2018 that states the appellant can ambulate without assistance and does not need any skilled nursing. The documentation submitted by the facility does not comply with the regulations, and the appellant cannot be discharged under 130 CMR 610.028(A)(2).

It is clear, based on the testimony at hearing, that the appellant has failed to pay the facility for any portion of her care for which she is responsible. The appellant received reasonable and appropriate notice of the charges she incurred at the facility, as indicated by the billing statements included in Exhibit 4. In addition, the appellant does not dispute that she has not paid any money to the facility for her care, and she was found to be not eligible for MassHealth benefits to cover her care.<sup>5</sup> The facility has sufficient grounds to discharge the appellant under 130 CMR 610.028(A)(5). However, because the Notice of Intent is deficient, the appeal is approved.

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<sup>4</sup> While the appellant's son is known to the facility, it does not appear that he, or any other family member, was designated by the appellant to receive notices from the facility. In addition, the appellant does not have a healthcare proxy or emergency contact on file. Based on this information, the Notice of Intent is not deficient in this respect.

<sup>5</sup> There was no specific mention of Medicare by either party.

## **Order for Nursing Facility**

Rescind the April 27, 2018 Notice of Intent. Do not discharge the appellant under this notice.

## **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.

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Samantha Kurkijy  
Hearing Officer  
Board of Hearings