

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1603204
Decision Date:	5/12	Hearing Date:	04/08/2016
Hearing Officer:	Radha Tilva		

Appellant Representative:

Nursing Facility Representative:
Lisa Bruno, Business Office Manager



*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:	5/12	Hearing Date:	04/08/2016
Nursing Facility Rep.:	Lisa Bruno	Appellant Rep.:	
Hearing Location:	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 notice dated March 8, 2015, Lighthouse Nursing Care Center (the “facility”) notified the appellant of its intent to discharge her in 30 days (Exhibit 1). The appellant filed this appeal in a timely manner on March 18, 2015 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

The facility informed the appellant of its intent to discharge her for nonpayment.

Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The nursing facility was represented by the Business Office Manager who appeared in person and testified to the following: appellant was admitted on May 8, 2015 and was approved for short-term care by MassHealth which ended on November 30, 2015. On November 16, 2015 an application was mailed to MassHealth knowing there was missing information. MassHealth subsequently asked for information on appellant's long-term care application. The facility contacted one of appellant's daughters (the one who helped with the paperwork when appellant was admitted to the facility) to explain what was needed. She again tried to contact her to follow up and left six voicemails for her, but did not hear back. The facility reached out to MassHealth who stated that they still did not have the information as of January 12, 2016. On January 15, 2016 the appellant's daughter said she would come by the office to pick up the information request sent from MassHealth for missing verifications, but that did not happen and the case closed with MassHealth. At the beginning of February the nursing facility called the MassHealth worker to see if anything was submitted and learned that it was not. As appellant's daughter was unresponsive the facility contacted the other daughter who did come by and picked up the information request. The nursing facility contacted the daughter to follow up and was informed that the daughter had some of the information and had contacted the funeral home. On February 22, 2016 the facility received a denial notice which stated that appellant's MassHealth case was closed. The facility did not appeal that notice. As the nursing facility was without a payor source since December 1, 2015¹ and there was no proof that a new application had been filed the facility sent a Notice of Intent to Discharge on March 8, 2016. The facility sent bills on a monthly basis to the daughter who was originally involved in the application.² The discharge plan included discharging the appellant to her other daughter's home and providing two weeks of 24 hour services for the safety of the resident. The facility would get any sort of equipment they need for appellant when she gets discharged. After two weeks the appellant would be responsible for finding her own care. The appellant was informed of the discharge plan the week before the hearing and was a little concerned.

At hearing the nursing facility representative submitted a packet of information which includes, but is not limited to the following: a chronology of events, notices from MassHealth, physician's order notes, departmental notes, and progress notes (Exhibit 4).

The appellant was represented by another daughter and her son-in-law who stated that they filed an application on April 7, 2016 (the day before the hearing). The appellant's daughter stated that her husband was recently diagnosed with brain cancer. At the time her sister stated that she would take care of their mother. The appellant's daughter stated that she became involved in February 2016 and that the facility has been good to them and her mother. The appellant's daughter stated that her mother had no notice that the bills were not being paid as the notices were being sent to her sister. The appellant's daughter also stated that her house has a lot of stairs and it is not safe for her mother

¹ The nursing facility has received appellant's patient paid amount, but is without MassHealth's portion of the payment.

² The bills were not presented at the hearing and there was no evidence presented to show that the bills were even sent to appellant.

to live there.

Findings of Fact

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

1. Appellant was admitted to the nursing facility on May 8, 2015.
2. Appellant was approved by MassHealth for a short-term stay until November 30, 2015.
3. On November 16, 2015 the appellant submitted an application for long-term benefits with MassHealth.
4. MassHealth sent an information request and the facility tried to contact appellant's daughter in an effort to complete the application.
5. Appellant's daughter eventually stopped communicating with the facility.
6. On February 22, 2016 MassHealth denied appellant's application for MassHealth benefits.
7. The nursing facility contacted the appellant's other daughter in order to get MassHealth the requested verifications.
8. The nursing facility did not receive payment from MassHealth since December 1, 2015, but did receive appellant's patient paid amount.
9. On March 8, 2016, the nursing facility issued its Notice of Intent to Discharge appellant to her daughter's residence.
10. The appellant's daughter submitted an application for MassHealth long-term care benefits on April 7, 2016.

Analysis and Conclusions of Law

The requirements for a nursing facility-initiated transfer or discharge are set forth at 130 CMR 456.429, 456.701 through 456.704, and 610.028 through 610.030. The regulation permits transfer or discharge only when one of the following circumstances is met: (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 MassHealth or Medicare*

pay for) a stay at the nursing facility; or (6) the nursing facility ceases to operate (Emphasis added, 130 CMR 610.028(A)).

In this case, the facility premised its notice of intent to discharge on the appellant's failure to pay for her stay. There was no evidence presented which showed when MassHealth stopped paying for appellant's nursing facility stay other than the testimony from the nursing facility representative and the notice provided in the facility's packet, dated February 22, 2016, which states that appellant's application will close. There is also no evidence in the record of any bills, which demonstrate how much appellant owes to the facility, or of a prior notice for failure to pay issued to the appellant.

While the appellant's representative did not dispute the allegation of nonpayment, I find that appellant has not received reasonable and appropriate notice which would allow her to pay for her stay at the nursing facility. Clearly, the appellant's daughter that was initially handling the application became unavailable to help her mother complete her MassHealth application or even cooperate with the nursing facility. It is also clear from the record that the invoices regarding nonpayment and the MassHealth notices were going to that daughter as appellant's other daughter (who was at the hearing) stated that her mother was unaware that the nursing home bills were not being paid. Notifying the appellant should have occurred before the facility issued the March 8, 2016 notice.

With respect to the discharge plan, I do not reach a determination as to whether or not it is appropriate at this time, but I do encourage the facility to look at the terms of G. L. c. 111, § 70E. Under that section, "[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."

Because I find that the nursing facility failed to provide reasonable and appropriate notice prior to seeking a discharge, the notice of intent to discharge must be rescinded.

This appeal is APPROVED.

Order for Nursing facility

Rescind notice dated March 8, 2016 and provide reasonable and appropriate notice to the appellant and her representative to pay for (or have Medicaid or Medicare) her stay at the facility.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Radha Tilva
Hearing Officer
Board of Hearings

cc: