

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2155609
Decision Date:	10/08/2021	Hearing Date:	08/27/2021
Hearing Officer:	Scott Bernard		

Appearance for Appellant:
None

Appearance for the Nursing Facility:
None



*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 Facility Discharge
Decision Date:	10/08/2021	Hearing Date:	08/27/2021
The Nursing Facility's Rep.:	None	Appellant's Rep.:	None
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.

Through a notice dated June 25, 2021 and entitled "Notice of Intent to Transfer or Discharge" Vero Health and Rehab of Revere, a skilled nursing facility, informed the appellant of its intent to discharge the appellant on [REDACTED] for the following reasons:

The resident has failed, after a reasonable notice, to pay for (or to have paid under Medicare or Medicaid) a stay at this facility. Non-payment applies if the resident does not submit the necessary paperwork for payment, or if the claim is denied, the resident refused to pay for their stay. (See Exhibit 1).

The appellant filed this appeal in a timely manner on July 26, 2021. (See 130 CMR 610.015(B) and Ex. 1). Appealing a notice of transfer or discharge initiated by a skilled nursing facility is a valid ground for appeal. (See 130 CMR 610.032).

On July 28, 2021, the Board of Hearing sent a notice to the appellant and the nursing facility, informing the parties that the hearing on this matter had been scheduled to be heard by telephone on August 27, 2021 at 10:00 A.M. (See Ex. 2). At the appointed date and time of hearing, no person was available at any of the telephone numbers contacted by the hearing officer. The nursing facility made no appearance as required by 130 CMR 610.062(B).

As a result, on September 22, 2021 the Board of Hearings issued a Notice of Nursing Facility Default and Order to Show Cause to the administrator of the nursing facility. (See Ex. 5). The notice informed the nursing facility that the Board of Hearings would issue a fully favorable decision to the appellant in the future unless, within 10 days of the date of the Notice of Nursing Facility Default and Order to Show Cause, the nursing facility presented good cause for its failure to attend the hearing that could

allow for vacating of such dismissal. (See Id.). The response was due on October 1, 2021, but no response was received from the nursing facility by that date.

The Federal Nursing Home Reform Act 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. The Nursing Facility has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge (as well as the nursing facility's responsibilities during such an action) and some of the relevant Massachusetts law may be found in both the Fair Hearing Rules at 130 CMR 610.000 et seq. and the Nursing Facility Manual at 130 CMR 456.000 et seq. As the facility did not appear to dispute Appellant's challenge to its intended notice of discharge, a ruling in Appellant's favor is warranted by law. (See e.g., 130 CMR 610.062(B) and (E) (listing some of the responsibilities of a skilled nursing facility in a Fair Hearing); 130 CMR 610.048 (discussing the adverse consequences that befall a party for its failure to appear at a Fair Hearing); 130 CMR 610.049 (listing negative consequences of a party's failure to prosecute a Fair Hearing)).

Order for the Nursing Facility

To the extent that the nursing facility has not already done so, the facility must rescind the notice of intent to discharge issued June 25, 2021. Do NOT discharge the appellant pursuant to this notice. If the appellant has already been discharged pursuant to the June 25, 2021 notice, the facility is ordered to re-admit the appellant to the next available bed, unless the appellant has agreed to such discharge.

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 of this Decision

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc: 