

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2175869
<b>Decision Date:</b>	10/14/2021	<b>Hearing Date:</b>	09/09/2021
<b>Hearing Officer:</b>	Paul Moore	<b>Re:</b>	Betty Jean Sheridan v. Brentwood Rehab and Healthcare Ctr.

**Appearance for Appellant:**

None

**Appearance for Respondent 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

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	Nursing facility discharge
<b>Decision Date:</b>	10/14/2021	<b>Hearing Date:</b>	09/09/2021
<b>Respondent's Rep.:</b>	None	<b>Appellant's Rep.:</b>	None
<b>Hearing Location:</b>	Remote		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction and Summary

On July 23 2021, respondent nursing facility issued a 30-Day Notice of Intent to Discharge the appellant, a resident of the nursing facility (Exhibit 1). The appellant filed a timely appeal of the discharge notice with the Board of Hearings (BOH) on August 4, 2021 (Exhibit 2). Challenging a notice of transfer or discharge initiated by a nursing facility is a valid basis for appeal (130 CMR 610.032(C)).

BOH notified the appellant and the respondent that a hearing would be held on this intent to discharge at 9:00 AM on September 9, 2021 via telephone (Exhibit 3). At the appointed time, this hearing officer made multiple attempts to reach the respondent's representative by phone, both by dialing the extension provided and the main operator. The hearing officer was also unable to reach the appellant at the facility, and was advised she was "still asleep" (Exhibit 6).

On September 15, 2021, BOH issued an order to show cause ordering the respondent to show cause within ten (10) days as to why BOH should not dismiss this appeal due the nursing facility's failure to designate a staff person or representative to appear at the hearing per 130 CMR 610.062(B) (Exhibit 4). Separately, BOH issued a dismissal of the appeal to the appellant's guardian, pursuant to 130 CMR 610.048(A)(3) (Exhibit 5). The letter of dismissal offered the appellant's guardian an opportunity to vacate the dismissal by explaining in writing why she did not attend the scheduled hearing and why she did not inform BOH before the date of hearing. No response was received from the appellant's guardian. Ten days passed from the date of the order to show

cause, and BOH received no response from the respondent.<sup>1</sup>

## **Issue**

The issue is whether the appellant and/or respondent has shown cause for failing to appear on the scheduled date of the hearing.

## **Analysis and Conclusions of Law**

Neither party attended the hearing or responded to the dismissal to evidence good cause to reschedule the hearing.

A nursing facility responsible for making a determination that can be appealed has rights and responsibilities set forth at 130 CMR 610.062. These responsibilities include submitting to the hearing officer at or before the hearing all evidence on which any action at issue is based, designating a staff person or representative to appear at the hearing, and ensuring that the relevant portions of a resident's record are present at the hearing. 130 CMR 610.062(A), (B), and (E).<sup>2</sup> If a party fails to attend the hearing, the appeal will be dismissed. 130 CMR 610.048(A)(3).<sup>3</sup> If a respondent fails to appear at hearing, BOH will issue an appropriate order. 130 CMR 610.048(B).

The respondent failed to appear at the hearing scheduled on September 9, 2021, and failed to respond to the order to show cause. The respondent has not met its responsibilities required under the fair hearing regulations. Further, the appellant failed to attend and failed to respond to the dismissal.

Therefore, the matter is dismissed with prejudice pursuant to 130 CMR 610.048(A)(3) with the below order pursuant to 130 CMR 610.048(B).

## **Order for Nursing Facility**

The facility is hereby ordered to rescind the notice of intent to discharge the appellant dated July 23, 2021. If the appellant has already been discharged, the facility is ordered to re-admit the appellant or otherwise reverse the effect of such notice of discharge.

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<sup>1</sup> Separately, BOH issued a dismissal of the appeal to the appellant's guardian, pursuant to 130 CMR 610.048(A)(3) (Exhibit 5). The letter of dismissal offered the appellant's guardian an opportunity to vacate the dismissal by explaining in writing why she did not attend the scheduled hearing and why she did not inform BOH before the date of hearing. No response was received from the appellant's guardian.

<sup>2</sup> No medical records of the appellant were submitted by the respondent nursing facility, as ordered by the BOH.

<sup>3</sup> The regulations support that when there is a failure to appear for hearing, good cause is necessary to avoid an adverse dismissal. *See* 130 CMR 610.035; 130 CMR 610.046; 130 CMR 610.048(D).

## 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.

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Paul Moore  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]