

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2176192
<b>Decision Date:</b>	9/14/2021	<b>Hearing Date:</b>	09/03/2021
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*

Pro se



**Appearance for Nursing Facility:**

*Via telephone:*

Alisa Alvarez, LCSW

Paul Fuanyi, Administrator



*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>	Approved	<b>Issue:</b>	Nursing Facility Transfer/Discharge
<b>Decision Date:</b>	9/14/2021	<b>Hearing Date:</b>	09/03/2021
<b>Nursing Facility's Rep.:</b>	LCSW Administrator	<b>Appellant's Rep.:</b>	Pro se [REDACTED]
<b>Hearing Location:</b>	Tewksbury 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 August 13, 2021, the skilled nursing facility, Twin Oaks Rehab & Nursing ("the facility"), informed the appellant of the facility's intent to discharge him to his daughter's home on September 13, 2021 because he failed, after reasonable and appropriate notice, to pay for (or has failed to have Medicaid or Medicare pay for) services rendered at the facility (see 130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on August 13, 2021 (see 130 CMR 610.015(B) and Exhibit 2). 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 the appellant that it sought to discharge him due to his failure to pay for his 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) the appellant has failed to

pay, or have Medicaid or Medicare pay, for his stay to-date at the facility, (2) the nursing facility has given the appellant reasonable and appropriate notice of this issue regarding the alleged failure to pay, and (3) the nursing facility can appropriately discharge the appellant to the location on its notice.

## Summary of Evidence

The appellant, his daughter, and the nursing facility representatives all appeared at hearing via telephone.

The social worker representing the facility testified that she was new at the facility as of July 7, 2021, but the business office manager and administrator have been working with the family for a while to get payment or a payor source. A MassHealth application has been filed, but MassHealth is missing certain bank statements. The appellant was admitted to the facility as short-term on [REDACTED] and there have been no payments made since he was converted to long-term care. The facility has provided him and his daughter with monthly statements. The facility did not submit copies of these statements to the Board of Hearings and could not testify to the amount owed to the facility. The facility provided progress notes which documented numerous attempts by the social worker to work with the appellant and his daughter and son on obtaining the necessary documents for MassHealth, as well as explain the discharge process if a payor source was not established.

The social worker testified that the appellant has dementia and needs to be in a facility or have 24/7 care. The administrator had suggested discharging the appellant to a shelter, but the social worker stated that was not safe. As such, the proposed discharge location is the daughter's home; however, the appellant came to the facility from the daughter's home after protective services got involved when the appellant was found wandering multiple times. The social worker stated that the appellant and his family cannot afford 24/7 care, but he needs that to be safe. There was no discharge planning or discussions with the appellant and his family on how to ensure a safe and orderly discharge. The facility stated that its hope in filing this appeal was to get the family to submit the missing paperwork to MassHealth and get the appellant approved for MassHealth coverage.

The appellant's daughter explained that she is not in charge of her father's finances and does not have access to them. There are other family members (half siblings) out of state that have the information and she does not talk to them. She testified that prior to his admission to the facility, her father was found wandering on Route 128 three separate times. The police and protective services got involved. Caring for her father gave her a lot of anxiety. She works and the appellant cannot be left home alone. Her home is not a safe discharge location for her father. She stated she would try to talk to her brother about getting the outstanding bank documents needed for the MassHealth application.

The social worker agreed that the discharge location was not safe because he requires 24/7 care which cannot be provided at the daughter's home; however, she has been frustrated by the family's inability to get in the remaining documentation which she has continually tried to work on with them. Her understanding is that the half-siblings have the bank statements from an account the

appellant had with his wife and MassHealth needs that documentation. Since her arrival at the facility, the social worker has had ongoing conversations with the appellant about what is going on with his MassHealth application and failure to pay.

## **Findings of Fact**

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

1. The appellant was admitted to the facility as short-term on [REDACTED] and there have been no payments made since he was converted to long-term care (Testimony and Exhibit 4).
2. The appellant has a diagnosis of dementia, a history of wandering, and cannot be safely left home alone (Testimony and Exhibit 4).
3. Prior to his admission to the facility, the appellant lived with his daughter. On three separate occasions, he was found wandering Route 128 in the middle of the night. Police and protective services got involved. (Testimony).
4. The proposed discharge location is the appellant's daughter's home (Testimony and Exhibit 1).
5. The appellant's failure to pay and need to submit banking documentation for his MassHealth application have been discussed with the appellant and his children (Testimony and Exhibit 4).
6. There has been no discharge planning discussed between the facility and the appellant and his children (Testimony).
7. The appellant needs a long-term care facility or 24/7 care, which is not available at the daughter's home (Testimony).

## **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:<sup>1</sup>

“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 discharge the appellant from the nursing facility to a noninstitutional setting (his daughter’s home) via its notice dated August 13, 2021.

The guidelines that apply in a determination of whether appellant can be so discharged are found in 130 CMR 456.701 and 130 CMR 610.028. 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

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<sup>1</sup> 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.

- 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).

Emphasis added (130 CMR 456.701(A) and (B)).

The facility is seeking to discharge the appellant for failing to pay for his stay at the facility. The facility has tried to work with the appellant and his children to get him approved for MassHealth, but they have not provided the requested banking documents. While the facility did not provide the hearing officer with any statements, it credibly testified that it provides them monthly to the appellant. Additionally, the facility credibly testified that the appellant has no payor source and has not made any payments since his conversion to long-term care. The efforts of the facility constitute reasonable and appropriate notice of the appellant's failure to pay the facility.

Through its testimony and documentation, the facility has sufficiently demonstrated that the appellant has failed to pay for his stay at the facility. In her own testimony, the appellant's daughter acknowledged that they have not provided the missing paperwork for the appellant's MassHealth application.

In addition to the MassHealth-related regulations discussed above, however, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E. 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.

The facility has proposed a transfer to the appellant's daughter's home. The record shows that the appellant has dementia. He has a history of wandering and was found on Route 128 three times while living with his daughter prior to his admission to the facility. His daughter testified that it was

unsafe and difficult to care for him at her home. That is why he is in a long-term care facility now and not with her. The facility did not testify to, nor did the records provided by the facility document, any discharge planning. The facility acknowledged in its testimony that the appellant needs to be in a facility or have 24/7 care, which is not available at the daughter's home.

While the appellant does not have a right to remain in the nursing facility without paying and he clearly owes the nursing facility money, the facility has not provided sufficient preparation and orientation to the resident to ensure a safe and orderly discharge. The facility has not shown that the proposed discharge location is safe and appropriate.

For these reasons, the appellant's appeal is approved.

## **Order for Nursing Facility**

Rescind the 30-Day Notice of Intent to Discharge/Transfer Resident.

## **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.

## **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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc: Alisa Alvarez, LCSW, Twin Oaks Rehab & Nursing, 63 Locust Street, Danvers, MA  
01923

[REDACTED]