

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2177920

**Decision Date:** 12/29/2021

**Hearing Date:** 12/14/2021

**Hearing Officer:** Rebecca Brochstein

**Appearances for Appellant:**



**Appearances for Nursing Facility:**

Jessica Burke, Business Office Manager  
Bolaji Mustapha, Administrator



*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>	Denied	<b>Issue:</b>	Nursing home discharge
<b>Decision Date:</b>	12/29/2021	<b>Hearing Date:</b>	12/14/2021
<b>Nursing Facility Reps.:</b>	Jessica Burke Bolaji Mustapha	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Remote)		

## Authority

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

## Jurisdiction

By a notice dated October 15, 2021, Chapin Center (“the facility”) informed the appellant of its intent to discharge her from the facility (Exhibit 1). The appellant filed a timely appeal on October 15, 2021 (130 CMR 610.615). The hearing was originally scheduled for November 19, 2021, but was rescheduled at the appellant’s request because she planned to obtain legal representation (Exhibits 3-5). Notification of intent to discharge an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

## Action Taken by the Nursing Facility

The facility informed the appellant of its intent to discharge her from the facility 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

Two representatives of the facility appeared at the hearing telephonically and testified as follows: The appellant has been a resident of the facility since 2020. She was previously approved for MassHealth long-term care coverage with no patient-paid amount (PPA), and it subsequently increased to \$149.80 per month. On September 27, 2021, MassHealth notified the appellant that her PPA would increase from \$149.80 to \$1,231.20 per month. The facility billed her for the increased PPA for the month of October 2021, but the appellant paid only \$500 of the amount owed. On October 15, 2021, the facility issued a notice of intent to discharge the appellant to a residence in the community based on nonpayment.<sup>1</sup> The appellant was billed for the full PPA amount in November as well, and once again only paid \$500 of her bill. The facility representatives stated that the appellant had reported she did not intend to pay the balance because she was saving for an apartment in the community and had other bills to cover.

The facility submitted the appellant's clinical record into evidence. It includes a copy of the invoice for the full monthly PPA amount, with payments of \$500 made on October 14 and November 16, 2021. See Exhibit 6 at 5. There is also a collection note that states as follows:

Administrator and BOM delivered NOID to resident for non-payment. \$500 was paid on current bill of \$1,231.20. She stated that is all she can afford due to paying for her storage unit, saving for an apartment, and keeping only \$200 for herself this month. Resident signed NOID and appeal, faxed both to ombudsman and board of hearings. (Exhibit 6 at 6)

The appellant appeared at the hearing by telephone and testified on her own behalf. She stated that she is actively looking for housing in the community; she noted that she received a grant to help with her transition, and that she has put in 18 applications so far. She testified that she no longer needs nursing home level of care. As to the monthly PPA bill, she confirmed that she has only been paying \$500 per month, stating that she needs funds to buy things such as toiletries and specialty foods. She stated that if she had the money she would pay it, but that she needs these funds to support herself in the community. She denied that she is trying to live there for free or to "scam" anyone. She added that she is a former social worker and has served as the resident council's president, which is an uncompensated position. The appellant expressed anger that someone at the facility had thrown away a set of sheets that had been given to her and indicated that she wants the facility to replace them.

The facility's administrator testified that the facility has provided the appellant with the food and toiletries that she needs, adding that if she wants additional items that the facility cannot provide she can use her \$72.80 personal needs allowance. The appellant responded that there are many things she needs that the facility does not provide and that they often run out of necessary items.

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<sup>1</sup> The facility representatives indicated that there was a previous notice of intent to discharge that the appellant had also appealed. They stated that at that time the appellant was made aware of her obligation to pay the PPA.

## **Findings of Fact**

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

1. The appellant has been a resident of the facility since 2020.
2. The appellant was approved for MassHealth long-term care coverage. She initially had no PPA but it was subsequently increased to \$149.80.
3. On September 27, 2021, the appellant's PPA most recently increased from \$149.80 to \$1,231.20.
4. On October 15, 2021, the facility issued a notice of intent to discharge the appellant to a residence in the community for failure to pay. The appellant filed an appeal with the Board of Hearings on the same date.
5. For the months of October and November 2021, the appellant paid only \$500 per month toward her PPA obligation to the nursing facility.
6. The appellant has failed to pay, or to have MassHealth pay, for a portion of her stay at the nursing facility.
7. The appellant is able to live in the community and no longer requires nursing facility level of care.
8. 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.

## **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.

In this case, the facility contends that its intent to discharge the appellant is justified because she and/or her representatives have failed, after reasonable notice, to pay for her care. The record

supports the facility's claim in this regard, as the billing records show that the appellant has paid only \$500 of her \$1,231.20 monthly obligation for both October and November 2021. The appellant did not contest that the money is owed, indicating that she does not intend to pay the full PPA because she needs the money to cover the cost of her apartment in the community as well as other expenses.

Under G. L. c. 111, § 70E, "[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 notice of intent to discharge indicates the facility intends to discharge the appellant to a residence in the community. The appellant confirmed at hearing that she no longer needs nursing facility level of care and is actively searching for subsidized housing in the community (though perhaps different than the residence listed on the notice). The record indicates that the requirements of the statute have been met.

This appeal is denied. The facility may proceed with the planned discharge 30 days after the date of this decision.

### **Order for the Nursing Home**

Discharge shall be stayed for 30 days after the date 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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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc:

