

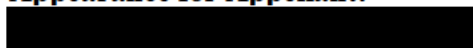
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved by default	<b>Appeal Number:</b>	2179109
<b>Decision Date:</b>	02/02/2022	<b>Hearing Date:</b>	12/31/2021
<b>Hearing Officer:</b>	Paul C. Moore		

**Appearance for Appellant:**



**Appearance for 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>	Approved by default	<b>Issue:</b>	Nursing home discharge
<b>Decision Date:</b>	02/02/2022	<b>Hearing Date:</b>	12/31/2021
<b>Nursing Facility's Rep.:</b>	None	<b>Appellant's Rep.:</b>	██████████
<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/Procedural History

Through a notice dated November 12, 2021, Genesis/Willow Manor nursing facility ("Willow Manor" or "the facility") issued a thirty-day notice of intent to discharge the appellant from the facility on December 11, 2021 (Exhibit 1). The notice stated that Willow Manor sought to discharge the appellant to ██████████ because the appellant failed, after reasonable and appropriate notice, to pay for (or have Medicaid or Medicare pay for) a stay at the facility (Exhibit 1). In response to this notice, the appellant submitted a timely request for a fair hearing to the Board of Hearings (BOH) on December 2, 2021 (Exhibit 2) (130 CMR 610.015(B)). Challenging the notice of intent to transfer an individual from a nursing facility is a valid basis for appeal to the BOH (130 CMR 610.032). The filing of such an appeal stays any attempt to transfer or discharge pursuant to 130 CMR 610.030.

On December 16, 2021, BOH issued a scheduling notice which was mailed to the attention of two individuals: (1) the appellant at the facility address; and (2) the administrator of Willow Manor at the same address as that of the appellant. The December 16, 2021 scheduling notice stated that BOH would hold a fair hearing at Springfield MassHealth Enrollment Center Room 1, 88 Industry Avenue, Springfield, MA 01104 at 2:30 pm on December 31, 2021, or by telephone to the parties (Exhibit 3). At the appointed date and time of hearing, the hearing officer reached the appellant's husband at the telephone number listed on the appellant's request for a fair hearing.<sup>1</sup> The hearing officer attempted to call the facility's administrator, and was told by an

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<sup>1</sup> MassHealth Eligibility Operations Memo 20-09, "MassHealth Response to Coronavirus Disease 2019 (COVID-

individual who answered the phone at Willow Manor that it was a “holiday” and no managers were present at the facility. No one from Willow Manor called the BOH prior to the hearing date to request to reschedule the hearing.

On January 6, 2022, BOH sent a Notice of Nursing Facility Default and Order to Show Cause to Willow Manor, informing them that BOH would issue a decision favorable to the appellant if the facility did not request to vacate the dismissal and demonstrate, in writing, good cause for its failure to attend the December 31, 2021 hearing (Exhibit 4). The Notice of Nursing Facility Default and Order to Show Cause required that such written request be received by BOH within ten days of the date of the notice (Exhibit 4).

Nothing was received.

Pursuant to 130 CMR 610.046(A), BOH is required to mail written notice of a hearing to the parties and any representative(s) at least ten days in advance of the hearing date. Here, the notice of hearing was properly mailed on December 16, 2021 to all parties entitled to receive notice ten days prior to the scheduled hearing date of December 31, 2021. The notice of hearing was mailed to attention of the administrator of Willow Manor at the correct address of [REDACTED]. This is the same address that appears on the notice of intent to discharge, as well as all correspondence from Willow Manor. As of January 31, 2022, BOH has not received any returned mail or other evidence suggesting that the December 16, 2021 scheduling notice sent to the administrator was not delivered to Willow Manor. There is nothing in the hearing record demonstrating that BOH failed to provide adequate written notice of the date and time of hearing to Willow Manor.

When there is a failure to appear, the fair hearing regulations require a party to demonstrate good cause to avoid an adverse dismissal. *See*, 130 CMR 610.035; 130 CMR 610.046; 130 CMR 610.048(D). No explanation was received from Willow Manor. Therefore, the Appellant’s appeal of the discharge notice of November 12, 2021 is APPROVED.

## Order for Nursing Facility

Willow Manor is hereby ordered to rescind the discharge notice dated November 12, 2021. If the appellant has already been discharged, Willow Manor is ordered to re-admit the appellant to the first available bed, or otherwise reverse the effect of such discharge notice.

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19),” issued April 7, 2020, states in relevant part: “In response to the current Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth is implementing the following protocols to support the public health efforts to expedite medical care and maintain care for both new MassHealth applicants and existing members. Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends: **All appeal hearings will be telephonic**; and Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility–related concerns” (emphasis added).

## **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 this decision is not implemented within 30 days and/or 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 C. Moore  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

[REDACTED]