

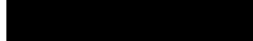
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2179138
<b>Decision Date:</b>	2/17/2022	<b>Hearing Date:</b>	02/07/2022
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**



**Appearances for Nursing Facility:**

Irina Ionkina, Social Worker  
Corey Beaudette, 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>	Approved	<b>Issue:</b>	Nursing Facility Discharge/Transfer
<b>Decision Date:</b>	2/17/2022	<b>Hearing Date:</b>	02/07/2022
<b>Nursing Facility Reps.:</b>	Irina Ionkina; Corey Beaudette	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### Authority

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

### Jurisdiction

Through notice dated December 3, 2021, Webster Manor Rehabilitation & Health Care Center, a skilled nursing facility, notified the appellant of its plan to discharge him to a shelter on January 3, 2022, because it determined that his health has improved and he no longer needs the services provided by the facility (Exhibit 1). The appellant filed this appeal in a timely manner on January 3, 2022 (130 CMR 610.015 and Exhibit 1). On December 7, 2021, the Board of Hearings dismissed the appeal because the appellant had not submitted a copy of the notice prompting the appeal (Exhibit 2). The appellant submitted the notice, and the Board then vacated the dismissal and scheduled a hearing (Exhibit 3). Discharge of a nursing home resident is a valid ground for appeal (130 CMR 610.028(A)).

### Action Taken by the Nursing Home

The skilled nursing facility notified the appellant of its intent to discharge him because it determined that his health has improved and that he no longer needs the services provided by the facility.

## **Issue**

The issue is whether the skilled nursing facility is justified in seeking to discharge appellant, and whether it followed proper procedures in doing so.

## **Summary of Evidence**

The skilled nursing facility (the facility) was represented by a social worker and its administrator, both of whom testified by phone. The social worker testified to the following: The appellant, a male in his early 40s, was admitted to the facility for rehabilitation following a hospitalization. The appellant had been hospitalized after a fall with symptoms including left leg numbness, pain, and incontinence. On July 2, 2021, he was admitted to the facility for pain management, physical therapy, and occupational therapy. At that time, there was concern about whether the appellant would require surgical intervention; surgery was eventually ruled out (Exhibit 6, p. 49). After a course of both physical and occupational therapy, the appellant was discharged from both services (Exhibit 6, p. 633). Physical therapy staff noted that the appellant had “good rehab potential” (Exhibit 6, p. 625). On August 16, 2021, physical therapy documented that the appellant could walk approximately 100 feet and could perform sit to stand transfers with his rolling walker (Exhibit 6, p. 633). Staff also referenced the appellant’s “self-limiting” behaviors on multiple occasions (Exhibit 6, pp. 670, 679). The social worker noted that the appellant is independent in a manual wheelchair.

The social worker testified that the appellant had planned to return to his previous residence when he could transfer/ambulate on his own. The appellant lived with an uncle prior to his hospitalization and nursing facility admission. The appellant told nursing facility staff that his previous residence was no longer an option. One of the facility social workers outreached to various programs to investigate housing opportunities. Rest homes were considered, as the appellant had at one point lived at a rest home. However, because the appellant currently has no income, rest homes would not review his application. The facility then considered shelter placement and settled on one in Worcester. She testified that visiting nurse services can assist the appellant at the shelter if needed. As the appellant needs a phone to access visiting nurse services, the facility agreed to provide a phone to the appellant. She stated that the appellant is independent in his wheelchair and needs supervision with his rolling walker. The appellant was recently seen by occupational therapy and will receive 10 more sessions; he hurt his right elbow and has some swelling which has been exacerbated because the appellant sleeps on his right side. She noted that this therapy could be done on an outpatient basis and does not justify continuing his admission.

On December 3, 2021, the facility issued a notice to the appellant that states that it seeks to discharge him to “25 Queen St. Worc. MA” on January 3, 2022, for the following reason: “Your health improved sufficiently so you no longer need the services provided by the facility” (Exhibit 5). The social worker explained that the address on the notice is a shelter.

On January 24, 2022, Dr. Octaviani, the nursing facility's medical director and the appellant's physician, noted in a progress report that "[h]e has been appealing his stay at Webster Manor where he has not required further rehabilitation services" (Exhibit 6, p. 45). The facility social worker added that the local elder service agency initially screened the appellant and found him eligible for nursing facility services on a short-term basis; that screening expires on February 14, 2022, and the appellant will be re-screened before that expiration date.

The record reflects that the appellant has the following diagnoses: hepatitis C, chronic back pain, chronic lower extremity weakness status post motor vehicle accident, L4-L5 Modic type 1 degenerative endplate change, cervical degenerative disc disease ADHD, gastritis, herniated lumbar disc without myelopathy, hiatal hernia, mitral valve prolapse, myocardial infarction, schizoaffective disorder, scoliosis, status post appendectomy, status postcardiac catheterization, status post cyst removal, and status post EGD hepatitis C (Exhibit 7, p. 45).

The appellant testified by phone and stated that he does not feel ready to leave the facility. He cannot walk long distances without support. When he tries, his leg buckles and he is at risk of falling. He is independent in his wheelchair, but still needs help for activities like showering. Because no one has helped him, he has gone for weeks without showering. He is able to take his wheelchair and supplies into the shower room, but needs help putting his supplies on the shelf, and also to move his wheelchair out of the shower area when he has transferred to the shower chair.

The appellant stated that his uncle is now in a nursing home and therefore he cannot live with him. He does not feel that the Worcester shelter is an appropriate discharge location. He has heard that residents need to be out of the shelter between 6 a.m. and 7 p.m. He would not be able to be on the street all day, every day. He would not be able to shower, and public bathrooms are not set up for him. For example, the bathrooms at McDonalds do not have bars close enough to the toilet to allow him to safely transfer from his wheelchair to the toilet. He has had a heart attack, suffers from significant mental health issues, and has developmental delay.

The social worker responded and stated that facility staff reached out to the Department of Developmental Service and were informed that the appellant is too high functioning to access their services. Further, the Department of Mental Health screened the appellant out.

Post-hearing, the facility social worker contacted the Worcester shelter and confirmed the following:

[T]here is one hour each day that individuals are required to step out of the building for cleaning services to come in. [The manager] also stated that if an individual chooses to leave the facility in the morning, they cannot come back until dinner time. [He] stated that they do allow visiting nurses to come into the shelter, but individuals must be able to manage on their own. The shelter is all on the same floor (so no steps/stairs). [He] stated there is no waitlist, but they are at capacity.

They are willing to put resident down on the list once we have the official discharge date (if the board decides resident is appropriate for discharge).

(Exhibit 7).

### **Findings of Fact**

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

1. The appellant is a male in his early 40s with the following diagnoses: hepatitis C, chronic back pain, chronic lower extremity weakness status post motor vehicle accident, L4-L5 Modic type 1 degenerative endplate change, cervical degenerative disc disease ADHD, gastritis, herniated lumbar disc without myelopathy, hiatal hernia, mitral valve prolapse, myocardial infarction, schizoaffective disorder, scoliosis, status post appendectomy, status postcardiac catheterization, status post cyst removal, and status post EGD hepatitis C.
2. The appellant was admitted to the facility for rehabilitation following a hospitalization; the rehabilitation plan included pain management, physical therapy, and occupational therapy.
3. At that time of the admission, surgical intervention was considered but ultimately ruled out.
4. The appellant completed courses of physical and occupational therapy and was discharged from each service.
5. The appellant's physician at the facility noted in January that the appellant had not required any further rehabilitation services.
6. The appellant is independent in his wheelchair but needs supervision with his rolling walker.
7. The appellant recently injured his elbow and the facility has authorized additional occupational therapy sessions to address this issue.
8. The facility seeks to discharge the appellant to a shelter.
9. The shelter allows residents to remain at the shelter for all but one hour per day, but if a resident chooses to leave the shelter, he or she may not return until dinner time.
10. The shelter permits visiting nurses to come to the shelter, but residents must be able to manage on their own.
11. The shelter is currently at capacity.



## **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. When the facility seeks to discharge a resident because of improved health, the clinical record must be documented by the resident's physician (130 CMR 610.028(B)).

In this case, the facility initiated discharge proceedings because it determined that the appellant's health has improved and that he no longer needs the services provided by the facility. The record does not adequately support the facility's position. The appellant's physician indicated in January that the appellant had not required any further rehabilitation services. As of the February hearing date, however, the situation had changed. As of that date, the appellant had been authorized to receive additional occupational therapy services to deal with an elbow injury. And while it may be true that occupational therapy services can be performed on an outpatient basis, the physician's statement is nevertheless no longer accurate. Further, the physician's statement is limited to the appellant's rehabilitation needs and does not specifically address whether discharge, to a shelter or elsewhere, is medically appropriate.

Additionally, while there may be no clinical bar to discharging the appellant to the community, the facility has not demonstrated that the Worcester shelter is a safe and appropriate place. Per M.G.L. c. 111, §70E, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. As of the date of hearing, the shelter was at capacity and had no space for the appellant. Further, it is not clear that the shelter rules will meet the appellant's medical needs. If the appellant leaves the shelter in the morning for any reason, he is not permitted to return until dinner time. The appellant is primarily wheelchair-bound with many medical issues - the inability to return to his residence until the evening does not seem appropriate at this time, especially in light of his current skilled service needs.

The facility has not demonstrated that discharge to the Worcester shelter is appropriate at this time, and therefore the appeal is approved.

## **Order for the Nursing Facility**

Do not discharge the appellant under this notice of intent to discharge.

### **Implementation**

If this nursing facility fails to comply with the above order, 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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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Webster Manor Rehab & Health Care Center  
Attn: Administrator  
745 School Street  
Webster, MA 01570