

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** DISMISSED (by party agreement)

**Appeal Number:** 2179630

**Decision Date:** 02/03/2022

**Hearing Date:** 01/31/2022

**Hearing Officer:** Christopher Taffe

**Appearance for Appellant:**

Appellant, pro se (by phone)

**Appearances for Nursing Facility:**

Alma Kobacic, Director of Social Services;  
Gianna Klausner, Director of Finances;  
Pat McCarron, Staff Development Coordinator  
& Nursing Supervisor; and  
Michael Takesian, Administrator  
(all by phone), on behalf of  
Fairhaven Healthcare Center



*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 (by party agreement)	<b>Issue:</b>	Nursing Facility Discharge – Expedited Notice
<b>Decision Date:</b>	02/03/2022	<b>Hearing Date:</b>	01/31/2022
<b>N. Facility’s Reps.:</b>	A. Kobacic, G. Klausner, P. McCarron, & M. Takesian	<b>Appellant’s Rep.:</b>	Appellant, pro se
<b>Hearing Location:</b>	HarborSouth Tower, Quincy		

## 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 titled “*Notice of Intent to Discharge Resident with Less than 30 Days’ Notice (Expedited Appeal)*” dated December 21, 2021, the Respondent, Fairhaven Healthcare Center (hereafter “Fairhaven”), informed Appellant (the nursing facility resident) that Fairhaven wished to discharge Appellant to the Lowell Transitional Living Center on January 4, 2022 because “*the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility...*”. See Exhibit 1. Appellant filed a timely request with the Board of Hearings for a Fair Hearing on December 21, 2021. See Exhibit 1; 130 CMR 610.015(B). The Board of Hearings has jurisdiction over appeals involving expedited nursing facility discharges per 130 CMR 610.032.

On December 28, 2021, the Board of Hearings scheduled this hearing to be heard on December 31, 2021. See Exhibit 2. On December 29, 2021, the Board of Hearings found good cause and granted a unconditional postponement upon the request of the nursing facility, as certain nursing facility staff would not be available on the proposed December 31, 2021 hearing date because the nursing facility, like many professional offices, observed the New Year’s Day holiday on that prior weekday. See Exhibit 3. The hearing was subsequently rescheduled and took place on January 31,

2022. See Exhibits 4 and 5.

## **Action Taken by Nursing Facility**

Fairhaven issued an expedited discharge notice to the Appellant.

## **Issue**

Does the discharge notice and record comply with all legal requirements to support the proposed discharge action and, if so, should the Appellant be discharged per that notice? Alternatively, have the parties reached an agreement to resolve the issue?

## **Summary of Evidence**

Fairhaven is a skilled nursing facility in the Commonwealth, licensed by the state's Department of Public Health. The nursing facility has 169 beds, all of which are dual-certified for both Medicare and Medicaid payment. Appellant is a female in her 70s who has resided at the facility since early October 2021 after an inpatient hospital admission that spanned much of August and September 2021.

Appellant has Medicare but does not currently qualify for MassHealth Standard Long-Term Care (LTC) benefits. Although she applied for LTC benefits in October 2021 in an attempt to help cover the financial costs of her nursing facility stay, the MassHealth agency issued an eligibility determination on December 17, 2021 indicating that Appellant would be ineligible for LTC benefits for a penalty period of October 6, 2021 to August 29, 2022 due to a disqualifying transfer of asset resources. Appellant has offered to pay \$5/week towards the debt, but the current debt is approximately \$34,312.64 through January 31, 2022. There was and is no plan to appeal the December 17, 2021 MassHealth eligibility determination.

At hearing, discussion covered whether the nursing facility used the proper discharge notice, as expedited discharge notices are usually restricted for use with other discharge motivations beyond non-payment; these other conditions for which an expedited notice may be more appropriate include but are not limited to situations when the resident is endangering the health or safety of others in the facility.<sup>1</sup> The facility attempted to counter that point at hearing by stating that, among other things, the hearing had been postponed for a month and the facility had tried to make extensive discharge planning attempts with the individual.

During the hearing, Appellant indicated that all she wanted was "30 days" before she was discharged and that she would find her own housing situation even though she did not want to go to a shelter. The Appellant testified that she resided in a motel prior to her nursing facility admission. After some more discussion, the parties agreed to not need a pending substantive decision from the

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<sup>1</sup> See e.g., 130 CMR 456.702(B) and 130 CMR 610.029(B).

Hearing Officer on this matter, and instead they agreed to mutually resolve the appeal on the condition that Appellant could stay at the nursing facility until Friday, March 18, 2022. The Appellant acknowledged that, with this agreement, she was forfeiting or extinguishing all further appeal rights to the Board of Hearings related to the length of her stay or the facility's discharge action. The Appellant also understood that, while she was responsible for participating in finding a location for discharge and the facility was expected to continue to work with her on discharge planning, the nursing facility could discharge her to the shelter location listed on the notice if no alternative could be found.

## Findings of Fact

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

1. Through a notice titled "*Notice of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal)*" dated December 21, 2021, the Respondent Fairhaven informed Appellant (the nursing facility resident) that Fairhaven wished to discharge Appellant to the Lowell Transitional Living Center on January 4, 2022 because "*the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility...*". (Testimony and Exhibit 1)
2. Appellant timely appealed the discharge notice to the Board of Hearings, leading to the current appeal. (Exhibit 1)
3. The Appellant owes over \$40,000 in debt to the nursing facility for her stay and admission since October 2021, and the application to MassHealth for LTC benefits was denied in December 2021 for the time period from October 6, 2021 to August 29, 2022 due to a disqualifying transfer of asset resources. (Testimony and Exhibit 6)
4. At hearing, the parties agreed to forego a decision from the Hearing Officer on this matter, and the parties instead mutually agreed to resolve the appeal by agreeing that the Appellant would depart the facility on Friday, March 18, 2022.<sup>2</sup> (Testimony of the parties)
  - A. Appellant understood that, with this agreement, she is getting more than 30 days from the hearing date before she has to depart, but she is also forfeiting the current and all future appeal rights to the Board of Hearings regarding the discharge. (Testimony)
  - B. Appellant indicated that she did not want to go to the shelter but would work on finding alternative arrangements in the community. Should Appellant not find an alternative in time, she understands that the facility may discharge her to the Lowell Transitional Living Center. (Testimony)

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<sup>2</sup> Although not discussed, the facility has the option to extend the discharge date if that assists the parties with any discharge planning efforts. Appellant may not unilaterally extend this deadline by herself. Similarly, if Appellant is able, prepared, and wishes to discharge herself earlier, she may of course opt to do so and work with the nursing facility towards that end.

## Analysis and Conclusions of Law

In Massachusetts, appeals of nursing facility discharge notices are often heard by the Board of Hearings per the Fair Hearing Rules at 130 CMR 610.000. The Fair Hearing Rules include the following regulation which allows the parties to resolve matters without having to get a more formal substantive decision:

610.051: Adjustment Procedures and Mediation

(A) MassHealth Agency.

...

(B) Adjustments Resolving Issues.

*The MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. BOH will not delay a fair hearing because a possible adjustment is under consideration, unless the appellant requests or agrees to such a delay.*

(C) Mediation.

*BOH may offer to the parties the opportunity to resolve one or more of the appeal issues in dispute through mediation, and such mediation may proceed only if, and as long as, both parties agree to such mediation that will be conducted substantially in accordance with M.G.L. c. 233, § 23C. If such mediation resolves one or more of the issues in dispute, the hearing officer, by written order, will dismiss the appeal, as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement. Either party may elect to terminate mediation at any time and proceed to a fair hearing that BOH will schedule accordingly. Any party may request that a different hearing officer be assigned to conduct such fair hearing.*

**(Bolded emphasis added.)**

In this matter, both sides were made aware at hearing that this situation may have required one or two future Fair Hearing decisions or appeals. Rather than face some uncertainty over any future timetable, the parties informally mediated and discussed a settlement with the Hearing Officer at hearing. The parties eventually mutually agreed on a discharge date for Appellant of March 18, 2021, which is more than 45 days from the second hearing date, and over two-and-a-half months after the appeal of the discharge notice. The parties are encouraged to work together as amicably as possible over the next month-plus to bring their patient-provider relationship to a close.

As the matter is resolved, this appeal is DISMISSED per 130 CMR 610.035 and 610.051.

## Order for Nursing Facility

Do not discharge Appellant prior to March 18, 2022 date (unless the Appellant consents to an earlier date). Continue to work with Appellant on discharge planning as requested and needed by the

Appellant. If the parties cannot agree on a future place of discharge and Appellant cannot secure another housing option, the nursing facility may work with Appellant towards placing her in the Lowell Transitional Living Center.

## **Notification of Your Right to Appeal to Court**

If either party disagrees with this decision, either side has the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, the party must file a complaint with the Superior Court for the county where the party resides, or Suffolk County Superior Court, within 30 days of the party's receipt of this decision.

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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: Alma Kobacic  
Director of Social Services  
Fairhaven Healthcare Center  
476 Varnum Avenue  
Lowell, MA 01854