

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2200310
<b>Decision Date:</b>	2/24/2022	<b>Hearing Date:</b>	February 11, 2022
<b>Hearing Officer:</b>	Brook Padgett	<b>Record Open:</b>	February 18, 2022

**Appellant Representative:**

Pro se

**Nursing Facility Representatives:**

Ben Marshall, Administrator  
Meshack Mtango, Rehab Director  
Nicole Troisi, Social Worker



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> floor  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	130 CMR 610.028
<b>Decision Date:</b>	2/24/2022	<b>Hearing Date:</b>	February 11, 2022
<b>Nursing Facility Reps:</b>	B. Marshall, M. Mtango, N. Troisi	<b>Appellant Rep:</b>	Pro se
<b>Hearing Location:</b>	Quincy (telephonic)		

## Authority

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

## Jurisdiction

The appellant received a 30-day Notice of Intent to Transfer Resident dated January 11, 2022, stating: “In accordance with 42 CFR 483.12 & with 130 CMR 456.701-456.704, we hereby give notice that we will discharge [the appellant] effective as of 2/9/2022. Pursuant to the discharge plan developed by our social services staff in cooperation with you, our facility will discharging you to 857 East Broadway, South Boston, 02127. A copy of your discharge plan and summary will be provided to you either with this notice or during the week of your planned discharge. •**This transfer/discharge notice is being issued because your health has improved sufficiently so that you no longer need the services provided by our facility.**” (Exhibit 1). The appellant filed this appeal timely on January 13, 2022. (130 CMR 610.015(B); Exhibit 2). Discharge or transfer of a Nursing Facility patient is valid grounds for appeal. (130 CMR 610.028(A); 42 CFR Ch IV §483.200 et seq.).

## Action Taken by the Nursing Facility

The nursing facility intends to discharge to the appellant to his home.

## Issue

Is the planned discharge correct pursuant to 130 CMR 610.028(A)?

## Summary of Evidence

A social worker from The Rehabilitation & Nursing Center at Everett testified the appellant is 48 years old and was admitted to the facility from the hospital on November 24, 2021<sup>1</sup>. At the time of admission, the appellant had a right calf wound. At the time of admission, the plan of care was to allow the wound to heal. Medical evidence indicates that on December 21, 2021 the wound was cleaned, and necrotic tissue was removed. Notes dated January 18, 2022 indicates the right calf wound was resolved and the appellant's chief complaint as "rash" and the appellant currently is at baseline. The facility argued they have attempted to get the appellant to participate in his rehabilitation, but he has resisted on a number of occasions and is unmotivated. The appellant's condition is stable, he is oriented x 3 and his judgment and insight are appropriate. Currently the appellant does not require anything but a moderate assist with his Activities of Daily Living (ADL's) and he no longer has any medical need to remain in the facility. The appellant has on several occasions requested to leave the facility against medical advice (AMA) but on each occasion reconsidered and remained. The appellant can no longer receive either Occupational Therapy (OT) or Physical Therapy (PT) at the facility; however if he wishes to participate in additional OT or PT it can be arranged once he is transferred home with his wife and child. Nursing Facility submitted into evidence Progress Notes, medical record, Wound Evaluation & Summary Management record, PT Discharge Summary, OT Discharge Summary. (Exhibit 4 and Testimony)

The appellant responded that he has refused to participate in rehab and has tried to leave AMA, only because of his treatment at the facility. The appellant stated he had individuals coming into his room unannounced and without introduction who would yelling at him to participate in rehab. The appellant maintained he didn't know who these people were or why they were acting like this, so he refused to participate. He now understands the individuals were there for OT or PT, but there was no need to disrespect him. The appellant stated he does not want to have to be stuck using a walker or a wheelchair and so far, has received very little rehabilitation while in the facility. He states he has been to other facilities where they assist you walking up and down the hallways and help you get used to using stairs etc. The appellant maintained his goal is to get his leg back to 85% so he can walk again. He argued that if he is discharged home now there is chance that he could fall and end up back in the hospital. (Testimony).

The appellant did not present any testimony that he required assistance with any ADL's.

The submitted hearing record was not numbered, so at the request of the hearing officer the record remained open until February 18, 2022 for the Nursing Facility to resubmit the record highlighting where the evidence specified the appellant's wound has healed, the appellant had met his rehab goals, in addition to documentation from the facility physician stating the appellant's health had improved sufficiently that he no longer requires nursing facility services; and that his medical need can be met at the place of discharge. (Exhibit 5).

The Nursing Facility submitted the requested evidence within the time limits. (Exhibit 6).

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<sup>1</sup> The appellant was admitted into the hospital from November 20, 2021 through November 24, 2021.

## Findings of Fact

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

1. The appellant resides at The Rehabilitation & Nursing Center at Everett, which is a licensed nursing facility. (Exhibit 1 and Testimony).
2. On November 24, 2021 the appellant was admitted to the nursing facility from the hospital with a right calf ulcer. (Exhibit 4).
3. OT Discharge Summary dated January 13, 2022 states the appellant came to the facility with a 50% assist with his ADL's and is now able to complete all ADL's with no assist. (Exhibit 6).
4. Facility physician notes dated January 13, 2022 indicates the appellant has plateaued and is ready to transition to a home setting. (Exhibit 6).
5. VOHRA Wound Physicians, Evaluation & Management Summary dated January 18, 2022 states post-surgical wound of right calf has resolved. (Exhibit 6).
6. Rehab Notes dated February 25, 2022 state the appellant was admitted for a leg ulcer which has now healed and there are no other outstanding issues; appellant is independent in all ADL's, discharge to OT and PT with PCP home follow up. (Exhibit 6).

## Analysis and Conclusions of Law

On January 11, 2022, a "30-day Notice of Intent to Discharge Resident" was provided to the appellant by The Rehabilitation & Nursing Center at Everett. The notice indicated the facility planned to discharge the appellant to his home as his health had improved sufficiently that he no longer requires nursing facility services. The appellant timely appealed and the discharge was stayed pending the outcome of this appeal.

A nursing facility may transfer or discharge a resident when 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, as long as the nursing facility to provide reasonable and appropriate notice. (130 CMR 610.028(A)(5)).<sup>2</sup>

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<sup>2</sup> 130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility (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 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 MassHealth agency or Medicare pay for) a stay at the nursing facility; ... (B) When the facility transfers or discharges a resident under any of the circumstances

The appellant was admitted to the nursing facility with a right calf ulcer requiring a 50% assist with his ADL's. The current medical evidence indicates the appellant's right calf wound has resolved and he is independent in all his ADL's. The facility physician has agreed the appellant is ready to transition to his home setting. Although the appellant argues he requires additional OT and PT, he has provided no credible evidence to counter the current position of the nursing facility that his health has improved so he does not require skilled nursing facility services.

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations, including MGL c.111, §70E, which went into effect in November of 2008.<sup>3</sup> The nursing facility notice lists the appellant's home as the discharge location. The nursing facility physician maintains the appellant can be appropriately cared for at his home with his wife and child as he is clinically stable, he has no skilled nursing needs and requires no assist with all ADL's. Since there is no credible evidence that the appellant requires any nursing services, the facility has met its burden to ensure safe and orderly discharge. As a result, the nursing facility's notice of discharge complies with the applicable state and federal notice requirements and their actions are appropriate and reasonable. This appeal is therefore denied.

## **Order for the Nursing Facility**

Proceed with discharge.

## **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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Brook Padgett  
Hearing Officer  
Board of Hearings

cc: Respondent: The Rehabilitation & Nursing Center at Everett, Attention: Administrator, 289 Elm Street, Everett, MA 02149

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specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented... . (*Emphasis added*).

<sup>3</sup> The key paragraph of that statute, which is directly relevant to this appeal, reads 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."

