

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** DENIED

**Appeal Number:** 2201970

**Decision Date:** 4/01/2022

**Hearing Date:** 03/28/2022

**Hearing Officer:** Christopher Taffe

**Appearance for Appellant:**



**Appearances for Nursing Facility:**

Miatta Edi-Osagie (Administrator);  
Tammi Lockhart (Director of Nursing) with  
Adam Soloperto, Esq., all on behalf of  
Marlborough Hills Rehabilitation and  
Healthcare Center (all by phone)



*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>	DENIED	<b>Issue:</b>	Expedited Nursing Facility Discharge – Endangerment
<b>Decision Date:</b>	4/01/2022	<b>Hearing Date:</b>	03/28/2022
<b>S.N. Facility’s Rep.:</b>	A. Soloperto, Esq.	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center (heard remotely)		

## 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 March 16, 2022, the Respondent, a Skilled Nursing Facility (“SNF”) Marlborough Hills Rehabilitation and Health Care Center (hereafter “Marlborough Rehab” or “the SNF”) informed Appellant (the nursing facility resident) that Marlborough Rehab sought to discharge Appellant to the Woods Mullen Center at 794 Massachusetts Avenue, Boston, MA 02118 on March 31, 2022 because of two reasons: (1) “*the safety of the individuals in the nursing facility is endangered due to the clinical or behavioral status of the resident as evidenced by the resident’s non-compliance with facility safety measures*”, and (2) “*the health of the individuals in the facility would otherwise be endangered as evidenced by the resident’s non-compliance with the facility safety measures*”. See Exhibit 1. Appellant filed a timely request with the Board of Hearings for a Fair Hearing on March 17, 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. Per 130 CMR 610.015(B)(4) and 130 CMR 610.030, the nursing facility must stay the planned discharge and not proceed prior to five days after the date of the hearing decision.

# Action Taken by Skilled Nursing Facility

Marlborough Rehab issued an expedited discharge notice to the Appellant.

## Issue

Does the discharge notice and medical record comply with all legal requirements in order to support the proposed discharge action and, if so, should the Appellant be discharged?

## Summary of Evidence

Appellant is a [REDACTED] woman who was admitted to this SNF on [REDACTED]; she has been a long-term care resident at the facility since that date. She has taken periodic leave of absences to spend time (usually a day or two) with family or friends since her admission. Appellant has also had some hospitalization since her initial admittance, but she has always been readmitted to Marlborough Rehab. At all times relevant to this appeal, Appellant has been a member utilizing MassHealth Standard Long-Term Care benefits to pay for her stay. The SNF is currently licensed by the state's Department of Public Health and the SNF has 196 beds, all of which are doubly certified for Medicare and Medicaid. Appellant's admission in 2020 was related to recovery from a CVA or stroke resulting in left-sided hemiplegia. Her medical history also includes cardiac history including endocarditis, a xenogenic heart valve, CHF, and COPD. She can ambulate independently briefly but will sometimes walk in the nursing facility using a wheelchair for support and for occasional mobility. The medical record in Exhibit 4 indicates a history of substance abuse involving opioids and other drugs. Appellant admitted at hearing that she has used heroin and cocaine in the past but claims to have not done so any time since her 2020 admission to the SNF.

The nursing facility presented testimony and written records, including medical records and a two-page document titled "Resident Incident Investigation Statement" summarizing the events of [REDACTED] which led to the discharge action. The 2-page "Statement" was prepared by the Administrator, who testified to its origin, and was signed by Appellant, the Administrator, and the Director of Nursing on [REDACTED], 2022.<sup>1</sup>

On the [REDACTED] date in question, Appellant received a visit from her friend ("Ms. Z" or "Z") in the evening hours who visited Appellant while she was in the room of one other nursing facility resident ("Mr. X" or "X").<sup>2</sup> The statement and nursing facility testimony indicate that Z offered Appellant certain illicit drugs in exchange for borrowing Appellant's green card or a copy of the green card. Per the report, Z gave Appellant a small bag containing "stuff like klonopin, and other pills". The "stuff" was later allegedly described by Appellant as "crushed heroin and klonopin". The statement alleges that Appellant admitted giving it to the other resident X, who snorted the contents of much of the bag. Per the statement, the Appellant admitted that it was not the first time

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<sup>1</sup> The events of the following paragraph are based on these sources. Appellant does not agree with these events.

<sup>2</sup> These are identifying pseudonyms for these two other individuals.

she had received similar drugs from Z and shared it with X while they were at the facility. After Z left, Appellant went outside for a cigarette smoking break and had a vomiting episode. When being checked after this, a bottle of “biotin” capsules was found on Appellant and confiscated by a nurse. Shortly before 9:00 P.M. an ambulance was called for Appellant as there was an assessment that she may need a hospitalization related to illicit drug use. Shortly thereafter, Appellant went into the room of X and found him unresponsive. She then pressed on his chest and poured water on him to unsuccessfully try to awaken him, and she yelled for the staff to call 911 for X. At some point Appellant continued to vomit and made statements of using heroin that her friend Z had brought for her. EMTs arrived and took Mr. X away to a hospital. Police were also notified and came on the scene and performed a search of Appellant and her room and found a bag of unknown substances, a suboxone strip, and other unknown pills. Appellant herself eventually was transferred to a hospital and stayed overnight, before returning the next morning.

During the early afternoon of the following day, [REDACTED], Appellant met with the Administrator and the Director of Nursing and was asked to recall the circumstances of the prior day, which led to the Incident Report. The Incident Report was typed up and signed by (1) Appellant, (2) the Administrator, and (3) the Director of Nursing.

Per the SNF, Mr. X never returned to the facility. He went to the hospital that night of [REDACTED], 2022 and, approximately two weeks after his admission, Mr. X died at the hospital.

There is no police report at the current time because, per the nursing facility, the investigation is ongoing. When asked whether they had supplied the Investigation Statement, the SNF indicated the police took their own statement at hearing and that the facility had not been asked for it as of the Fair Hearing date.

Appellant claims she didn’t read the whole statement and denied taking drugs or providing them on [REDACTED]. She explained her signature by being cajoled into signing it, thinking it was just a signature confirming that she tried to resuscitate Mr. X, and that she never read the whole thing. Appellant claims that she has some of order protecting her from Ms. Z, but there are multiple notes in Exhibit 4 of Appellant having multiple visits from Ms. Z in the year prior. Appellant did not raise or say anything indicating that she ever asked anyone in the facility to remove Ms. Z from the premises in [REDACTED].

Appellant claims that much of this involves a retaliatory action by the nursing facility because of a sexual assault she allegedly experienced from a nursing facility worker in late 2020. Appellant has a lawyer on this, and the lawyer for the facility present at hearing stated that no such civil action had been filed in Superior Court or any other Massachusetts court forum as of the Fair Hearing date, but also noted that M.G.L. c.60L requires that the plaintiff take some prefiling actions before initiating a claim of this type against a medical provider. The facility also argued that there was nothing retaliatory about the [REDACTED] 2022 action, and that the events of [REDACTED] 2022 led to the discharge notice. The facility also tried to dismiss Appellant’s claim of retaliation by noting that the SNF never acted in earlier months of Appellant’s admission when she was violating the cigarette

smoking policy and that it was the major events of [REDACTED], 2022 which led to this.<sup>3</sup> The SNF explained that, like most nursing facilities, it had a policy regarding medications, and that residents like Appellant were not allowed to use medications or drugs unless they were prescribed, and that such medications would be directly given or supervised by the SNF staff. The SNF indicated that the drugs found on [REDACTED], 2022 (beyond Klonopin)<sup>4</sup> were not prescription or authorized in any way.

The SNF indicated that Appellant could be safely served in the community as she no longer has a skilled care need and was independent with Activities of Daily Living (ADLs). In support, the nursing facility pointed out that Appellant would periodically leave the SNF for a day or two and was able to handle her dressing, bathing, toileting, and other needs while in the community. She is mobile with the assistance of other devices and she uses such devices or support to go outside to smoke cigarettes.

The record submitted by the SNF contained this March 26, 2022 progress note from a doctor in the SNF, Dr. Ajay Anand. The note reads as follows:

*“The patient is a young female with polysubstance abuse who was recently found lethargic after snorting cocaine brought in by a visitor. She was also in another resident’s room and shared the drugs leading to an unresponsive episode in hospitalization of this other resident. As such [Appellant] is a significant risk to the life and safety, both to herself and to other residents and it is not safe or appropriate for her to continue as a resident at [the SNF]. She is medically stable to be discharged and discharged at the earliest is in the best interest of the residents and staff of [the SNF]. (Exhibit 4, page 40)*

Appellant discussed how she was not ready to go back to the community and needed help with getting dressed and washing certain parts of her back and body. She also indicated she did not want to go to the shelter in Boston proposed by the nursing facility, as she had been there one time before and she would not be able to be there with the limited hours they were open, the bunk beds in the shelter (which she would not be able to use), and the general environment. Later during the hearing, Appellant stated she may be able to go to the community but just needed more time to find the appropriate discharge location. The nursing facility indicated that they have had discussions with Appellant prior about possible transfer or discharge locations.<sup>5</sup> The SNF also indicated that they

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<sup>3</sup> An example of this is found in the medical records, on page 22 of Exhibit 4, detailing an argument over violation of the smoking policy involving a vape, and a claim that the Appellant tried to “bite” a nurse during the argument. Another example is found on page 28, when used cigarettes butts were found in a trash bin in Appellant’s room. There are also examples of the Appellant using the wheelchair and traveling too fast in the hallway, risking the health of other patients. See e.g., pp. 29 and 64 of Exhibit 4.

<sup>4</sup> Appellant’s medical records in Exhibit 4 indicate that she has some prescription at the facility for some amount (.5 mg as of 3/3/2022) for clonazepam, which is a generic name for the drug klonopin (brand name), a type of benzodiazepine. The record indicates some talks about increasing the dosage during Appellant’s stay.

<sup>5</sup> As an example of earlier efforts regarding discharge planning there is a note on page 64 of Exhibit 4 indicating the nursing facility’s effort to remind Appellant on December 6, 2021 of an early morning appointment the following day with some immigration official from her Northern African country in regard to her status, and how it was “essential that resident attend this meeting in order to receive appropriate supports to return to community”. There are other notes discussing placement options, including rest homes, in January of 2022, within Exhibit 4.

have even explored possible transfer locations to other nursing facilities, but the SNF reported that those facilities either believe she either does not meet the coding needed for her stay at those other nursing facilities, or the details of her behavior do not make her appealing as a transferee to those proposed places.

## Findings of Fact

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

1. Through an Expedited Appeal discharge notice dated March 16, 2022, Marlborough Rehab informed Appellant that Marlborough Rehab sought to discharge Appellant to the Woods Mullen Center at 794 Massachusetts Avenue, Boston, MA 02118 on March 31, 2022. (Testimony and Exhibit 1)
2. The two listed bases for the discharge action were:
  - a. *“the safety of the individuals in the nursing facility is endangered due to the clinical or behavioral status of the resident as evidenced by the resident’s non-compliance with facility safety measures”, and*
  - b. *“the health of the individuals in the facility would otherwise be endangered as evidenced by the resident’s non-compliance with the facility safety measures”.*  
(Exhibit 1)
3. Appellant timely appealed this expedited discharge notice to the Board of Hearings. (Exhibit 1)
4. Appellant was admitted to Marlborough Rehab in [REDACTED] of 2020 due to effects of a CVA, resulting in left-sided hemiplegia. There is a history in the medical record of Appellant having substance abuse problems involving certain drugs and narcotics in the past. (Testimony and Exhibit 4)
5. Appellant is either independent or needs minimal assistance with all ADLs. She needs some help with dressing and bathing but has had overnight leave of absences from the nursing facility in the last year. Appellant can walk by using a wheelchair or walking device for assistance with mobility. (Testimony and Exhibit 4)
6. There is no evidence of any skilled nursing need being received from Appellant, other than the administration of medication which is done on a supervised basis. (Testimony and Exhibit 4)
7. A physician from the nursing facility wrote in March 22, 2022 in the medical record that Appellant *“...is medically stable to be discharged and discharged at the earliest is in the best interest of the residents and staff of [the SNF].”* (Exhibit 4)
8. Appellant indicated at hearing an interest in returning to the community but believed she needed

more time before being discharged to a community setting. She does not want to go to the discharge location listed on the discharge notice. (Testimony)

9. On the evening of [REDACTED], 2022, Appellant received a visit from a friend, Ms. Z. (Testimony and Exhibits 1, 3 and 4)
10. Later that evening, Appellant was found to be vomiting and a subsequent search of her and/or her room resulted in the finding of Suboxone, additional (or non-prescribed) Klonopin, and other non-prescribed pills and substances. (Testimony and Exhibits 1, 3, and 4)
11. On the night of [REDACTED] 2022, Appellant found Mr. X unresponsive in his room and called for assistance and 911 after trying to revive or awaken him. (Testimony and Exhibits 1, 3, and 4)
12. Both Appellant and Mr. X went to the hospital that evening of [REDACTED] 2022. Appellant returned to the nursing facility the following morning. (Testimony and Exhibit 4)
  - a. Mr. X never returned to the facility and he died in the week prior to the Fair Hearing. (Testimony)
13. On [REDACTED] 2022, the SNF wrote up a summary of the events of March 13, 2022 indicating that Appellant admitted obtaining from Ms. Z certain drugs, including some which were snorted by her and another resident (Mr. X) on the evening of [REDACTED] 2022. (Testimony and Exhibits 1, 3 and 4)
  - a. Appellant signed a statement summarizing the above events on [REDACTED], 2022 but at the Fair Hearing on March 28, 2022, she denied that and that she signed the nursing facility's statement while not understanding its contents and thought it was about her attempts to revive and assist Mr. X the prior evening. (Testimony)

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. In this Commonwealth, the MassHealth agency has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.002 apply<sup>6</sup>:

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<sup>6</sup> The regulatory language in the MassHealth Nursing Facility Manual at 130 CMR 456 has regulations which are identical (or near-identical and substantively equivalent) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.000 as well as corresponding federal government regulations. As an example, the text of the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. Because there is identical or near-identical regulatory language, the remainder of this

*“Nursing facility” – a Medicare skilled nursing facility or Medicaid nursing facility licensed by the Department of Public Health to operate in Massachusetts, or a distinct Medicaid- or Medicare-certified unit within a facility.*

*“Discharge” – the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility’s failure to readmit following hospitalization or other medical leave of absence.*

Based on the above information, Marlborough Rehab is attempting to discharge Appellant to a community setting via the appealable notice in question. See Exhibit 1 and 130 CMR 456.002.

Some regulatory guidelines that speak to whether and how the Appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for transfer or discharge of a resident from a nursing facility as well as the specific and strict requirements of the relevant notice and supplementary paperwork. If these requirements are not satisfied, the facility must permit the resident to remain in the facility. 130 CMR 456.701 through 130 CMR 456.704 read in relevant part as follows:

**456.701: Notice Requirements for Transfers and Discharges 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 Division or Medicare pay for) a stay at the nursing facility; or***
- (6) the nursing facility ceases to operate.***

***(B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:***

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and***
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).***

***(C) Before a nursing facility discharges or transfers any resident, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative a notice***

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decision will hereafter only cite to the MassHealth Nursing Facility Manual regulations in 130 CMR 456 unless otherwise noted.



written in 12-point or larger type that contains, in a language the member understands, the following:

- (1) the action to be taken by the nursing facility;
- (2) the specific reason or reasons for the discharge or transfer;
- (3) the effective date of the discharge or transfer;
- (4) the location to which the resident is to be discharged or transferred;
- (5) a statement informing the resident of his or her right to request a hearing before the Division's Board of Hearings including:
  - (a) the address to send a request for a hearing;
  - (b) the time frame for requesting a hearing as provided for under 130 CMR 456.702; and
  - (c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for nursing-facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. s. 6041 et seq.);
- (8) for nursing-facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. s. 10801 et seq.);
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal-services office. The notice should contain the address of the nearest legal-services office; and
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal.

456.702: Time Frames for Notices Issued by Nursing Facilities

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

**(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are emergency discharges or emergency transfers.**

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.**
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not resided in the nursing facility for 30 days immediately prior to receipt of the notice. ...

456.703: Time Frames for Submission of Requests for Fair Hearings

(A) Appeals of discharges and transfers will be handled by the Division's Board of Hearings (BOH).

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

(1) 30 days after a resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); or

(2) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B);...

456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) **If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision...**

(Bolded emphasis added.)

In addition to the MassHealth-related regulations discussed above, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E. One key paragraph of that statute, which is highly relevant to these types of appeals, 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.***

(Bolded emphasis added.)

With the above laws in mind, I come to the following conclusions:

I find the nursing facility's statement of the events of [REDACTED], 2022 to more credible than that of the Appellant and that Appellant either invited or participated in actions which led to illegal drugs being introduced into the facility, leading to adverse medical consequences for at least one individual beyond the Appellant. In support of such finding, it is noted that the SNF has contemporaneous notes from the evening in question, detailing some of the materials that were found and with the reported statements of Appellant that night. I also am aware of the drafted summary. Even if I were to accept Appellant's argument that her signature on that document should be given little to no weight in assessing the truthfulness of that summary's content, the summary is consistent with the medical record notes in Exhibit 4. I will also note that Appellant's

claim of this being a retaliatory action is not supported by evidence in the record. To believe Appellant's claim would require the factfinder to find that the nursing facility only created multiple pieces of untrue medical record paperwork in an elaborate effort to remove her. It is also noted that while Appellant mentioned how she did not want Ms. Z there, Appellant did not deny Ms. Z's presence or offer anything at hearing about her (Appellant's) efforts to ask the nursing facility to get Ms. Z to leave. The events of [REDACTED], 2022 are extremely sad and may have led to a tragic outcome regarding the subsequent passing of Mr. X. There is no place for non-permitted drugs in a nursing facility setting, and I accept and agree with the nursing facility's contention that Appellant's continued stay at the SNF would represent a risk to the health and safety of others.

Based on the totality of the record and the presentation of testimony, I find the preponderance of evidence shows that Appellant engaged in unsafe behavior and that the safety risk associated with such behavior could adversely affect the safety or health of others in the facility. There are sufficient grounds to discharge under 130 CMR 456.702(B).

Furthermore, the record submitted by the nursing facility is sufficiently documented, especially with the letter from the physician of the facility which comments directly on the safety risk to others and which states that Appellant is "medically stable" and ready for discharge to the community. Although a greater level of commentary on the current medical needs of the Appellant from the doctor may have been more appreciated, the testimony of all parties indicate that the [REDACTED]-year old Appellant has taken independent leaves and has no obvious severe medical needs; even the Appellant at one point admitted that she could return to the community but she wanted more time for the purpose of finding a more preferred location of discharge. There is thus sufficient compliance with 130 CMR 450.701(B)(2) and the notice of discharge also looks proper and compliant with the other regulatory requirements. See 130 CMR 456.701.

Lastly, there is evidence of discharge planning in Exhibit 4, and the testimony and record show no evidence indicating that it would be clinically inappropriate to discharge Appellant to a shelter. I thus find that there is compliance with M.G.L. c.111, §70E in this matter.

For these reasons I conclude that the discharge action by Marlborough Rehab is proper and supported by the record, and that Appellant's appeal should be DENIED.

## Order for Nursing Facility

Marlborough Rehab may proceed with preparing and arranging for the discharge of Appellant to the discharge location in Boston identified in the March 16, 2022 discharge notice. Per 130 CMR 456.704(B), no such discharge may take place any earlier than 5 days from the date of this decision unless the Appellant consents to an earlier time frame.

## 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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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: Miatta Edi-Osagie, Administrator  
Marlborough Hills Rehabilitation and Health Care Center  
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