

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2202296
<b>Decision Date:</b>	4/20/2022	<b>Hearing Date:</b>	04/11/2022
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*

Pro se

**Appearance for Nursing Facility:**

*Via telephone:*

Katie Morris, Executive Director  
Janice Lindblom, Director of Social Services,  
Social Worker  
Karen Duke, Social Worker



*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	<b>Issue:</b>	Nursing Facility Discharge
<b>Decision Date:</b>	4/20/2022	<b>Hearing Date:</b>	04/11/2022
<b>Nursing Facility's Rep.:</b>	Katie Morris; Janice Lindblom; Karen Duke	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center		

## Authority

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

## Jurisdiction

Through a 30-Day Notice of Intent to Discharge dated March 15, 2022, Bay Path Rehab & Nursing Center ("the facility") informed the appellant of its intent to discharge him to a location "TBD" on April 13, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on March 28, 2022 (see 130 CMR 610.015(B) and Exhibit 1). Notification of intent to discharge or transfer an individual from a nursing facility is a valid basis for appeal (130 CMR 610.032).

## Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge him because "the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident and the health of the individuals in the facility would otherwise be endangered."

## Issue

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

## Summary of Evidence

The executive director and two social workers from the facility appeared at hearing via telephone and offered the following testimony: on March 13 or March 14, 2022, there was an incident between the appellant and another resident of the facility. The appellant went out to dinner with family in the evening and upon his return to the facility, provided alcohol to another resident. Alcohol is only allowed at the facility with a doctor's order. There have been no other incidents involving the appellant and other residents. The appellant was admitted to the facility on December 26, 2020 with a primary diagnosis of hydrocephalus. He is independent with all activities of daily living (ADLs). The facility did not provide any documentation or clinical records.

The facility representatives stated that for discharge planning, the appellant has been approved for the Moving Forward Plan (MFP) Waiver with MassHealth. The Waiver has assigned him a caseworker who will help him return to the community and find an apartment. The MFP Waiver had not been able to locate an apartment for him yet. In its discharge notice, the facility did not name a discharge location, only stated it was "TBD" (to be determined). The facility representatives stated that they do not have a discharge location for him and it is not safe to discharge him without the support of the MFP Waiver. The facility stated that it had considered a rooming house in a nearby town, but the facility had not contacted the rooming house. One of the social workers testified that the appellant needs more oversight than just a rooming house. The facility stated it is not looking to discharge him without the support that he needs in the community.

The appellant admitted that he provided another resident with alcohol. The other resident was going through a difficult time and had asked the appellant for the alcohol. The appellant did not drink any of the alcohol himself. He understood that he should not have done it and would not do it again.

The facility acknowledged that this was not regular behavior for the appellant and he is okay to remain in the facility at this time. The facility would be following up with the MFP Waiver to help find the appellant an apartment in the community. The facility believes he will be happier in his own apartment at this point.

## Findings of Fact

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

1. On March 15, 2022, the facility issue a discharge notice seeking to discharge the appellant to a location to be determined on April 13, 2022 (Exhibit 1).
2. The reasons for the discharge stated on the notice are that the safety of individuals in the nursing facility is endangered and the health of individuals in the nursing facility would otherwise be endangered (Exhibit 1).
3. The notice does not state a discharge location (Exhibit 1).

4. The appellant filed a timely appeal of the notice on March 28, 2022 (Exhibit 2).
5. The facility did not provide any documentation or clinical records (Testimony).
6. At hearing, the facility acknowledged that it did not have a discharge location and it would not be safe to discharge the appellant without the appropriate support (Testimony).
7. Shortly before the discharge notice was issued, the appellant provided alcohol to another resident of the facility. There have been no other incidents involving the appellant and other residents. (Testimony).

## Analysis and Conclusions of Law

A nursing facility may only discharge or transfer a resident for one of six reasons:

- (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; or
- (6) the nursing facility ceases to operate.

130 CMR 610.028(A); see also 130 CMR 456.701(A). (Emphasis added).

Additionally, pursuant to 130 CMR 610.028(B),

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(3) or (4).**

(Emphasis added).

130 CMR 610.028(C) in relevant parts states:

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, if the resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands:

- (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...**

(Emphasis added).

The nursing facility here has moved to discharge the appellant because it determined that the safety of individuals in the nursing facility is endangered and the health of individuals in the nursing facility would otherwise be endangered. In support of its action, the facility points to one isolated incident in which the appellant provided one other resident with alcohol. The facility did not provide any records of the incident and testified that there have not been any other incidents involving the appellant and other residents. The facility acknowledged that this was not typical behavior of the appellant and he was okay to remain in the facility. Based on testimony, the facility has not adequately demonstrated that there is no reasonable solution short of discharge. The testimony of the facility and the appellant do not support a finding that a transfer or discharge is necessary for the reasons cited in the facility's notice of intent to discharge.

Additionally, the notice in this matter is deficient. The notice does not contain "the location to which the resident is to be discharged or transferred," as required by 130 CMR 610.028(C)(4). Instead, the facility stated that the discharge location was "TBD." The facility acknowledged that it did not have a discharge location and it would not be safe to discharge the appellant without adequate supports.

When the discharge is because the safety of individuals in the nursing facility is endangered or the health of individuals in the nursing facility would otherwise be endangered, pursuant to 130 CMR 610.028(B)(2) the clinical record needs to include documentation by the physician supporting the necessity of the discharge. The nursing facility has failed to provide documentation made by a physician supporting that the discharge is necessary. The facility has not provided any of the appellant's clinical records.

Furthermore, discharge is prevented under the terms of G. L. c. 111, § 70E. Under that section, "[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." The facility has not named any discharge location and testified that it would not be safe to discharge the appellant without adequate supports, which have yet to be set up.

For these reasons, the appeal is approved.

## **Order for the Nursing Facility**

Rescind the 30-Day Notice of Intent to Discharge Resident dated March 15, 2022.

## **Implementation of this Decision**

If the appellant experiences problems with the implementation of this decision, then the appellant 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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

Bay Path Rehab & Nursing Center, Attn: Janice Lindblom, 308 Kingstown Way, Duxbury, MA 02332