

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2206415
<b>Decision Date:</b>	9/21/2022	<b>Hearing Date:</b>	09/02/2022
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appellant Representative:**



**Nursing Facility Representative:**

None



*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>	Expedited Nursing Facility Discharge
<b>Decision Date:</b>	9/21/2022	<b>Hearing Date:</b>	09/02/2022
<b>Nursing Facility Rep.:</b>	None	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

## 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 of Intent to Transfer Resident with Less than 30 Days' Notice (Notice of Transfer) dated August 5, 2022, the Lifecare Center of Stoneham ("the nursing facility") notified Appellant that it was planning to transfer him to the Melrose Wakefield Hospital because it was "necessary for the resident's welfare and the resident's needs cannot be met by the facility." See Exh. 1. Appellant filed a timely appeal with the Board of Hearings (BOH) on August 26, 2022. See Exh. 2; 130 CMR 610.015(C). Transfer of a nursing facility resident is a valid ground for appeal. See 130 CMR 610.032(C); see also 130 CMR 610.012(5).

BOH scheduled a Fair Hearing for the Appellant on September 2, 2022. See Exh. 3; see also 130 CMR 610.015(F). Appellant, through his attorney, appeared at the hearing via telephone. Despite multiple attempts to contact the nursing facility, there was no representative from the facility available to appear for the hearing.<sup>1</sup> On September 7, 2022, BOH sent the nursing facility a "Notice of Default and Order to Show Cause." See Exh. 5. The notice informed the facility that BOH would issue a favorable decision to the resident, unless the facility, within 10 days of the notice, submitted good cause for its failure to attend the hearing. Id. The nursing facility did not respond or submit

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<sup>1</sup> At the scheduled hearing time, BOH called the nursing facility and left two voicemails for Kim O'Connor, Administrator, who was reportedly not at the facility at the time of the hearing. BOH also requested to speak with Kim Lovering, the facility social worker involved with the transfer process, but was informed she was also not at the facility at the time of the hearing.

documentation of good cause to BOH within the 10-day deadline.

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all nursing facility residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. MassHealth 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 the Nursing Facility Manual regulations at 130 CMR 456.000 et seq. and the Fair Hearing Rules at 130 CMR 610.000 et seq. As the nursing facility did not appear to dispute Appellant's challenge to its intended notice of transfer, a ruling in Appellant's favor is warranted by law. (See, e.g., 130 CMR 610.062(B) and (E) (listing the responsibilities of a skilled nursing facility in a Fair Hearing); 130 CMR 610.048(B) (discussing the adverse consequences that befall a party for its failure to appear at a Fair Hearing); 130 CMR 610.049 (listing negative consequences of a party's failure to prosecute a Fair Hearing).)

## Order for Nursing Facility

Rescind the Notice of Intent to Transfer Resident dated August 5, 2022. Do not transfer Appellant pursuant to this notice. If Appellant has already been transferred pursuant to the August 5, 2022 notice, the facility is ordered to re-admit Appellant to the next available bed, unless Appellant has agreed to such transfer. See 130 CMR 610.030(C).

## 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.

## 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.

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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc: Respondent: LifeCare Center of Stoneham, Attn: Administrator, 25 Woodland Rd.,  
Stoneham, MA 02180

Appellant Attorney: [REDACTED]



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