

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2207353
<b>Decision Date:</b>	11/1/2022	<b>Hearing Date:</b>	10/21/2022
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**  
*Pro se*

**Appearances for Nursing Facility:**  
Krystal Gagnon, LSW, Director of Social Services, Parsons Hill Rehab. & Health Care Center ("Parsons Hill");  
Roland Perrin, Business Office Manager, Parsons Hill;  
Norma B. Mullings, Administrator, Parsons Hill



*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>	Nursing Facility Discharge – 30 Days
<b>Decision Date:</b>	11/1/2022	<b>Hearing Date:</b>	10/21/2022
<b>Nursing Facility Rep.:</b>	Krystal Gagnon, LSW, <i>et. al.</i>	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<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 dated September 16, 2022, Parsons Hill Rehabilitation & Health Care Center (“the nursing facility”) informed Appellant that it sought to discharge him from the facility because he failed, after reasonable and appropriate notice, to pay for services rendered at the facility. See 130 CMR 610.028 and Exhibit 1. On September 30, 2022, Appellant filed a timely appeal of the discharge notice. See 130 CMR 610.015(B) and Exhibit 1. An attempt to discharge a nursing facility resident is valid grounds for appeal. See 130 CMR 610.032(C).

## Action Taken by Nursing Facility

The nursing facility sought to discharge Appellant because it determined that he failed, after reasonable and appropriate notice, to pay for his nursing facility care.

## Issue

The issue on appeal is whether the nursing facility met the statutory and regulatory requirements set forth under 130 CMR §§ 610.028, 610.029 and 42 CFR Ch IV, subpart B, 483.12(a) to discharge Appellant from the nursing facility pursuant to its September 16, 2022 discharge notice.

## Summary of Evidence

At the hearing, the nursing facility was represented by its administrator, business office manager, and director of social services (collectively “the facility representatives”). Based on testimony and documentary submissions, the nursing facility presented the following information:

Appellant is a MassHealth member, under the age of 65, and is a current resident of the Parsons Hill Rehabilitation & Health Care Center (“the nursing facility”). Appellant was admitted to the facility approximately 18 months ago after having been hospitalized with a diagnosis of altered mental state in the setting of metabolic encephalopathy. See Exhibit 3, pp. 1, 65. From the hospital, he was transferred to the facility to receive short-term rehabilitation under his Medicare benefit, but was subsequently converted to long-term care, with a MassHealth coverage start date of February 1, 2022. See id. His admitting diagnoses include: chronic obstructive pulmonary disease (COPD), acute and chronic respiratory failure with hypoxia, weakness, aphasia, morbid obesity, obstructive sleep apnea, hemiplegia and hemiparesis following cerebral infection, congestive heart failure, hyperlipidemia, metabolic encephalopathy, bipolar disorder, diabetes, major depressive disorder, and dependence on supplemental oxygen. Id. at 2-3.

The nursing facility representatives testified that the facility seeks to discharge Appellant to the community because he has failed to pay his monthly patient paid amount (PPA), despite giving him numerous opportunities and notice to pay the outstanding balance. As such, Appellant has accrued over \$10,000 in unpaid nursing home services. The facility representatives testified that from the outset of his admission, and during the pendency of his MassHealth application, Appellant was informed that he would be liable for a portion of his nursing facility care and as such, advised to save his social security income to pay his PPA obligation. The Administrator testified that despite such conversations, Appellant did not save his money, but rather spent all his income on food, friends, his ex-wife, and their child. The social worker also testified that prior to his admission, Appellant resided at a rest home where he was familiar with the concept of paying a PPA and was aware this obligation existed here. In July 2022, MassHealth notified Appellant that he was approved for MassHealth, effective February 1, 2022 with a monthly PPA obligation of \$1,021.70. Appellant’s PPA is comprised of his gross social security income, less the permitted deductions and expenses, including a deduction for mandated child-support.

Once his PPA was established, the facility provided Appellant each month with an updated invoice. The administrator testified that she approached Appellant on numerous occasions to collect the outstanding balance, including a final attempt on September 12, 2022, during which Appellant told her that he spent his money on “school clothes for his child” and that he “will not be paying and will be leaving soon.” Id. at 20. According to the most recent statement, Appellant owes a total of \$10,217.00 for nursing home care provided from February 1, 2022 through October 31, 2022. Id. at 4-5. Appellant has not made a single payment for his care and the full amount is owed.

On September 16, 2022, the facility presented Appellant with a “30-Day Notice of Intent to Discharge Resident.” Id. at 8-12. The notice informed Appellant that the facility sought to

discharge him to a nearby “Days Inn and Suites” on October 17, 2022 based on the reason that he “failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” Id. at 10. The administrator testified that she offered Appellant a payment plan wherein he could pay low monthly installments to address his past-due balance, so long as he began paying his current monthly invoices in-full going forward. Appellant, however, did not express any willingness to cooperate with this plan.

Finally, the facility testified that the discharge location is safe and appropriate for Appellant. Appellant does not receive any rehabilitation at the facility. Referring to the facility progress notes, the social worker testified that Appellant did not require skilled nursing care to remain at the facility. Id. at 13-65. The progress notes primarily indicate that Appellant receives assistance with medication and reminders to use his oxygen and his CPAP machine, which he is frequently reported being noncompliant in using. See id. The social worker testified that Appellant is his own decision maker and has physician approval to leave the facility through its leave of absence (LOA) policy. According to a sign-out sheet, Appellant took numerous independent LOAs between August and October 2022 with no issues. See id. at 6, 45. The social worker also pointed to the fact that Appellant was seeking to book a round trip flight to California to attend the funeral of his cousin and would be capable of going if cleared by his physician. Id. at 17, 128. Referring to quarterly social service assessments performed throughout 2022, the facility social worker testified that Appellant was consistently found to be alert and oriented, stable on medication, and without any cognitive deficits (scoring a 15/15 in each “brief interview for mental status” (BIMS) assessments). Id. at 14, 42, 122.

Appellant appeared at the hearing by telephone and acknowledged that he owed money for his nursing facility care. Appellant testified that despite being aware of his PPA, he has not paid the facility because he has a nine-year-old child that requires expenses and his ex-wife will not let him see his child if he does not pay. Appellant explained that he did not receive notice of his PPA obligation until July or August, so was not aware of the past due amounts. Appellant explained that “they do a great job” taking care of him at the facility and he does not wish to leave. He requires oxygen, which he receives at the facility. When asked why he has not made any payments since receiving the PPA notice, Appellant acknowledged that he does not have any excuse, as his child support responsibility is addressed separately from his PPA. With respect to the facility’s proposed payment plan, Appellant responded that he would pay \$500 per month going forward, so that he can get his child through school, and would start paying the full invoices in 2023.

The facility representatives reiterated that Appellant’s PPA is the remaining amount of income *after* factoring his child support obligations and other permitted deductions, and despite all efforts, Appellant has been unwilling to pay the nursing facility for services rendered.

## **Findings of Fact**

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

1. Appellant is a MassHealth member, under the age of 65, and is a current facility resident.
2. Appellant's diagnoses include: COPD, acute and chronic respiratory failure with hypoxia, weakness, aphasia, morbid obesity, obstructive sleep apnea, hemiplegia and hemiparesis following cerebral infection, congestive heart failure, hyperlipidemia, metabolic encephalopathy, bipolar disorder, diabetes, major depressive disorder, and dependence on supplemental oxygen.
3. In July 2022, MassHealth notified Appellant that he was approved for MassHealth long-term care services with a monthly PPA obligation of \$1,021.70 effective February 1, 2022.
4. Appellant's PPA is comprised of his gross social security income, less the permitted deductions and expenses, including a deduction for mandated child-support.
5. Prior to receiving his MassHealth/PPA approval notice, the facility informed Appellant on numerous occasions that he would be liable for a portion of his nursing facility services and as such, advised to save his social security income.
6. Appellant did not retain any of his income, despite receiving notice that he would need it to pay for his nursing home care.
7. After receiving the MassHealth approval/PPA notice, the facility provided Appellant with updated invoices each month informing him of his outstanding balance.
8. The facility Administrator approached Appellant on numerous occasions to collect the outstanding balance, including a final attempt on September 12, 2022, during which Appellant told her that he spent his money on "school clothes for his child" and that he "will not be paying and will be leaving soon."
9. Appellant owes a total of \$10,217.00 for nursing home care provided from February 1, 2022 through October 31, 2022.
10. As of the hearing date, Appellant had not made a single payment for his care and the full amount is owed.
11. On September 16, 2022, the facility presented Appellant with a "30-Day Notice of Intent to Discharge Resident," stating that it sought to discharge him to a nearby hotel on October 17, 2022 because he "failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility."
12. The facility Administrator proposed a payment plan to help Appellant re-pay the outstanding balance owed; however, Appellant did not agree to this plan.

13. Appellant receives assistance with medications, oxygen, and his C-PAP machine, but he does not receive rehabilitation and he does not have a skilled nursing care need.
14. Through his physician's permission, Appellant has taken numerous independent LOAs from the facility without issue.
15. Appellant's 2022 quarterly social service assessments consistently found Appellant to be alert and oriented, stable on medication, and without any cognitive deficits (scoring 15/15 on his BIMS assessments).

## 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. MassHealth has enacted regulations that mirror the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 et seq. and in the Fair Hearing Rules at 130 CMR 610.000 et seq.

MassHealth regulations at 130 CMR 610.028 set forth the requirements that a nursing facility must meet to initiate a transfer or discharge, and provides in part as follows:

(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.

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

When the transfer or discharge is sought due to the circumstances specified in subsections (1) through (5), above, as it is here, the resident's clinical record must be documented.<sup>1</sup> See 130 CMR

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<sup>1</sup> When the basis for the discharge is due to reasons stated under subsections (1) through (4), above, the documentation must be made by a physician. However, in this case, where the basis for the discharge is due to Appellant's failure to pay under subsection (5), above, the regulation simply requires that the clinical record contain

610.028(B)(2). Furthermore, the nursing facility must demonstrate that it has complied with the requirements under M.G.L. c.111, §70E, which states the following:

***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.***

Based on the applicable laws and regulations, Appellant failed to demonstrate that the facility erred in issuing its September 16, 2022 discharge notice. The facility cited proper grounds for discharging a resident under 130 CMR 610.028(A)(5); specifically, that Appellant failed to pay, after reasonable and appropriate notice, to pay for his stay at the facility. The evidence indicates that prior to receiving his MassHealth approval/PPA notice, the facility informed Appellant on multiple occasions that he needed to retain his social security income to pay for the cost of his nursing home care, as would be determined by MassHealth. In July of 2022, MassHealth informed Appellant that his patient liability (PPA) was \$1,021.70 per month, effective February 1, 2022. Once his PPA was established, the facility presented Appellant with monthly invoices, informing him of his outstanding balance. As of the hearing date, Appellant had not made a single payment to the facility and accrued an outstanding balance of \$10,217.00 for services rendered from 2/1/2022 through 10/31/2022. See Exh. 3, pp. 4-5. Appellant testified that despite being aware of his patient payment obligation, he has not retained any of his income to pay for his care, nor has he agreed to cooperate with the facility's proposed payment plan. The grounds for the intended discharge have been documented in Appellant's clinical record as required under 130 CMR 610.028(B).

In addition, the facility satisfied the requirements of G.L. c.111, § 70E, above, by discharging Appellant to a nearby hotel. The nursing facility demonstrated that while Appellant receives assistance with medications and oxygen, he does not require any skilled level of nursing care that would otherwise prohibit him from entering the community. Id. There is ultimately no evidence to conclude the facility failed to ensure a safe and orderly discharge to a safe and appropriate location. See G.L. c.111, § 70E

Based on the foregoing, the appeal is DENIED.

## **Order for Nursing Facility**

Continue with the discharge plan as stated in the September 16, 2022 notice. Discharge Appellant no sooner than 30 days from the date of this decision pursuant to 130 CMR 610.030(A).

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documentation of the basis for the 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.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, 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: Attn: Administrator, Parsons Hill Rehabilitation & Health Care Center, 1350 Main Street Worcester, MA 01603

Krystal Gagnon, LSW, Director of Social Services, Parsons Hill Rehabilitation & Health Care Center, 1350 Main Street Worcester, MA 01603