

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2208914
<b>Decision Date:</b>	1/10/2023	<b>Hearing Date:</b>	12/30/2022
<b>Hearing Officer:</b>	Christine Therrien		

Appearance for Appellant:  
Pro se

Appearance for Nursing Facility:  
Mary Andrea, Social Worker  
Eddie Mahoney, Administrator



*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>	1/10/2023	<b>Hearing Date:</b>	12/30/2022
<b>Nursing Facility's Rep.:</b>	Mary Andrea, Social Worker; Eddie Mahoney, Administrator	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Telephonic		

### 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 Discharge Resident with 30 Day Notice, dated 11/14/22, the appellant was notified that Plymouth Rehabilitation & Health Center (Nursing Facility) intends to discharge the appellant to the Christ Church homeless shelter on 12/14/22. The notice states that the reasons for the discharge is: The safety of individuals in the facility is endangered by the resident's being here and the health of the individuals in the facility would be endangered by the resident's being here (Exhibit 1). The appellant filed a timely appeal on 12/1/22 (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 Nursing Facility

The facility intends to discharge the appellant out of the nursing facility.

### Issue

The appeal issue is whether the Nursing Facility can proceed to discharge appellant, pursuant to 130 CMR 610.028.

## Summary of Evidence

The nursing facility social worker testified that the appellant was admitted to the nursing facility most recently in [REDACTED], he has been admitted to this facility six times in the previous three years. The social worker testified that the appellant was admitted from the hospital because he is unable to manage his multiple medical conditions. (Exhibit 4). The social worker testified that the appellant can leave the facility during the day and on 11/11/22 the appellant brought alcohol “nips” back to the facility which he sold to another resident who should not be drinking alcohol. (Exhibit 4). The social worker testified that there is a room available at rest home in Brockton, but the appellant did not want to be referred to this option. The social worker testified that the appellant is being discharged to the Christ Church shelter in Plymouth because it is the only available location in Plymouth. The social worker testified that the appellant is on several housing lists, but he refuses to move out of Plymouth, so his housing options are limited.

The appellant testified that he was living with his sister who died, prior to entering the facility this time. The appellant testified that he does not want to leave the Plymouth area because he does not have transportation and cannot get around. The appellant testified that the last time he was in a homeless shelter he ended up in the hospital. The appellant testified that he knows he will die soon and would like to stay in the nursing facility. The appellant stated that the shelter is only open from 6pm-6am so he has no place to go during the day. The appellant gets around with a walker and a wheelchair.

The social worker testified that there are Adult Day Health programs where the appellant can go during the day. The social worker testified that the facility did not have the appellant apply for an Adult Day Health program. The social worker testified that no other services are set up for the appellant upon discharge.

The appellant’s clinical record indicates he has multiple diagnosis including hypertension, chronic viral hepatitis C, Type 2 diabetes, Cirrhosis of the liver, and COPD. The appellant’s clinical record indicates he was discharged from physical therapy with a discharge plan to undergo an at home exercise program. The appellant’s records also document an 10/18/22 meeting with the transitional coordinator who reported the barriers to returning to the community include no housing and no caregiver. The note states the appellant was denied for a waiver program due to income. (Exhibit 4).

The social worker also noted that the appellant has a large outstanding balance due the facility because he does not pay his monthly patient paid amount.

## Findings of Fact

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

1. The appellant was admitted to the nursing facility in [REDACTED].
2. The appellant has been admitted to this facility six times in the previous three years.
3. The appellant was admitted from the hospital because he was unable to manage his multiple

medical conditions. (Exhibit 4).

4. The appellant can leave the facility during the day.
5. On 11/11/22 the appellant brought alcohol “nips” back to the facility which he sold to another resident who should not consume alcohol. (Exhibit 4).
6. There is a room available at rest home in Brockton, but the appellant has no transportation and cannot get around, so he does not want to move out of Plymouth.
7. The appellant is being discharged to the Christ Church shelter in Plymouth because it is the only available location in Plymouth.
8. The appellant is on several housing lists.
9. The appellant was living with his sister who died, prior to entering the facility this time.
10. The last time the appellant was in a homeless shelter he ended up in the hospital.
11. The shelter is only open from 6pm-6am.
12. The appellant has no place to go during the day.
13. The appellant uses a walker and a wheelchair.
14. There are Adult Day Health programs where the appellant can go during the day.
15. The facility did not have the appellant apply for an Adult Day Health program.
16. No other services are set up for the appellant upon discharge.
17. The appellant’s clinical record indicates he has multiple diagnosis including hypertension, chronic viral hepatitis C, Type 2 diabetes, Cirrhosis of the liver, and COPD.
18. The appellant’s clinical record indicates he was discharged from physical therapy with a discharge plan to undergo an at home exercise program.
19. The appellant’s record shows a 10/18/22 meeting with the transitional coordinator who reported the barriers to returning to the community include no housing and no caregiver and that the appellant was denied for a waiver program due to income.

## **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 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>1</sup>

“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.

“Transfer” — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;
- (2) a Medicaid-certified bed to a Medicare-certified bed;
- (3) a Medicare-certified bed to a Medicaid-certified bed;
- (4) one nursing facility to another nursing facility; or
- (5) a nursing facility to a hospital, or any other institutional setting.

A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

Based on the above definition, the nursing facility is attempting to discharge the appellant to a homeless shelter in the community via its notice dated 11/14/22. (Exhibit 1 and 130 CMR 456.002).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations specifically lists the only circumstances and conditions that allow for transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice -- if these requirements are not met, the facility must permit the resident to remain in the facility.

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<sup>1</sup> The regulatory language in the MassHealth Nursing Facility Manual often has identical (or near-identical) regulatory counterparts which can be found within the Commonwealth's Fair Hearing Rules or the federal government regulations; in this case, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that in 130 CMR 456.002. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted or required.

The regulation at 130 CMR 456.701(A) and (B) reads 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 MassHealth 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).
- (Emphasis added.)

M.G.L. c.111, §70E sets forth the obligation of the nursing facility when discharging a resident. §70E states that “[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 nursing facility plans to discharge the appellant to a homeless shelter with no other services set up. The appellant has been admitted to the facility six times over the last three years for his inability to manage his multiple medical conditions. The appellant’s meeting on 10/18/22 with the transitional coordinator indicated that in addition to homelessness a barrier to the appellant’s transition to the community is a lack of a caregiver. The nursing facility has not sufficiently prepared the appellant for his transition to the community such that it will be safe and orderly. Additionally, a homeless shelter is not an appropriate discharge location place given the appellant’s need for a caregiver to manage his medical conditions and prevent re-admission to a nursing facility. For these reasons the appellant’s appeal is approved.

## Order for MassHealth

Rescind the 11/14/22 notice of intent to discharge or transfer. Do NOT discharge or transfer the appellant pursuant to this notice.

## **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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Christine Therrien  
Hearing Officer  
Board of Hearings

cc: Ed Mahoney, Administrator, Plymouth Rehab, 123 South Street, Plymouth, MA 02360.