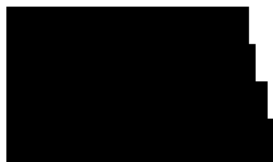


# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2302141
<b>Decision Date:</b>	4/21/2023	<b>Hearing Date:</b>	04/10/2023
<b>Hearing Officer:</b>	Rebecca Brochstein	<b>Record Closed:</b>	04/19/2023

**Appearances for Appellant:**



**Appearances for Nursing Facility:**

Thomas Lynch, Administrator  
Azra Kreso, Finance Coordinator  
Amber Letina, Regional Finance Director  
Elizabeth Bohan, Social Worker



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing home discharge
<b>Decision Date:</b>	4/21/2023	<b>Hearing Date:</b>	04/10/2023
<b>Nursing Facility's Reps.:</b>	Thomas Lynch Azra Kreso Amber Letina Elizabeth Bohan	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Remote)		

## Authority

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

## Jurisdiction

By a notice dated February 17, 2023, Medford Rehabilitation and Nursing Center (the facility) informed the appellant of its intent to discharge her for nonpayment (Exhibit 1). The appellant filed a timely appeal on March 16, 2023 (130 CMR 610.615). After hearing on April 10, 2023, the record was held open for the facility to submit additional evidence and for the appellant to respond. Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal (130 CMR 610.032).

## Action Taken by the Nursing Facility

The facility informed the appellant of its intention to discharge her for nonpayment.

## 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 nursing facility administrator appeared at the hearing telephonically along with three other members of the facility's staff, and testified as follows: The appellant is a resident of the facility and was previously approved for MassHealth long-term care coverage. MassHealth set the appellant's monthly patient-paid amount (PPA) at \$2,031.20. However, the appellant has underpaid her PPA each month; instead of the full PPA of \$2,031.20, she makes payments of only \$900. At present, she owes the facility more than \$16,000 due to these underpayments. The appellant reported that she needs the remainder to pay for a storage unit for her belongings, as she plans to return to the community. The administrator testified that the appellant "makes a good faith partial payment" each month, but that the facility cannot afford to absorb the shortfall. He noted that if the facility condones the appellant's failure to pay her full PPA it will have to make the same accommodation for all of its residents.

On February 17, 2023, the facility notified the appellant of its intent to discharge her for nonpayment of the full PPA. The notice sets forth a discharge location of a nursing facility in Ghent, NY. The administrator testified that the facility "put out a referral" for other nursing homes that would be willing to take the appellant and that this one agreed to accept her.<sup>1</sup> He stated that the New York facility offers the same level of care and understands the appellant's clinical needs. In response to the hearing officer's questions, he testified that no one from his facility has visited the New York facility in person. He also stated that he does not know whether any arrangements have been made on the appellant's behalf to secure Medicaid or other payment sources for the New York facility.

The appellant appeared at the hearing telephonically and testified on her own behalf. She stated that she does not know New York "at all," adding that her family all lives locally and would have a hard time visiting her in an out-of-state facility. She testified that she is hoping to be discharged from the nursing home soon and does not want to lose her storage unit or the items contained in it. The appellant stated that if she is transferred to another facility she will have the same problem, and that she would rather stay in the current facility and pay what she can here. She stated that she understands she owes the facility money and intends to pay her bill, adding that she appreciates the care the facility staff have provided her.

The record was held open after hearing for the facility to submit a copy of the clinical record and for the appellant to respond. The facility submitted the record into evidence; the appellant did not file a response. See Exhibit 4.

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<sup>1</sup> The administrator testified that the facility previously attempted to discharge the appellant to her sister's house, but that the sister subsequently refused to accept her.

## **Findings of Fact**

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

1. The appellant is a resident of a nursing facility.
2. The appellant was previously approved for MassHealth long-term care benefits with a patient-paid amount of \$2,031.20.
3. The appellant has been paying \$900 per month to the facility rather than the full PPA. She owes more than \$16,000 because of the monthly underpayments.
4. On February 17, 2023, the facility notified the appellant of its intent to discharge her for nonpayment of the full PPA. The discharge location is another nursing facility in Ghent, NY.
5. The appellant filed a timely appeal on March 16, 2023.
6. No one from the current facility has seen the New York nursing home in person. No arrangements have been made to secure Medicaid or another funding source on the appellant's behalf.
7. The appellant has no connection to the geographic area where the new facility is located. Her family lives locally and would not be able to easily visit her there.
8. The nursing facility has not provided sufficient preparation and orientation to the appellant to ensure that she is discharged to a safe and appropriate location.

## **Analysis and Conclusions of Law**

The requirements for a nursing facility-initiated transfer or discharge are set forth at 130 CMR 456.429, 456.701 through 456.704, and 610.028 through 610.030. The regulation permits transfer or discharge only when one of the following circumstances is met: (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.

In this case, the facility premised its notice of intent to discharge on the appellant's failure to pay her full patient-paid amount. The appellant does not dispute the allegation of nonpayment, but maintains that she needs to keep a portion of her monthly income to cover storage expenses in

preparation for her eventual return to the community. While there is no question that the appellant has failed to meet her financial obligation to the facility and that discharge may be justified on this basis, the facility must still persuasively demonstrate the appropriateness of the discharge location. It has not done so here.

Under G. L. c. 111, § 70E, “[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.” Here, the facility proposes to discharge the appellant to another nursing home in New York. However, the record includes scant details about the facility itself, with only vague assurances by the current facility that it will meet the appellant’s clinical needs. There is no indication of any meaningful discharge planning to orient the appellant to the new facility, which is in a location that is unfamiliar to the appellant and far away from her family. Equally important, it does not appear that anyone has taken steps to ensure the appellant will have a funding source for this out-of-state placement. For these reasons, I do not find, as required by the statute above, that the “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 notice of intent to discharge must therefore be rescinded.

This appeal is approved.

### **Order for the Nursing Facility**

Rescind the 30-day notice of intent to discharge the appellant.

### **Implementation of this Decision**

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further 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.

## **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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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Administrator  
Medford Rehabilitation & Nursing Center  
300 Winthrop Street  
Medford, MA 02155