

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2303215
<b>Decision Date:</b>	5/30/2023	<b>Hearing Date:</b>	05/11/2023
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**

Pro se

**Appearance for Skilled Nursing Facility:**

Tara Dewitt, Administrator with Glen St.  
Martin, Business Office Manager



*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>	SNF Discharge
<b>Decision Date:</b>	5/30/2023	<b>Hearing Date:</b>	05/11/2023
<b>SNF's Rep.:</b>	Tara Dewitt	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Tewksbury MEC		

### 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 Appellant dated [REDACTED] 2023, the skilled nursing facility, Cedar View Rehabilitation and Health Care Center, ("the facility") informed Appellant of the facility's intent to discharge to her home for failing, after reasonable and appropriate notice, to pay for her stay (Exhibit A). An appeal was timely filed on April 21, 2023 (130 CMR 610.015(B); Exhibit A). Challenging a notice of intent to discharge from a skilled nursing facility constitutes valid grounds for appeal (130 CMR 610.032(C)).

### Action Taken by the Nursing Facility

The nursing facility notified Appellant that it seeks to discharge her due to failure to pay.

### Issue

The appeal issue is whether or not the nursing facility can discharge Appellant under the notice of [REDACTED] 2023 pursuant to the governing state and federal regulations including, but not limited to 130 CMR 610.028 and 130 CMR 456.701.

## Summary of Evidence

Both parties appeared together by telephone. Prior to hearing, the facility filed a packet of documentation (Exhibit B). Appellant's only filing was her Fair Hearing Request (Exhibit A).

The facility representatives testified that Appellant's 100 days of SNF Medicare coverage ended on February 8, 2023. The facility provided a written timeline indicating multiple contacts with Appellant since that time to discuss with her the amount of a growing arrearage for uncovered costs for her care and treatment and the need for payment (Exhibit B, page 5). The facility representatives testified that as of [REDACTED] 2023, the arrearage totaled \$42,190.19 which remained unpaid as of the date of hearing.

The facility acknowledged that Appellant has made some significant payments, but they have been sporadic. Appellant has also refused to address the facility's concerns over her ability to make future payments. In particular, the facility has asked Appellant to verify the amount she has available in her 401K and how much she could withdraw on a monthly basis without an undue penalty. According to the facility, Appellant has stated that she is willing to provide them with the information, but has repeatedly failed to do so.

Upon questioning by the hearing officer, the facility representatives testified that as stated in the notice, the intent is to discharge Appellant to her home with VNA or other appropriate services. The facility representatives testified that Appellant was admitted to their facility for short-term rehabilitation relative to wound care affecting Appellant's use of her prosthetic leg. The facility submitted a two-page progress note from a physician at the facility relative to a follow-up appointment on [REDACTED] 2023. According to the note, the physician reviewed Appellant's history of illness and performed a general examination with an assessment. The physician noted that Appellant's recent wounds had healed (Exhibit B, page 7). The physician concluded with the statement: *"in overall review of the case patient potentially could be discharged home with appropriate services with close follow-up"* (Exhibit B, page 8).

Appellant testified that she intends to pay the facility and does not want to "stiff" anyone. Appellant testified that she is very proud that she has been able to manage independently in the community. Appellant explained that she lives very frugally with no debt and has worked hard to invest her money over the years. She explained that she does not want to make withdrawals from her 401(k) account that would trigger a penalty. Appellant noted that last month she paid the facility \$10,000. Appellant also testified that during the Covid pandemic she could not get proper care

and she could not find home caregivers to help her in the community. She explained that she does not want to be discharged from the facility until she believes she is fully rehabbed, but once that occurs, she fully intends to return home.

There was a discussion between the parties during which the facility representatives explained to Appellant that they need something concrete to show their corporate office that Appellant has the ability to pay a certain amount each month. The facility representatives speculated that if they had a verified understanding of Appellant's future ability to pay, they could possibly work something out, but they could not simply rely on Appellant's verbal assurances.

## Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant was admitted to the facility on a short-term basis relative to wound care affecting Appellant's use of her prosthetic leg.
2. Appellant's 100 days of SNF Medicare coverage ended on February 8, 2023.
3. The facility has had multiple meetings with Appellant since February 8, 2023 to discuss the amount of a growing arrearage for uncovered costs for her care and treatment and the need for payment (Exhibit B, page 5).
4. As of [REDACTED] 2023, the arrearage totaled \$42,190.19 which remained unpaid as of the date of hearing.
5. Appellant has made some significant, but sporadic payments including a payment on [REDACTED] 20223 in the amount of \$10,000.00.
6. Appellant has refused to address the facility's concerns over her ability to make future payments.
7. Appellant has failed to verify the amount she has available in her 401K and how much she could withdraw on a monthly basis without an undue penalty.
8. The facility seeks to discharge Appellant to her home with VNA or other appropriate services.

9. A two-page progress note from a physician at the facility relative to a follow-up appointment on [REDACTED] 2023 indicates that the physician reviewed Appellant's history of illness and performed a general examination with an assessment.
10. The physician noted that Appellant's recent wounds had healed (Exhibit B, page 7).
11. The physician concluded with the statement: *"in overall review of the case patient potentially could be discharged home with appropriate services with close follow-up"* (Exhibit B, page 8).

## Analysis and Conclusions of Law

The issue on appeal is limited to whether the nursing facility is acting in compliance with federal and state law governing the discharge of nursing facility residents in its attempt to discharge Appellant.

Massachusetts's regulations at 130 CMR 610.028, which embody federal regulations at 42 CFR Ch. IV §483.12, require the following (emphasis supplied):

### *Notice Requirements Regarding Actions 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 the MassHealth agency 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 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).*

*(C) 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;*
- (5) a statement informing the resident of his or her right to request a hearing before the MassHealth agency, including:*
  - (a) the address to send a request for a hearing;*
  - (b) the time frame for requesting a hearing as provided for under 130 CMR 610.029; and*
  - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;*
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;*
- (7) for nursing facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 6041 et seq.);*
- (8) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. § 10801 et seq.);*
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal services office; and*
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal.*

*(D) As provided in 130 CMR 456.429: Medical Leave of Absence: Failure to Readmit, a nursing facility's failure to readmit a resident following a medical leave of absence will*

*be deemed a transfer or discharge (depending on the resident's circumstances). Upon determining that it will not readmit the resident, the nursing facility must issue notice to the resident and an immediate family member or legal representative, if the resident has made such a person known to the facility, in accordance with 130 CMR 456.701(A) through (C), 456.702: Time Frames for Notices Issued by Nursing Facilities, and 130 CMR 610.028 through 610.030.*

Appellant did not challenge the adequacy of the discharge notice. Upon review, the notice of [REDACTED] 2023 meets the requirements set forth at 130 CMR 610.028.

The nursing facility has set forth proper and adequate grounds to discharge Appellant. The facility has demonstrated that Appellant does owe a significant arrearage for services rendered to her and that the facility has repeatedly notified Appellant of the amount owed and the need to pay (130 CMR 600.028(A)(5)). Appellant does not deny the existence of the arrearage or that she has been repeatedly advised of the need to pay it. The fact that Appellant has made some payments on the arrearage and states her intent to ultimately pay does not erase the arrearage or the grounds for the discharge.

The physician's' note of [REDACTED] 2023 verifies that Appellant is fit for discharge to her home with in home services.

Upon this record, there is no basis in fact or law to deny the facility from proceeding on it's notice of intent to discharge dated [REDACTED] 2023. For the foregoing reasons, the appeal is DENIED.

## **Order for Nursing Facility**

Proceed with discharge pursuant to notice of [REDACTED] 2023; however, Appellant may not be discharged prior to thirty days from the date of this decision and appropriate in-home services must be in place at the time of 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.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]