

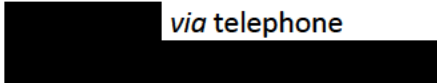
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2304851
<b>Decision Date:</b>	07/25/2023	<b>Hearing Date:</b>	07/06/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



*via telephone*

*via telephone*

**Appearance for Respondent:**

Stephanie Bruno, Administrator *via telephone*  
Ann MacDonald, Corporate A/R Specialist *via telephone*  
Gaylene Sulesky *via telephone*  
Tony Magno *via telephone*



*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>	07/25/2023	<b>Hearing Date:</b>	07/06/2023
<b>Respondent's Rep.:</b>	Stephanie Bruno <i>et al</i>	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center		

### 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 June 5, 2023, the respondent notified the appellant that it was seeking to discharge him from their nursing facility by [REDACTED] 2023 because it had determined that the appellant had “. . . failed, after reasonable and appropriate notice, to pay for (or [had] failed to have Medicare or Medicaid pay for) your stay at the nursing facility . . .” (See 130 CMR 610.028 - 610.030 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner, also on June 14, 2023. (See 130 CMR 610.015(B) and Ex. 1). A nursing facility-initiated transfer or discharge is valid grounds for appeal. (See 130 CMR 610.032(C)).

### Action Taken by the Respondent

The respondent notified the appellant of its intent to discharge him from its facility by [REDACTED] 2023, because it determined that the appellant had failed to pay for his stay at the facility after reasonable and appropriate notice.

## Issue

The appeal issues are whether the respondent was correct, pursuant to 130 CMR 610.028, in determining that the appellant should be discharged from the nursing facility and whether the nursing facility followed the correct procedures to allow them to discharge the appellant from the nursing facility.

## Summary of Evidence

The nursing facility accounts receivable specialist spoke first, referring to the resident notes and report that the facility submitted to the Board of Hearings. (See Ex. 4). The appellant arrived at the facility in [REDACTED] 2022. The previous facility had applied for MassHealth Long Term Care (LTC) benefits on the appellant's behalf, requesting payment beginning in July 2021. The appellant's LTC application was initially denied but eventually approved after an appeal to the Board of Hearings. Once the appellant had a patient paid amount (PPA), the nursing facility gave the appellant a bill and in the following months other bills. The facility did not receive payment. The appellant had a PPA of \$1,390.74 for December 2022, \$3,097.88 from January through March 2023, and \$3,268.98 from April 2023 through the present. (Ex. 4, p. 13).

In April, the accounts receivable specialist called the appellant to the office and spoke with him regarding the PPA and getting his income redirected to the facility. The appellant asked the facility to work with his sons B and R<sup>1</sup>, who were his powers of attorney. The facility spoke with B about getting the appellant's sources of income directed to the facility, but it took time. In the meantime, the facility continued to ask the appellant to pay his bill. The appellant did submit a check in the middle of April 2023 for about \$5,000 but it was returned by the bank for lack of funds. (Ex. 4, p. 13). At that time, the appellant owed quite a bit of money. (Id.). As of the invoice date of June 28, 2023, the appellant owed the facility \$13,011.60. (Id.). The facility has received five payments totaling \$7,479.72. (Id.). The accounts receivable specialist asserted that B redirected another payment.

The accounts receivable specialist stated that the facility has been working with the appellant and had many conversations trying to get him on track. The facility has also tried speaking with B and sent him a lot of emails. After finally speaking with both R and B, the facility offered the appellant a repayment agreement, which would be \$500 per month on top of the PPA, but the appellant and his sons would not agree to this because they did not have the money to pay this.

The facility administrator stated that she and others at the facility discussed discharge plans with the appellant on two occasions during the appellant's stay. The first was on March 15, 2023, in response to the appellant's request to be transferred. (Ex. 4, p. 17). The facility did find

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<sup>1</sup> Initials have been used for privacy reasons.

the appellant an available bed at another facility but then the appellant stated that he did not want to move. (Ex. 4, pp. 16-18). The second time was on [REDACTED] 2023, when, during the discussion of the appellant's outstanding bill, the appellant again indicated that he wanted to be discharged from the facility. (Ex. 4, p. 15). The facility arranged for a discharge to a hotel in another town. The facility got as far as giving the hotel the appellant's credit card and working to arrange companion and homemaker services with the local elder services organization, but the appellant changed his mind. (Ex. 4, pp. 14-15). It is this hotel which the facility identified as the place to which it would discharge the appellant in its discharge notice. (Ex. 1).

The appellant stated that, when he first arrived, a social worker at the facility warned him that he only had 12 days left on Medicare coverage then payment would become his responsibility. At that time, the appellant's MassHealth application was pending. The appellant was initially denied for being over the asset limit. The appellant stated that the application would be approved eventually but it was not at that time. MassHealth moves slowly. The appellant stated that, in his opinion, the facility should have asked him to start putting money aside as soon as he arrived so he would not build up a balance. He could have started putting his money into escrow or signed his income over to the facility at that time. The appellant did not hear about signing over his income until April. The social worker had told him that there was no possibility that MassHealth would approved his appeal and encouraged him to discharge himself so he would not owe any money. The appellant stated he told her that his MassHealth was going to be approved. The social worker called R, even though the appellant did not give her permission to do so.

The appellant stated that he declined the move to the hotel because, looking at the daily rates, he would not be able to stay there very long. The appellant stated that he can only move about 600 feet using a walker on a good day but often is not able to ambulate that well. The appellant stated that he did not think that he could function at a commercial hotel. The appellant had wanted to discuss a group home or assisted living facility. He spoke to the social worker, who suggested that he discharge to a homeless shelter. That social worker is gone now but was not helpful. The facility has not helped him tremendously with where he should go if he is discharged. The appellant stated that he would prefer not to stay at the facility but did not know where else to go other than moving to another part of the United States with a lower cost of living. Even so, the appellant stated that he could not envision a place where he could utilize his wheelchair. Even using his walker would be difficult. Grocery shopping would be hard. The appellant also has limited transportation options. The appellant apologized for the bad check. He did not intend for the check to be rejected.

The accounts receivable specialist stated that the appellant proffered two other checks after the rejected \$5,000 check, which also would have been rejected for lack of funds. The facility has been asking the appellant and his sons since December or January where all of his money is going, since he was no longer living in his former apartment. The facility has not received a good explanation for this and was concerned about continuing to go in circles.

The appellant's son R, also spoke. R admitted that what the facility stated about the communication challenges was true. R stated that he and B, his brother, work a lot and travel internationally. They have difficulty with schedules. R and his brother made the accounts receivable specialist aware through emails on which she was copied. They had explained that the appellant's money had been paid toward the rent and utilities of the appellant's now former apartment because he needed a place to live after his discharge. R admitted that, in retrospect, this was poor financial decision making on their part. Further money had to be paid in order to move the appellant's property out of the apartment. It was not until the end of May 2023 that they stopped maintaining the appellants' apartment and moved out his property. Now, all of the appellant's income is going to the facility.

R stated that this has caused a lot of tension. There are not a lot of options for the appellant. Moving the appellant into the hotel was not really a viable option as the appellant indicated. Discharging the appellant out of the facility at this point did not make sense. R said that his family is not well off. He and his brother do make a decent income, but they do not have a lot of extra money. R is currently going through a divorce, however, and it is not feasible for him to help the appellant pay down the debt. If he could, he would so in a second.

The administrator stated that, according to the facility's notes, the landlord contacted the facility in December 2022 and stated that they were seeking to evict the appellant at that time. (Ex. 4, p. 4). R stated that the landlord did not end up evicting the appellant. The appellant stated that, in addition to continuing to pay rent and utilities for his apartment, he also had continued paying off other debt in that time. The appellant stated that given his current situation, he regretted paying those bills and not paying the facility.

## Findings of Fact

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

1. The appellant arrived at the facility from another facility in [REDACTED] 2022. (Ex. 4, p. 4; Testimony of the accounts receivable specialist).
2. The previous facility had applied for LTC benefits on the appellant's behalf, requesting payment beginning in July 2021. (Ex. 4, p. 4; Testimony of the accounts receivable specialist).
3. The appellant's LTC application was initially denied but eventually approved after an appeal to the Board of Hearings. (Ex. 4, p. 5; Testimony of the accounts receivable specialist).
4. The appellant had a PPA of \$1,390.74 for December 2022, \$3,097.88 from January through March 2023, and \$3,268.98 from April 2023 through the present. (Ex. 4, p. 13).

5. The facility billed the appellant for PPA going back to December 2022. (Ex. 4, p. 13).
6. The appellant continued to pay for the rent and utilities for his former apartment as well as other bills through the end of May 2023. (Testimony of R; Testimony of the appellant).
7. The appellant did not pay submit his first payment until April 2023. (Ex. 4, p. 13).
8. This was a check for \$5,000, which his bank would not honor because of insufficient funds. (Ex. 4, p. 13; Testimony of the accounts receivable specialist).
9. The facility arranged for the appellant's income to be assigned to the facility at the end of April 2023. (Testimony of the accounts receivable specialist).
10. The appellant has submitted payments totaling \$7,479.72 in April, May and June 2023. (Ex. 4, p. 13).
11. The appellant also proffered two other checks which the facility declined to accept because the appellant would not have had the money to cover the payment. (Testimony of the accounts receivable specialist).
12. As of the invoice date of June 28, 2023, the appellant continued to owe the facility \$13,011.60. (Ex. 4, p. 13).
13. The facility first discussed discharge plans with the appellant on March 15, 2023, in response to the appellant's request to be transferred. (Ex. 4, p. 17; Testimony of the administrator).
14. The facility found an available bed for the appellant at another facility but then the appellant stated that he did not want to move. (Ex. 4, pp. 16-18; Testimony of the administrator).
15. The facility discussed discharge with the appellant a second time on [REDACTED] 2023, when, during the discussion of the appellant's outstanding bill, the appellant again indicated that he wanted to be discharged from the facility. (Ex. 4, p. 15; Testimony of the administrator).
16. The facility arranged for a discharge to a hotel in another town. (Ex. 4, p. 15; Testimony of the administrator).
17. The facility got as far as giving the hotel the appellant's credit card and working to arrange companion and homemaker services with the local elder services organization, but the appellant changed his mind. (Ex. 4, pp. 14-15).
18. It is this hotel which the facility identified as the place to which it would discharge the

appellant in its discharge notice. (Ex. 1).

19. The appellant is currently able to ambulate 600 feet or less per day with the assistance of a walker. (Testimony of the appellant).

20. The appellant relies on the use of a wheelchair. (Testimony of the appellant).

## Analysis and Conclusions of Law

The regulations concerning nursing home discharges are located at 130 CMR 610.028, 610.029 and 610.030. According to 130 CMR 610.028(A), a Nursing Facility resident may be transferred or discharged 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. (Emphasis added).

When the facility discharges a resident under any of the circumstance specified in (1)-(5), above, the resident's clinical record must be documented. (130 CMR 610.028(B)).

Prior to discharge or transfer, the Nursing Facility must hand deliver to the resident and mail to a designated family member or legal representative a notice written in 12-point or larger type that contains, in a language the member understands, the following:

- (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 Nursing Facility 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. (130 CMR 610.028(C)).

Additionally, the notice must be made by the facility at least 30 days before the date the resident is to be discharged or transferred, except when the circumstances for an emergency discharge or emergency transfer are met. (130 CMR 610.029).

Further, Mass. Gen. Laws ch. 111, §70E provides 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.**” (Emphasis added). Finally, federal regulations require that a Nursing Facility provide sufficient preparation for a safe and orderly discharge. (See 42 CFR 483.12(a)(7)).

A preponderance of the evidence does not show that the appellant should be discharged at this time. By the facility’s admission, they have spoken with the appellant only twice regarding his discharge. On each occasion, the appellant declined to go through with the discharge. Discussing possible places for discharge is not the equivalent of proving sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge. It is also clear that the place the facility determined should be the discharge location, a hotel that is located not very close to the facility, is not “another safe and appropriate place.” The appellant stated in the hearing that he would not be able to pay to remain in that hotel for very long. Although the facility representatives stated that they had made some arrangements for services to be provided at the hotel at the time they discussed discharge with the appellant in May, it was unclear whether these were still on the table at the time the facility decided to discharge the appellant in June. What seems clear to this hearing

officer is that discharge to this location would be tantamount to making the appellant homeless. Although the facility certainly has a right to expect the appellant to pay his debt, it should do more to prepare the appellant before endeavoring to discharge or transfer the appellant again.

## **Order for Respondent**

Rescind the June 5, 2023 notice. Do not discharge the appellant under this notice.

## **Implementation of this Decision**

If the 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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Scott Bernard  
Hearing Officer  
Board of Hearings

CC:

[REDACTED]