

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2306003
<b>Decision Date:</b>	9/11/2023	<b>Hearing Date:</b>	10/21/2022
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**

*Pro se*

**Appearances for Nursing Facility:**

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>	Denied	<b>Issue:</b>	Nursing Facility Discharge – 30 Days; Failure to Pay
<b>Decision Date:</b>	9/11/2023	<b>Hearing Date:</b>	8/21/23
<b>Nursing Facility Rep.:</b>	Emmanual Ikomi, Administrator	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### 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 July 21, 2023, [REDACTED] (“the nursing facility”) informed Appellant that it sought to discharge her from the facility because she failed, after reasonable and appropriate notice, to pay for services rendered at the facility. See 130 CMR 610.028 and Exhibit 1, pp. 3-4. The same day, Appellant filed a timely appeal of the notice with the Board of Hearings (BOH). See 130 CMR 610.015(B) and Exh. 1, p. 7. An attempt to discharge a nursing facility resident is valid grounds for appeal. See 130 CMR 610.032(C). BOH scheduled a hearing to take place on August 8, 2023. See Exh. 2. On August 7, 2023, Appellant requested the hearing be rescheduled due to illness. See Exh. 3. BOH granted the request and rescheduled the hearing to take place on August 21, 2023. See Exh. 4.

### Action Taken by Nursing Facility

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

## Issue

The issues on appeal are (1) whether the nursing facility cited appropriate grounds and provided sufficient notice to Appellant in seeking to discharge her from the nursing facility; and (2) whether the facility provided Appellant with sufficient preparation and orientation for the discharge to a safe and appropriate location in accordance with MGL c. 111, § 70E.

## Summary of Evidence

At the hearing, the nursing facility was represented by its Administrator. Based on oral testimony and documentary submissions, the nursing facility presented the following information: Appellant is a MassHealth member under the age of 65, and a current resident of the [REDACTED] ("the nursing facility"). Appellant was admitted to the facility in 2020 following a hospitalization for worsening knee pain causing a decline in functional status. See Exh. 1, p. 2; see also Exh. 5, p. 6. Her diagnoses and past medical history include ataxic cerebral palsy, intervertebral disc degeneration, severe morbid obesity post-bypass, acute kidney failure, generalized edema, diabetes, anxiety, hemiplegia of left nondominant side, bilateral osteoarthritis of knee, migraines, and neuropathy. See id.

The Administrator testified the facility seeks to discharge Appellant to the community because she has repeatedly failed to pay her monthly patient paid amount (PPA), and as a result, accrued an outstanding balance of \$18,485.90. The Administrator explained that Appellant currently receives \$2,489.00 per-month in social security disability income (SSDI). The administrator explained that Appellant declined appointing the facility as rep-payee, and therefore receives her SSDI payments directly. Beginning shortly after her admission and through December 2021, Appellant's PPA was \$2090.20. See Exh. 5, at 16-20. MassHealth calculated annual increases to her PPA obligation in accordance with increases in her SSDI. In the most recent PPA notice, dated December 14, 2022, MassHealth notified Appellant that effective January 2023 her PPA obligation would increase from \$2,217.20 per-month (which it was through 2022) to \$2,416.20 per month, as it currently remains. See id.

The Administrator testified that during her admission and until the beginning of this year, Appellant mostly complied with her PPA payments, though she did not always pay on time, or pay the full amount, causing her to accrue an outstanding balance. In February 2023, the facility provided Appellant with an itemized statement of all patient liability charges and payments made between February 2021 through December 2022. The invoice shows that Appellant owed \$7,072.60 due to missing and partial PPA payments. Id. at 12. More significant, the Administrator explained, is that Appellant has not been paying her PPA for 2023. The last payment she made to the facility was on April 28, 2023, but otherwise, she has not made any further payments. The June 2023 invoice, submitted into evidence, shows that the facility credited Appellant's April 28<sup>th</sup> payment on May 3, 2023 in the amount of \$3,186.00, which left

Appellant with a total overdue balance of \$13,653.60. Pursuant to the facility's most recent invoice, dated August 1, 2023, Appellant has an outstanding balance of \$18,485.90. Id. at 14.

The Administrator testified that both he and the business office have made numerous attempts to work with Appellant on her outstanding patient liability, including the potential to make discounted monthly payments. The facility submitted a written statement from its business office manager dated August 1, 2023, explaining that she "met with [Appellant] on several occasions to discuss her 'Patient Liability' balance due to [REDACTED]." Id. at 5. The business office manager further wrote that Appellant never responded to the itemized statement from February 2023 and that despite continuing to receive monthly invoices, Appellant has not made a single payment since April 28, 2023. Id.

The Administrator testified that Appellant is well-aware of her PPA obligation but refuses to pay the facility. He further stated that Appellant purchases a lot of personal items using her SSDI income, which are delivered to her at the facility and are in her room. According to a progress note dated September 13, 2022, a facility social worker and administrator met with Appellant to discuss her continued purchasing of personal items and accruing an "excess" of belongings in her room. Id. at 21

On July 21, 2023, the facility presented Appellant with a "30-Day Notice of Intent to Discharge Resident." See Exh. 1. The notice informed Appellant that the facility sought to discharge her to the community on [REDACTED] 2023 because she "failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) a stay at the facility." Id. at 4. The discharge address specified in the notice, was confirmed at hearing to be the address of Appellant's apartment in the community. Id. The notice further informed Appellant of the assigned staff member responsible for overseeing her discharge, a list of legal and community resources, and guidance on Appellant's right to appeal the proposed discharge action. Id. At Appellant's request, the facility assisted Appellant with filing the present appeal. Id.

The Administrator testified that Appellant's apartment is a safe and appropriate discharge location. Appellant specifically requested the facility designate her apartment as the discharge location; it is where she previously resided; and she is familiar with the location and surrounding area. The Administrator explained that social services and rehabilitation staff are coordinating community supports, including PCA services, a local physician, and required medical equipment. The facility submitted into evidence a written letter signed by Appellant's attending primary care physician (PCP), [REDACTED] M.D. In the letter, [REDACTED] noted, in relevant part, the following:

...[Appellant] requires daily assistance and can live safely in the community with the appropriate home services or in a skilled nursing facility. [Appellant] was issued a thirty-day letter of discharge by the facility on [REDACTED] 2023, due to an

issue of nonpayment. She has chosen to return to her apartment [in Massachusetts]. [Appellant] is dependent on the majority of her activities of daily living (bathing, dressing transfers). She makes all of her medical decisions and can manage her own finances and her own medications. Upon discharge, her medical care will be transferred to her physician of choice in the community.

See Exh. 5, p. 3.

In her letter, [REDACTED] further specified what necessary medical equipment Appellant would require upon discharge, including a manual wheelchair to maintain independence, and a mechanical lift for transferring between surfaces. Id. Appellant's clinical record, submitted into evidence, includes progress notes that describe Appellant as alert and oriented, capable of making her needs known, independent in self-care and self-directing leisure activities, and motivated to return to the community. Id. at 21. The progress notes further stated that Appellant has available family and friends that remain supportive of her care. Id.

Appellant appeared at the hearing by telephone and testified that while she is aware of her PPA obligation and outstanding balance, she has not paid the facility because she believes the current PPA calculation is incorrect. Appellant also questioned how the facility determines its rates and wanted a break-down of its admission fees and daily rates. Appellant denied that the facility offered her a reduced payment plan or that it provided her with invoices any earlier than June 2023. Appellant questioned why the facility let her bill accrue to the extent it did before addressing it with her.<sup>1</sup>

Appellant testified that she would be willing to work with the facility to make payments, however, currently does not have any funds to do so and has a negative balance in her bank account. When asked where her SSDI deposits went, Appellant responded that she has been using her income to pay for living expenses, including a phone bill, credit card payments, and food. Although the facility provides her meals, it does not provide adequate protein for her needs and sometimes is not edible. Appellant also explained that she maintains an apartment in the community, where she lived prior to her nursing home admission. She described it as an in-law apartment within a single family raised ranch home. She continues paying electric bills at the apartment and has set up a trust with her landlord through which he receives rent.

Appellant explained that she is overweight and requires a large bariatric wheelchair for mobility. Because the home was built in the 1970s, it was not built to current ADA standards. It has narrow doorways and hallways. Her current wheelchair is 30 inches wide, and although the hallway and door frames are slightly larger, it would be tight. Appellant stated that she

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<sup>1</sup> Appellant also took issue with portions of her clinical record that were not included in the facility's submission, including a hospitalization in February 2022, and being placed on a medication that was contraindicated with an existing medication, resulting in neurological symptoms, "blackouts," and lapses in memory.

likes the care she is getting at the facility and is willing to work out a payment plan once MassHealth adjusts the PPA to the correct amount.

In response to Appellant's testimony, the Administrator explained that all facility residents are followed by a dietician. The dietician works directly with the kitchen staff to accommodate any of the residents' unique dietary needs. As to Appellant's statement that she was not aware of the overdue amount, the Administrator testified that this is not the first time collecting past due monies and that the business office and social services have had ongoing issues of collecting payment from Appellant, which has led up to the current overdue balance. There is a business manager that has been available to help Appellant understand the costs associated with her PPA obligation, and this is not a new issue.

## **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 a current facility resident.
1. Appellant was admitted to the facility in 2020 with diagnoses and a past medical history including ataxic cerebral palsy, intervertebral disc degeneration, severe morbid obesity post-bypass, acute kidney failure, generalized edema, diabetes, anxiety, hemiplegia of left nondominant side, bilateral osteoarthritis of knee, migraines, and neuropathy.
2. Appellant currently receives \$2,489.00 per-month in SSDI which is deposited into her personal account.
3. Throughout her admission, MassHealth has required Appellant to pay a monthly PPA to the facility, which, as of January 2023, was calculated at \$2,416.20 per-month.
4. From February 2021 through December 2022, Appellant contributed to her PPA obligation, but accrued a total outstanding balance of \$7,072.60 due to having repeatedly missed, or made only partial, payments to the facility.
5. In February 2023, the business office manager notified Appellant of her overdue PPA balance and provided Appellant with itemized statement of all patient liability charges and payments made through December of 2022.
6. Aside from a \$3,186.00 payment to the facility made in/around April/May of 2023, Appellant did not make any monthly PPA payments during 2023.

7. Following receipt of the February 2023 itemized statement, Appellant continued to receive monthly invoices of her PPA and updated outstanding balance.
8. On [REDACTED] 2023, the facility presented Appellant with written notice of its intent to discharge Appellant from the facility to her apartment in the community on [REDACTED] 2023, due to her failure to pay the facility for her stay.
9. The facility administrator and business office manager met with Appellant on several occasions prior to issuing the discharge notice to discuss her overdue patient liability balance.
10. Appellant specifically requested that the facility designate her former apartment in the community as the discharge location.
11. As of the hearing date, Appellant had still not made any payment to the facility, and, as of August 1, 2023, owed the facility an outstanding balance of \$18,485.90.
12. Appellant used her SSDI income to pay for non-nursing facility related costs, including phone and utility bills, food purchases, and other personal items; leaving her with a negative balance in her bank account and unable to make any payments to the facility towards her debt.

## **Analysis and Conclusions of Law**

The federal Nursing Home Reform Act (NHRA) of 1987, codified at 42 U.S.C. §§1395i-3 and 1396r, 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 which mirror the federal requirements, and which can be found in its regulations governing nursing facility services at 130 CMR §§ 456.701 – 456.704 and its Fair Hearing Rules at 130 CMR §§ 610.028 – 610.030. Under these requirements, skilled nursing facilities are prohibited from involuntarily transferring or discharging a resident, unless the discharge or transfer is based upon one or more of the following circumstances:

(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>2</sup> See 130 CMR 610.028(B)(2). Additionally, the nursing facility must provide the resident with written hand-delivered notice of the intended discharge, at least 30 days before the date the resident is to be discharged.<sup>3</sup> See 130 CMR §§ 610.028(C), 610.029(A). The content of the notice must include specific information, such as the action to be taken by the nursing facility; the specific reason or reasons for the discharge or transfer; the effective date of the discharge or transfer; the location to which the resident is to be discharged or transferred; among other requirements relating to the resident's rights and available resources to contest the notice. Id.

Finally, 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 evidence in the record, Appellant did not demonstrate that the facility erred in issuing the July 21, 2023 discharge notice. The facility cited proper legal grounds for the proposed discharge under 130 CMR 610.028(A)(5); specifically, that Appellant failed, after being given reasonable and appropriate notice, to pay for her stay at the facility. The evidence indicates that

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<sup>2</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 documentation of the basis for the discharge.

<sup>3</sup> MassHealth recognizes limited exceptions to this rule, such as "emergency" circumstances where there is a health or safety component prompting the discharge, in which case the notice "must be made as soon as practicable before the discharge..." Id.



Appellant had a history of making incomplete PPA payments to the facility and that in April of 2023, Appellant completely stopped making any payment to the facility. As a result, she has accrued an outstanding balance of \$18,485.90 in unpaid skilled nursing care services. See Exh. 5, p. 14. The facility administrator presented oral testimony and documentary evidence demonstrating numerous communications he and other staff members had with Appellant regarding her outstanding payment obligations. While Appellant denied having conversations with staff about payment plan options, she was nevertheless aware of her PPA obligation, as evidenced by the previous PPA payments she made the facility in her years-long admission. Despite being aware of this obligation, Appellant opted to spend her income on personal items, unrelated to her nursing home care, leaving her without any funds to contribute to her outstanding debt. The nursing facility demonstrated appropriate legal grounds for the intended discharge, and this has been documented in Appellant's clinical record. See 130 CMR 610.028(B).<sup>4</sup>

In addition, the facility satisfied the requirements of G.L. c.111, § 70E, above, by discharging Appellant to her former residence. The evidence demonstrates that Appellant's apartment in the community remains available to her, and that she specifically requested the facility designate the apartment address as her discharge location. See Exh. 5, p. 3. Appellant described the residence as one-floor "in-law apartment," which does not require any stairs to enter. While Appellant explained that the house is an "older" style home built prior to current ADA standards, there was no evidence to indicate she would be unable to safely access the home or ambulate within the residence using her bariatric wheelchair. In addition, Appellant's physician, [REDACTED] opined that Appellant is dependent for most ADLs, but capable of living safely in the community with the appropriate home services and equipment. The Administrator confirmed that the facility is coordinating community supports upon discharge, including securing Appellant with a local physician and PCA services. [REDACTED] also noted that Appellant was capable of making her own medical decisions, managing her own finances, and managing her medication regimen. In consideration of the evidence, the facility demonstrated it has sufficiently prepared and oriented Appellant to ensure a safe and orderly discharge to another safe and appropriate place, as required under M.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 July 21<sup>st</sup> notice, adjusting the discharge date to occur no sooner than 30 days from the date of this decision. See 130 CMR 610.030(A); see also 130 CR 456.704(A).

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<sup>4</sup> Appellant did not dispute that the facility failed to provide sufficient and adequate notice of the discharge as required under 130 CMR 610.028 and 610.029. The evidence shows that the facility presented Appellant with a hand-delivered notice 30-days prior to the intended discharge date, stated the grounds for the discharge, and assisted her in filing this appeal of the 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 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, [REDACTED]  
[REDACTED]