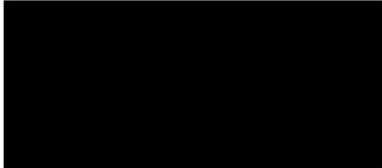


# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2307425
<b>Decision Date:</b>	09/29/2023	<b>Hearing Date:</b>	09/25/2023
<b>Hearing Officer:</b>	David Jacobs		

**Appearance for Appellant:**

Pro se

**Appearance for MassHealth:**

Jennifer Young, Social worker  
Lynn Wilson, Director of Social Services  
Monica Kosmider, Assistant Director of  
Nursing  
Doris Fernandes, Rehab Director



*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
<b>Decision Date:</b>	09/29/2023	<b>Hearing Date:</b>	09/25/2023
<b>Facility Rep.:</b>	Jennifer Young	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

The appellant received a Notice of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal) dated August 21, 2023. The notice stated that Worcester Rehabilitation and Health Care Center ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED]. The notice indicates the reason for the discharge is that "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" (Exhibit 1). The appellant filed this timely appeal on August 24, 2023 (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.029; 42 CFR Ch IV §483.200 et seq.).

### Action Taken by MassHealth

The skilled nursing facility intends to discharge the appellant from the facility.

### Issue

Is the planned discharge correct pursuant to 130 CMR 610.029?

## Summary of Evidence

A social worker from the skilled nursing facility primarily testified on behalf of the facility at the hearing. The appellant received a “Notice of Intent to Discharge Resident with Less than 30 Days’ Notice” on [REDACTED] (Exhibit 1). The social worker submitted the appellant’s clinical record from the facility into evidence (Exhibit 6). The social worker testified that the appellant was admitted to the facility on [REDACTED], 2022, and after a brief hospital stay readmitted on [REDACTED]. The appellant was admitted to the facility due to “left knee pain with a primary diagnosis of staphylococcal arthritis” (Exhibit 8). The social worker testified that the appellant has met all of her skilled PT goals and no longer meets the criteria for a skilled nursing facility. The facility provided a letter from the appellant’s doctor that states, in summary, that her treatment at the facility is complete and she is able to walk with the assistance of a rolling walker and a shoe wedge to accommodate her leg discrepancy (Exhibit 8). Furthermore, her left knee is septic and will be on lifelong antibiotics to treat it (Exhibit 8). The social worker further testified that the facility has been working with the appellant for several months now on finding suitable housing. However, the appellant has no family she deems it is appropriate for her to stay with, so they turned to their default choice of the [REDACTED]; a homeless shelter that is handicap accessible and part of the SMOC (South Middlesex Opportunity Council) program which assists residents with finding new housing.

The appellant represented herself and testified that she does not want to leave the facility because she still has chronic pain in her legs, the equipment to help her walk is of poor quality, and she does not want to be discharged to the Greater Worcester homeless shelter. She explained that she is worried about the dangers of drug use there could have for her. She asks that she be allowed to stay at the facility for an additional month or two so that she may apply for social security and find more suitable housing as she has no family or friends she deems appropriate for her to stay with.

The social worker responded to the appellant’s concerns. She testified that the chronic pain in the appellant’s legs is capable of being treated in the community, that the facility would assist the appellant in asking MassHealth for new equipment for assistance with walking, and that the Greater Worcester homeless shelter is not inherently dangerous. She explained that, although the shelter does allow active drug addicts to stay there, they also offer a SMOC program specifically geared to help resident’s find housing which is the appellant’s primary concern.

## Findings of Fact

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

1. The appellant was admitted to the facility on [REDACTED] and readmitted on [REDACTED]

- [REDACTED]
2. The appellant was admitted to the facility due to the “left knee pain with a primary diagnosis of staphylococcal arthritis.”
  3. The appellant received a “Notice of Intent to Discharge Resident with Less than 30 Days’ Notice” on August 21, 2023
  4. The appellant has met all of her skilled PT goals and no longer meets the criteria for a skilled nursing facility.
  5. A letter from her physician indicated that her left knee is septic and will require life-long antibiotics to treat. The letter also states that the appellant is able to walk with a rolling walker and can safely be discharged back into the community.
  6. The appellant experiences chronic pain in her legs, the equipment she has to help her walk is of poor quality, and she is concerned about the dangers of drugs at the homeless shelter she will be discharged to.
  7. The appellant has no family or friend she deems is appropriate for her to stay with.
  8. The discharge location is a homeless shelter that allows active drug addicts to stay there and has a SMOC program to help residents find housing.
  9. The facility will assist the appellant with obtaining appropriate medical equipment from MassHealth.

## **Analysis and Conclusions of Law**

A resident may be transferred or discharged from a nursing facility when 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 (130 CMR 610.028(A)(2)). A transfer or discharge on this ground must be documented by the resident’s clinical record (130 CMR 610.028(B)). The documentation must be made by the resident’s physician (130 CMR 610.028(B)(1)).

130 CMR 610.028: 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 Division 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)(4).  
M.G.L. Ch. 111, § 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 first issue is whether the appellant's discharge is appropriate because her health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. 130 CMR 610.28(B)(1) indicates that this determination must be documented by the resident's physician. Here that burden has been met as the facility submitted a letter from the appellant's doctor that indicates that her treatment goals at the facility have been met and she can safely be discharged back into the community (Exhibit 8). Although the appellant testified that she has chronic pain in her legs, the facility social worker responded that such treatment of the appellant's chronic pain can be treated in the community. This assertion is supported by the letter from her doctor stating that her left leg is septic and she will be on lifelong antibiotics to treat it. Finally, the appellant testified that the medical equipment to assist her with walking is of poor quality. However, the facility's social worker satisfactorily addressed this concern by testifying the facility

would assist the appellant with obtaining new medical equipment through MassHealth.

The second issue is whether the nursing facility has met the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including G.L. c.111, § 70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, reads as follows:

*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.)

The notice of discharge lists the appellant's discharge location as the Greater Worcester Housing Connection; a homeless shelter that is handicap accessible and part of the SMOC program. Based on the credible testimony of the facility's social worker, the nursing facility has met its burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly discharge from the facility, and thus has complied with G.L. c.111, § 70E. The record suggests that the facility has been working with the appellant for months in selecting an appropriate discharge location, but the appellant has no family or friends with whom she deems are appropriate for her to stay. Although the appellant testified that she is concerned about the safety of the Greater Worcester homeless shelter, due to the fact that they allow active drug addicts to stay there, she has alleged no specific dangers that this would cause her. Therefore, the nursing facility's notice of discharge dated 8/2/19 meets the requirements of G.L. c. 111, § 70E.

Based on the record and the above analysis, the nursing facility has valid grounds to discharge the appellant per its notice dated August 21, 2023. The appeal is thus DENIED.

## Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 5 days from the date of this decision.

## Implementation of this Decision

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.

## **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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David Jacobs  
Hearing Officer  
Board of Hearings

cc: Worcester Rehabilitation and Health Care Center, 119 Providence Street, Worcester, MA,  
01604