

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2310017
<b>Decision Date:</b>	11/29/2023	<b>Hearing Date:</b>	11/07/2023
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**

Pro se

**Appearances for Marlboro Hills Rehab and  
Healthcare Skilled Nursing Facility:**



*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 Home Discharge
<b>Decision Date:</b>	11/29/2023	<b>Hearing Date:</b>	11/07/2023
<b>Skilled Nursing Facility Reps.:</b>	[REDACTED] Asst. Director of Nursing; [REDACTED] Social Worker; [REDACTED] [REDACTED] Substance Abuse Coordinator; and [REDACTED] [REDACTED] Aftercare Coordinator	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield 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

The appellant received a 30-Day Notice of Intent to Discharge Resident Notice ("discharge notice") dated 10/10/2023. The notice states that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to "[REDACTED] MA" on [REDACTED] 2023. 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 10/19/2023 (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.028; 42 CFR Ch IV §483.200 et seq.).

## Action Taken by the Nursing Facility

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

## Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

## Summary of Evidence

██████████ Assistant Director of Nursing; ██████████ Social Worker; ██████████ Substance Abuse Coordinator; and ██████████ Aftercare Coordinator from the skilled nursing facility appeared at the hearing and testified telephonically. Prior to the hearing, the facility submitted the appellant's clinical record from the facility into evidence (Exhibit 4). The facility representatives testified that the appellant was admitted to the facility earlier in summer 2023 as a short-term rehabilitation patient. Since then, his health has improved and he no longer needs skilled nursing facility level of care. According to the facility representatives, the appellant was assessed by Dr. ██████████ who provided a letter stated that the appellant needs to maintain sobriety, but is independent with activities of daily living ("ADLs) and he may be discharged home on medications. The facility representatives testified that, on ██████████ 2023, the staff found "crushed up white pills" in the appellant's room. In addition, he has been non-compliant with the facility's smoking policy and is "using drugs."

The facility representatives testified that the appellant suffers from major depressive disorder and anxiety. His substance abuse is in remission, but he is not competent to live on his own in the community. They suggested that he go to a more stable substance abuse recovery treatment facility, like the Salvation Army. ██████████ testified that the discharge plan for the appellant is to continue his substance abuse treatment at a facility, where a bed is currently available for him.

The representatives cited to the appellant's clinical record to state that his condition has improved to the extent that he no longer needs a skilled nursing facility (Exhibit 4, p. 29/280). In the notes dated 1 ██████████ 2023, Dr. ██████████ writes:

██████████ with Hypertension. major depressive disorder, chronic viral hepatitis-C, and protein-calorie malnutrition who was admitted to ██████████ on ██████████ 2023 for short-term rehab status post hospitalization for complications related to tricuspid endocarditis. He was seen today for a physical exam prior to discharge and medication review. No acute issues were reported. No chest pain, chest pressure or palpitations. No shortness of breath/dyspnea. He had physical therapy/Skilled Nursing care and has reached his maximal level of function. He is now dependent with ambulation and

all of his ADLs needs. May be discharged home with medications and services.

The representatives testified that, although the notes state the appellant is “dependent,” the physician, the appellant’s facility physician meant to write “independent.” They also stated that the appellant “needs to go to rehab for further treatment.”

The appellant testified that the address to which the facility seeks to discharge him is his mother’s home. He stated that he cannot receive the services and care he needs at that location. In addition, his mother cannot care for him because she is also sick. The appellant testified that Dr. [REDACTED] is not his physician. His cardiologist, Dr. [REDACTED] [REDACTED] wrote a letter on the appellant’s behalf dated [REDACTED] 2023 that states the following:

Severe cardiac issues burden this unfortunate [REDACTED]. This includes a severely leaky valve in his right heart and a weak left heart. He depends on medications to keep him stable. He currently has no home support and is at risk for a poor outcome should he be dismissed prematurely from our facility. He has not gotten the wherewithal to survive on his own at the shelter, nor does he have the family support to help supervise his care. I am asking you to consider keeping this patient in your facility since he can strengthen and have a chance to get better.

(Exhibit 5.)

## Findings of Fact

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

1. Appellant was admitted to the facility in summer 2023 as a short-term rehabilitation patient.
2. Appellant is a [REDACTED] with hypertension, major depressive disorder, chronic viral hepatitis-C, and protein-calorie malnutrition who was admitted to the facility for short-term rehab status post hospitalization for complications related to tricuspid endocarditis.
3. The appellant received a 30-Day Notice of Intent to Discharge Resident Notice dated 10/10/2023. The notice states that the facility seeks to discharge the appellant to “[REDACTED] MA” on 11/10/2023. 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.”
4. The appellant’s facility physician, Dr. [REDACTED] wrote in his notes dated [REDACTED] 2023 that the appellant was “was seen today for a physical exam prior to discharge and medication review. No acute issues were reported. No chest pain, chest pressure or palpitations. No shortness of

breath/dyspnea. He had physical therapy/Skilled Nursing care and has reached his maximal level of function. He is now **dependent** with ambulation and all of his ADLs needs. May be discharged home with medications and services” (**emphasis added**).

5. The address on the discharge notice is the appellant’s mother’s address located in the community.
6. The appellant’s mother cannot care for the appellant.
7. The facility representatives stated that the appellant “needs further treatment,” “needs to go to rehab, and he “is not competent to live on his own in the community.”
8. There is no written discharge plan submitted by the facility.
9. Dr. [REDACTED] wrote a letter on the appellant’s behalf dated [REDACTED] 2023, that states the following:

“Severe cardiac issues burden this unfortunate [REDACTED] This includes a severely leaky valve in his right heart and a weak left heart. He depends on medications to keep him stable. He currently has no home support and is at risk for a poor outcome should he be dismissed prematurely from our facility. He has not gotten the wherewithal to survive on his own at the shelter, nor does he have the family support to help supervise his care. I am asking you to consider keeping this patient in your facility since he can strengthen and have a chance to get better.”

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 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 that follow and implement the federal requirements concerning a resident’s right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (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)(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 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 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.

***(Emphasis added.)***

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.

The clinical record, as submitted by the facility representatives at the time of hearing, contains a statement from Dr. [REDACTED] the facility physician, that contains contradictory information. It seems to support the facility's assertion that the appellant's health has improved to the extent that he no longer needs the care in a skilled nursing facility; however, his note states that the appellant is "now ***dependent*** with ambulation and all of his ADLs needs" (***emphasis added***). The facility representatives testified that the note is a typographical error and that the appellant is now "independent." Absent testimony from Dr. [REDACTED] or a written correction of the above statement, the note must be read as written. Accordingly, pursuant to Dr. [REDACTED] note, upon discharge the appellant will require assistance with ambulation and his ADL needs. Also, at the fair hearing, the facility representatives testified that the appellant "needs further treatment" and "needs to go to rehab."

The location to which the facility seeks to discharge the appellant is his mother's home in the community. It is not a rehab facility. There is no written discharge plan that provides the appellant with resources in the community to assist him with his ambulation and ADL needs at his mother's home. Accordingly, the location on the discharge notice is not a "safe and appropriate place." Further, without a written discharge plan that lists the services arranged by the facility for the appellant in the community, the facility has not provided "sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge."

The facility may not discharge the appellant pursuant to the 10/10/2023 discharge notice because there is no evidence that there is an appropriate discharge plan, as required by the above statute. This appeal is therefore approved.

## **Order for the Nursing Facility**

Rescind the discharge notice dated 10/10/2023.

## **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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

CC: [REDACTED]