

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2313061
<b>Decision Date:</b>	1/22/2024	<b>Hearing Date:</b>	01/18/2024
<b>Hearing Officer:</b>	David Jacobs		

**Appearances for Appellant:**

Pro se



**Appearance for MassHealth:**

Rodney Gonsalves, Director of Operations



*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>	1/22/2024	<b>Hearing Date:</b>	01/18/2024
<b>Facility Rep.:</b>	Rodney Gonsalves	<b>Appellant's Reps.:</b>	[REDACTED]
<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

Through a notice dated November 21, 2023, RegalCare Harwich, a skilled nursing facility, notified the appellant of its plan to discharge him to [REDACTED] on [REDACTED] 2023, because it determined that he had failed to pay for his stay at the facility (Exhibit 1). The appellant filed this appeal in a timely manner on December 13, 2023 (130 CMR 610.015 and Exhibit 2). The discharge of a nursing home resident is valid grounds for appeal (130 CMR 610.028(A)).

### 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

The director of operations (“the director”) for the facility appeared during the hearing and testified to the following. The appellant was admitted to the facility on [REDACTED] 2021 with a primary diagnoses of diabetes, alcohol abuse, and cognitive impairment (Exhibit 4). The appellant had a patient paid amount (“PPA”) of \$2,272.00 a month that he failed to pay from April to August 2022. (Exhibit 5, pg. 2). The total amount due was \$11,333.00. This amount continued to go unpaid until July 2023 when the appellant began paying the balance in the amount of \$72.80 a month (Exhibit 5, pg. 1). The amount still due as of the date of the hearing date is \$9,949.80.

The appellant’s daughter appeared on his behalf and testified that the appellant was aware of the past due amount and was doing his best to pay off the balance. She argued that \$72.80 a month was all the money the appellant had and could provide no more to the facility to pay back the amount due. She added that the appellant had recently been approved for MassHealth Standard which would increase his available funds to \$217.40 a month in the near future. The question then turned to whether the facility would accept some kind of payment plan involving the \$217.40.

The appellant’s daughter initially argued that she hoped to keep some amount of the \$217.40 because if the facility were to take it all, the appellant would be left with no money for the likely 5 year period it would take to pay the money back. However, the director of operations refused to accept even the maximum amount of \$217.40 a month as part of the payment plan. He argued that the amount due has been pending since 2022 and it would take too long at a rate of \$217.40 a month to pay it back in a satisfying way to the facility.

The appellant’s daughter went on to argue that regardless of the money being owed, her father could not be discharged into the community. She testified that her father is unable to care for himself or his diabetes and requires a skilled nursing facility in order to do so. She argued her father has severe cognitive issues that make him forgetful and erratic at times. When asked if the appellant’s daughter had any legal support for how these facts can excuse his need to pay the facility, she offered none.

Finally, the testimony turned to the choice of [REDACTED] as the discharge location. The director testified that this was the standard choice for discharge from the facility. When the director was asked if the facility worked with the appellant when choosing the shelter as the discharge location, he responded no, but the location was communicated to the appellant via the November 21, 2023 notice. The appellant’s daughter confirmed the director’s testimony and added that the choice of the shelter as a discharge location was inappropriate due to her father’s medical needs. She reiterated that her father is unable to take care of himself and needs skilled nursing care to make sure he takes his medication for his diabetes and does not bring harm to himself due to his extreme forgetfulness. She further testified that she is unable to have her father live with her due to his medical needs being beyond her ability to provide.

## Findings of Fact

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

1. The appellant was admitted to the facility on [REDACTED] 2021
2. The appellant was admitted to the facility for primary diagnoses of diabetes, alcohol abuse, and cognitive impairment.
3. The appellant received a “Notice of Intent to Discharge Resident with Less than 30 Days’ Notice” on November 21, 2023
4. The appellant has past due PPA bills accrued from April to August 2022 owed to the facility.
5. The past due amount went unpaid until July 2023 when the appellant began making payments in the amount of \$72.80 a month, all the monthly income the appellant had available to him.
6. As of January 2024, the total amount still due to the facility is \$9,949.80.
7. The appellant has cognition issues that make him very forgetful and unable to take care of his diabetes.
8. [REDACTED] was the location chosen by the facility for discharge.
9. The discharge location was not discussed with the appellant and it was only made aware to him via the November 21, 2023 notice.

## 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 has failed to pay for a stay at the facility (130 CMR 610.028(A)(5)). A transfer or discharge on this ground must be documented by the resident’s clinical record (130 CMR 610.028(B)).

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 he has failed to pay for his stay at the facility (130 CMR 610.028(A)(5)). Here, it is found that the facility has appropriate grounds to discharge the appellant. Although the appellant has begun paying off the past due amount in small monthly payments, the appellant representative conceded that even at the higher rate that includes MassHealth income, it could take up to 5 years to fully pay it off. The director rejected the timescale for repayment, arguing it would take too long considering that the amount was already 2 years overdue. The hearing officer agrees that it is not reasonable to expect the facility to now wait for up to 7 years for full repayment of the past due amount considering that 2 years went by without payment. Further, it is not clear what the appellant's daughter means by "MassHealth income" as MassHealth is a health insurance benefit, not a cash benefit. The appellant

has been on MassHealth Standard since the PPA was first calculated, otherwise he would have been charged the private pay rate for his nursing facility stay, not simply a PPA. A PPA is calculated for residents on MassHealth and income is counted by MassHealth in calculating the PPA. Thus, if the appellant had any increase in income, his PPA would also be increased.

The appellant's daughter argues that regardless of the lack of payment the appellant cannot be discharged due to his inability to care for himself. However, the appellant offers no legal support for the medical needs of the resident to be considered to avoid discharge for lack of payment. Therefore, it is found that is appropriate for the facility to discharge the appellant for lack of payment and we move onto the second issue.

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 MGL 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 [REDACTED] [REDACTED] MGL c.111, §70E requires "sufficient preparation and orientation to the resident..." However, when the director was asked if the appellant was involved in the discharge plan, he answered that the discharge location was only communicated via the November 21, 2023 notice. This is taken to mean, and the appellant's daughter confirmed, that the appellant was not involved at all in any discharge planning with the facility. When the appellant is not involved in the discharge planning, it cannot be said there was "sufficient preparation and orientation to the resident." The facility has thus not satisfied the requirements of M.G.L. c.111, §70E.

Therefore, the appellant's appeal is approved.

## **Order for Nursing Facility**

Do not discharge the appellant under this notice of intent to discharge.

## **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: RegalCare Harwich  
111 Headwaters Drive  
Harwich, MA 02645

