

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2313415
<b>Decision Date:</b>	12/29/2023	<b>Hearing Date:</b>	12/27/2023
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**



**Appearance for Nursing Facility:**

Jennifer Young – Social Services  
Jessica Coffman – Unit Manager  
Tina Mkrumah – Care Coordinator



*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; Expedited Discharge
<b>Decision Date:</b>	12/29/2023	<b>Hearing Date:</b>	12/27/2023
<b>Nursing Facility's Reps.:</b>	Jennifer Young; Jessica Coffman; Tina Mkrumah	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Telephonic	<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 of Intent to Discharge Resident with Less than 30 Days' Notice dated [REDACTED], [REDACTED] informed the appellant that it would discharge him to a specific address on [REDACTED]. (Exhibit 1.) The appellant filed this timely appeal on December 20, 2023. (Exhibit 1; 130 CMR 610.015(B).) Nursing facility-initiated discharges are valid grounds for appeal. (130 CMR 610.032(C).).

### Action Taken by Nursing Facility

[REDACTED] sought to discharge the appellant with fewer than 30-days' notice because his medical condition improved to the point where he no longer needed to reside in a nursing facility.

### Issue

The appeal issue is whether [REDACTED] gave appropriate notice of legitimate grounds for discharging the appellant pursuant to 130 CMR 610.028(D) and 130 CMR 456.701(A).

## Summary of Evidence

The appellant is a homeless, middle-aged man who came to the nursing facility following a brief hospitalization for cellulitis on his right leg. He was discharged to the nursing facility about a [REDACTED], where he was treated with antibiotics for his cellulitis. He also received physical and occupational therapy for about a week before those services were discontinued as completed. When the appellant was informed that he was being discharged, he was offered multiple shelters to be brought to, or the facility offered to pay for a single night in a hotel. The nursing facility's representatives testified that the appellant only required brief medical care, so they were not able to spend a long time with him looking for new housing. They submitted a letter signed by the physician at the nursing facility indicating that the appellant can be safely discharged to a shelter to continue looking for housing there.

The appellant understood that he no longer required any medical care in the nursing facility, but he was reluctant to leave because he had nowhere to go. He testified that he had lived in an apartment for the past 15 years, but he was evicted because the rent went up and he could no longer afford it. He had a voucher to assist him in finding a new home, but he could not find an apartment because he had bad credit. The appellant testified that he was schizophrenic and that he becomes paranoid in shared spaces. He declined to be discharged to a shelter and identified his former residence as the location to which he would like to be discharged, even though it would mean he would have to live on the street. He also objected to the doctor writing a letter regarding him because he never saw the doctor while he was at the nursing facility. However, he did not dispute that he was medically at his baseline, and that he no longer required any treatment at the nursing facility.

The nursing facility's representatives testified that the appellant received no treatment for schizophrenia while at the facility, and that the condition was not identified in the hospital record when he was transferred to them. They identified a shelter that would offer him medical support if needed, and which would offer him community support in his housing search. They further testified that the physician who signed the letter regarding the appellant is the only on-staff physician at the nursing facility, though there is also a nurse practitioner who would have provided most of the appellant's medical oversight. It is a legal requirement that the discharge be documented by a physician.

## Findings of Fact

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

- 1) The appellant is a middle-aged, homeless man who contracted cellulitis on his right leg in the [REDACTED]. He went to a hospital where he was started on antibiotics and from which he was discharged to the nursing facility. (Testimony by nursing facility's representatives; Exhibit 2, p. 12.)

- 2) The appellant completed his antibiotics and achieved all physical and occupational therapy goals. (Testimony by the nursing facility's representatives; Exhibit 2.)
- 3) The appellant does not want to go to a shelter because he has schizophrenia and becomes paranoid when sharing crowded spaces. He declined to be discharged to a shelter and identified his last residence as his desired discharge location. (Testimony by the appellant.)
- 4) The only physician at the nursing facility opined that the appellant may be safely discharged to a homeless shelter. (Testimony by the nursing facility's representative; Exhibit 3.)
- 5) The appellant accepts that he no longer requires any medical treatment at the nursing facility, and he offered no objections to the discharge notice he received as he declined to be discharged to a shelter. (Testimony by the appellant.)

## **Analysis and Conclusions of Law**

A nursing facility may only discharge or transfer a resident for one of six reasons:

- (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.

(130 CMR 610.028(A); see also 130 CMR 456.701(A).)

When the transfer or discharge is for one of the first five reasons, the nursing facility must also document the basis for the transfer or discharge in the resident's clinical record. (130 CMR 610.028(B); 130 CMR 456.701(B).) Further, "the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2) ... ." (130 CMR 610.028(B)(1).)

The discharge notice must be hand delivered to the resident and mailed to a designated family member, and it must state 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 Division's Board of Hearings 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 456.702; and
  - (c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 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. s. 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 456.701(C).)

Typically, a nursing-facility must provide 30-days-notice of its intent to discharge. (130 CMR 610.029(A).) An emergency discharge may proceed "as soon as practicable" in one of the following circumstances:

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.

(2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.

(3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.

(4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(130 CMR 610.029(B); see also 130 CMR 610.015(B)(4) (allowing 14 days to appeal emergency discharge notice).)

A nursing-facility resident who requests a hearing to dispute their discharge “pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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.”<sup>1</sup> (M.G.L. ch. 111, § 70E.)

The parties agree that the nursing home has provided proper notice to the appellant of its intent to discharge him. The appellant’s clinical record details that the appellant could be safely and appropriately discharged to a homeless shelter at this time, and the only reason the appellant is not being discharged to a shelter is that he refuses to go to one. The appellant raised no objections to the discharge proceeding, but he wanted to wait until the first of the month, as he would receive his monthly income by then and be in a better position to decide about how to proceed.

I find that the nursing home issued a valid notice of discharge and there are no medical reasons why the appellant cannot be safely and appropriately discharged to a homeless shelter, or to the street at the appellant’s insistence. The nursing facility may proceed to discharge the appellant no sooner than five days after the date of this decision, pursuant to 130 CMR 610.030(B). This appeal is DENIED.

## **Order for the Nursing Facility**

Proceed with discharge no sooner than five days from the date of this decision.

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<sup>1</sup> The term “referee” in the statute refers to a Board of Hearings hearing officer.

## 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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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: Attn: