

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2400296
Decision Date:	02/16/2024	Hearing Date:	01/23/2024
Hearing Officer:	Kimberly Scanlon		


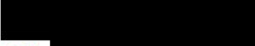

Appearance for Appellant:

*Via telephone*



Appearance for Nursing Facility:

*Via telephone*

Administrator;   
Business Office Manager;   
Director of Social Services;   
Social Worker



*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>	30-Day Nursing Facility Discharge
<b>Decision Date:</b>	02/16/2024	<b>Hearing Date:</b>	01/23/2024
<b>Nursing Facility's Reps.:</b>	Donald Christie, Administrator; Nicole Lucent, Business Office Manager; Darlene McConnell, Director of Social Services; Megan Bulleck, Social Worker	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Room 1 (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 30-Day Notice of Intent to Discharge Resident dated January 4, 2024, the nursing facility informed the appellant of its intent to discharge her to a motel on February 4, 2024 because she has failed, after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility. (130 CMR 456.702(B); 130 CMR 610.029(B); Exhibit 1). The appellant filed this appeal in a timely manner on January 8, 2024. (130 CMR 610.015(F); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal. (130 CMR 456.703; 130 CMR 610.032(C)).

### Action Taken by the Nursing Facility

The nursing facility issued a 30-day notice of intent to discharge to the appellant.

## Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the Appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

## Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility was represented telephonically by its Administrator, Business Office Manager (hereinafter “BOM”), Director of Social Services, and Social Worker. The facility’s BOM testified that the facility changed hands in February of 2023 and therefore she can only testify as to the appellant’s payment history at that time up to present. Further, the appellant is a resident of the facility and was previously approved for MassHealth benefits (Exhibit 4, pp. 22-23). MassHealth set the appellant’s monthly patient-paid amount (hereinafter “PPA”) at \$ 1,174.20.<sup>1</sup> However, the appellant has not paid her monthly PPA from February of 2023 to present, except for a \$ 600.00 payment that the appellant made in January of 2024. The appellant receives social security benefits and refuses to have her social security checks mailed to the facility directly. The facility has contacted the appellant’s family members numerous times regarding payment, to no avail. At present, she owes the facility \$13,690.40 (Exhibit 4, p. 19).

The facility’s Administrator testified that the appellant has been a resident of the nursing facility since [REDACTED]. She was admitted for atrial fibrillation, unsteady gait, and the need for therapy. Currently, the appellant does not require assistance with activities of daily living, she is not receiving skilled care services at the facility, and she is able to reside in a less restrictive environment in the community, with services. As for the discharge plan, the Administrator testified that the facility would have the appellant transported to the motel that she will be discharged to, and the facility will pay for one (1) night. Further, the facility will provide visiting nurse (“VNA”) services, a physical therapy evaluation to acclimate the appellant into a new environment, and a referral for elder care services.

The appellant testified on her own behalf. She testified that she requires skilled care services because she has numerous health issues, including atrial fibrillation and diabetes. With respect to non-payment, she explained that the facility changed hands on more than one occasion since her

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<sup>1</sup> By notice dated December 15, 2023, MassHealth notified the appellant that her monthly PPA was changing to \$1,214.20 beginning on January 1, 2024 (Exhibit 4, p. 22).

admission. Each time, the appellant signed an agreement that would allow the facility to deduct her PPA from her social security income. However, the deductions were never implemented for reasons unknown to the appellant. The appellant testified that while she never signed an agreement with the present Administrator of the facility, she has never stated to the Administrator that she would not pay her monthly patient amount owed. She stated that she made a \$600.00 payment to the facility in January of 2024. The appellant explained that she had previously spoken with the facility's Administrator and upon doing so, assumed that both parties agreed to the following: the appellant could make a (partial) payment of \$600.00 to the facility for the month of January 2024 and have her full PPA amount deducted from her social security benefits beginning in February 2024. However, two (2) hours after paying \$600.00 to the facility, the appellant received a 30-day notice of intent to discharge resident (Exhibit 1). The appellant testified that she has resided at the facility for years and does not wish to leave there. She stated that she will rectify her payment situation. The facility's Administrator testified that the appellant agreed to pay her monthly PPA in full for the month of January, as opposed to making a \$600.00 (partial) payment (Exhibit 4, p. 15).

## **Findings of Fact**

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

1. The appellant is a resident at the nursing facility.
2. The appellant currently owes the nursing facility over \$ 13,000.00.
3. The appellant was previously approved for MassHealth benefits with a patient-paid amount of \$ 1,174.20.
4. On January 4, 2024, the facility notified the appellant of its intent to discharge her for nonpayment. The discharge location is a motel for which the facility will pay for one (1) night.
5. The appellant filed a timely appeal on January 8, 2024.
6. The facility will be making services and referrals for the appellant thereafter but without any detailed schedule of such.
7. The nursing facility has not provided sufficient preparation and orientation to the appellant to ensure that she is discharged to a safe and appropriate location.

## 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 action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.<sup>2</sup>

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 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

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<sup>2</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

- 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)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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); 130 CMR 456.701(A)). (emphasis added).

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B)).

In the present case, the issue on appeal is whether the appellant has failed, after reasonable and appropriate notice, to pay, or failed to have Medicaid or Medicare pay, for her stay at the nursing facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid denies the claim and the resident refuses to pay for his or her stay. (See, 42 CFR 483.15(c)(E)). The appellant does not

dispute the allegation of nonpayment but maintains that an agreement had been reached with the facility's current administrator. While there is no question that the appellant has failed to meet her financial obligation to the facility and that discharge may be justified for failure to make payment, the facility must persuasively demonstrate the appropriateness of the discharge location. It has failed to do so here.

Specifically, the nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.<sup>3</sup>

Here, the facility proposes to discharge the appellant to a motel and pay for one (1) night of her stay. However, the record provides only vague assurances that the appellant's clinical needs will be met. There is no indication that a purposeful discharge plan was implemented. Rather, the record indicates that the facility would pay for one (1) night only at a motel for the appellant and that services and referrals "will" be made for the appellant thereafter without any detailed schedule for these services and referrals. For these reasons, I do not find, as required by the statute cited above, that the facility 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." Therefore, the notice of intent to discharge must be rescinded.

This appeal is approved.

## **Order for the Nursing Facility**

Rescind the 30-day notice of intent to discharge the appellant.

## **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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<sup>3</sup> See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

## 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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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

CC:

