

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2404328
<b>Decision Date:</b>	3/27/2024	<b>Hearing Date:</b>	3/22/2024
<b>Hearing Officer:</b>	Cynthia Kopka		

**Appearance for Appellant:**  
Pro se

**Appearance for Respondent:**  
Jennifer Young, social worker  
Nicole Coiteux, rehab director  
Jessica Cauffman, nursing



*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>	Expedited nursing facility discharge
<b>Decision Date:</b>	3/27/2024	<b>Hearing Date:</b>	3/22/2024
<b>Respondent's Rep.:</b>	Jennifer Young, Nicole Coiteux, Jessica Cauffman	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Taunton (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

By notice dated March 19, 2024, Worcester Rehabilitation & Health Care Center ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on March 22, 2024. Exhibit 1. Appellant filed a timely appeal on March 20, 2024. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032.

## Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

## Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

## Summary of Evidence

Respondent, a skilled nursing facility, was represented by telephone by a social worker, rehabilitation director, and nurse and submitted records in support, Exhibits 4 and 5. Appellant appeared by telephone. A summary of testimony and documents follows.

By hand-delivered letter dated March 19, 2024, Respondent informed Appellant of its intent to discharge him from the facility to an emergency shelter on [REDACTED]. Exhibit 1. The notice stated that Respondent sought to discharge Appellant because “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” *Id.* The notice explained Appellant’s appeal rights and identified employees responsible for supervising the discharge. *Id.* The notice included a sheet that provided contact information for the state long term care ombudsman, the disability law center, center for public representation, and a local legal assistance office. *Id.* A copy of the notice was not delivered to a family member or representative because Appellant did not know his son’s address. Exhibit 4 at 7.

Appellant admitted to the facility for a short-term rehabilitation stay on [REDACTED] with septic shock and cellulitis. Appellant ended up going back to the hospital and was re-admitted to the facility for short term rehab on [REDACTED] with a primary diagnosis of pneumonitis. Appellant’s secondary diagnoses include esophageal disease, alcoholic hepatitis, alcohol dependence, chronic pancreatitis, GERD, orthostatic hypotension, opioid abuse history, COPD, polyneuropathy, anemias, bipolar disorder, dysphagia, and major depressive disorder. Exhibit 4 at 3. Appellant’s physician wrote that Appellant is safe to discharge to the community. *Id.* Appellant’s short term rehab has ended, and Appellant is ambulatory and independent with all activities of daily living (ADLs). Appellant receives esophageal stretches, which can be done as an outpatient. Appellant has follow-up appointments scheduled for this procedure.

The discharge location on the notice is an emergency winter shelter that just recently opened in an old Registry of Motor Vehicles in conjunction with South Middlesex Opportunity Counsel (SMOC). It will be open through the end of April. The shelter is a walk-in, first-come-first-served shelter that does not require a referral. Respondent’s representative testified that she could not find a phone number to call the shelter to inquire as to availability. There was no plan to transport Appellant to the shelter contained in the record or through testimony, as Respondent’s representative testified that it would be up to Appellant to get to the shelter by 8:00 AM the morning of the discharge. Respondent’s representative testified that if the shelter did not accommodate Appellant, she did not know what would happen. Respondent’s representative suggested that Appellant use funds that his son is managing to rent a hotel room.

Respondent had been under the impression that Appellant planned to go to his son’s address upon discharge. However, on the day Respondent issued the notice, Appellant informed Respondent that he would not be able to go to his son’s location because his ex-spouse was not going to allow it. Respondent’s representative testified that she called for other locations, including another shelter, but it did not have availability. Respondent’s representative testified

that there was not much that could be done with the short notice.

Respondent's representative testified that Appellant's insurance called Respondent and asked why Appellant was still admitted, stating that Appellant's treatment was done and would no longer be covered. Exhibit 4 at 15. Respondent testified that if Appellant continues to stay at the facility past the date of insurance coverage, he will be on the hook for the daily rate which would be significantly higher than a hotel room. Appellant was dually eligible for Medicare and Medicaid, but the Medicare coverage ran out during his stay.

Appellant testified that he has a follow-up appointment for his esophagus on March 27, 2024. Appellant has no money at the moment because he has not received an SSDI check since his mother and rep payee passed away in June. Appellant's son has submitted the paperwork to be Appellant's rep payee. Appellant expects to receive all of his back pay soon, but until then he has no money for a hotel room or apartment. Appellant has nowhere to go. Appellant's ex-spouse will not let Appellant stay with her and Appellant's son after a rift.

Appellant has low-eyesight due to cataracts and still cannot keep down any meals. Appellant's son told him there is a full \$47,000 hospital bill waiting at home.

Regarding discharge, Appellant understands that he has to leave the facility and can do a shelter if it is necessary. Appellant's son is helping him. Appellant would prefer to go to a different shelter, a Salvation Army, which he had been to before. Respondent's representative testified that she could give Appellant a referral to the Salvation Army, but it might take time and it is not clear how long it would take. Appellant used to have public housing but was evicted. Respondent's representative testified that Appellant's situation is common and housing application has long waitlists. Appellant understood that he would have a high bill if he stayed at the facility past his coverage time. Appellant just needed a little extra time to allow his SSDI funds to be released.

## **Findings of Fact**

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

1. Appellant admitted to the facility for a short-term rehabilitation stay with a primary diagnosis of pneumonitis. Appellant's secondary diagnoses include esophageal disease, alcoholic hepatitis, alcohol dependence, chronic pancreatitis, GERD, orthostatic hypotension, opioid abuse history, COPD, polyneuropathy, anemias, bipolar disorder, dysphagia, and major depressive disorder. Exhibit 4 at 3.
2. Appellant's physician wrote on March 21, 2023 that Appellant's short term rehab has ended. Appellant is ambulatory and independent with all ADLs.

3. By hand-delivered letter dated [REDACTED], Respondent informed Appellant of its intent to discharge him from the facility to an emergency shelter on March 22, 2024. Exhibit 1.
4. The notice stated that Respondent sought to discharge Appellant because “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” *Id.*
5. The notice explained Appellant’s appeal rights and identified employees responsible for supervising the discharge. The notice included a sheet that provided contact information for the state long term care ombudsman, the disability law center, center for public representation, and a local legal assistance office. *Id.*
6. A copy of the notice was not delivered to a family member or representative because Appellant did not know his son’s address. Exhibit 4 at 7.
7. Appellant filed a timely appeal on March 20, 2024. Exhibit 2.
8. Respondent’s representative testified that the emergency shelter may not have availability on the discharge date and there is no phone number to call to find out prior to discharge.
9. There was no plan to transport Appellant to the shelter contained in the record or through testimony, as Respondent’s representative testified that it would be up to Appellant to get to the shelter by 8:00 AM the morning of the discharge. There was no plan in place if the shelter was full.

## **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 some of 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.*

Per 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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.

When the facility transfers or discharges a resident, the resident's clinical record must contain documentation to explain the transfer or discharge. 130 CMR 456.701(B); 130 CMR 610.028(B). If the discharge is necessary because the resident's health has improved, the documentation explaining the discharge must be made by **the resident's physician or PCP**. 130 CMR 456.701(B)(1), 130 CMR 610.028(B)(1).

Prior to discharge or transfer, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative (if the resident has made such a person known to the facility), 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.

130 CMR 610.028(C).

The notice of discharge or transfer must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred except in certain circumstances identified in 130 CMR 610.029 (*see also* 130 CMR 456.702(B) and (C):

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

(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.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

Per 130 CMR 610.032(C), a nursing facility resident has the right to request an appeal of any

nursing-facility initiated transfer or discharge. A nursing facility resident must appeal a written notice of an emergency discharge pursuant to 130 CMR 610.029(B) within 14 days. 130 CMR 610.015(B)(5).

Further, Mass. Gen. Laws ch. 111, §70E provides 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.” Finally, federal regulations require that a nursing facility “**provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.** This orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7) (emphasis added).

Respondent has satisfied many of its statutory and regulatory requirements in providing notice of discharge to Appellant, and there is little dispute between the parties. However, Respondent has not provided sufficient preparation and orientation to Appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place, because it did not document or articulate a plan to ensure that Appellant will have a place to go upon discharge. Respondent’s testimony was that Appellant will be expected to leave and will have to fend for himself if the shelter listed as the discharge location does not have availability. Respondent did not provide a plan to transport or arrange a ride for Appellant to the discharge location. Respondent also assumed Appellant would be able to rent a hotel room without confirming he had funds available. While many of Respondent’s obligations have been met, Respondent is responsible for ensuring that Appellant will have a safe place to go upon discharge. That obligation has not been met with the proposed discharge to the emergency shelter that may not have availability on the day of discharge. For this reason, the appeal is approved.

## **Order for Respondent**

Rescind the March 19, 2024 notice of discharge.

## **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.



## 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.

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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

Worcester Rehab, Attn: Administrator, 119 Providence Street, Worcester, MA 01604