

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|---------------------|-----------------------|------------|
| Appeal Decision: | Approved by Default | Appeal Number: | 2406663 |
| Decision Date: | 07/05/2024 | Hearing Date: | 06/03/2024 |
| Hearing Officer: | Mariah Burns | | |

Appearance for Appellant:
None

Appearance for Nursing Facility:
None



*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

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|---------------------------------|---------------------|--------------------------|----------------------------|
| Appeal Decision: | Approved by Default | Issue: | Nursing Facility Discharge |
| Decision Date: | 07/05/2024 | Hearing Date: | 06/03/2024 |
| Nursing Facility's Rep.: | None | Appellant's Rep.: | None |
| Hearing Location: | Remote | Aid Pending: | No |

Jurisdiction

Through a notice dated March 30, 2024, AdviniaCare Eastpointe issued a notice of intent to transfer/discharge the appellant from the facility. *See* Exhibit 1. The notice stated that the facility seeks to discharge the appellant to an unspecified shelter on April 28, 2024, because his health had improved sufficiently and nursing facility services were no longer needed, the move is necessary for his own welfare and his needs cannot be met in the facility, and the safety of individuals is endangered due to his clinical or behavioral status. The appellant submitted a timely request for a fair hearing on April 26, 2024. *See* Exhibit 2, 130 CMR 610.015(B). Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal *See* 130 CMR 610.032.

Summary and Decision

On May 1, 2024, the Board of Hearings issued notice to the appellant and to the Administrator of the facility, that a hearing was to be held, by telephone, at 2:00 p.m. on May 15, 2024. *See* Exhibit 3. At the appointed date and time of hearing, workers from the facility reported that the hearings staff was on a break and was unavailable for a hearing.¹ On May 15, 2024, the Board of Hearings sent a letter to the Administrator of the facility noting the date and time of the scheduled hearing and the facility's failure to appear or request a rescheduling prior to the date of the hearing. *See* Exhibit 3. The letter states that pursuant to M.G.L., c. 30A and 118E and 130 CMR 610.048, the Board of Hearings will issue a decision favorable to the appellant resident and order the respondent nursing facility to rescind the proposed notice of discharge, unless the nursing facility can demonstrate good cause for not attending the scheduled hearing and why it did not inform the Board of Hearings before the date of hearing. Such an

¹ The appellant did not provide separate contact information, and thus, did not appear on either hearing date. The Board of Hearings intended to rely on the facility to contact the appellant given his residence there.

explanation was due at the Board of Hearings within 10 days of the date of the letter. The facility responded that they did not receive notice of the May 15 hearing and requested that the hearing be rescheduled. *See Exhibit 3 at 5.*

The Board of Hearings rescheduled the hearing for June 3, 2024, at 10:30 a.m. and, again, sent notice to the appellant and the administrator of the facility. At the second appointed date and time, the hearing officer called the facility and spoke with a worker who indicated that the person responsible for the appeal was out of the office and that the facility was generally not prepared for the hearing. On June 5, 2024, the Board of Hearings sent a second, nearly identical Notice of Nursing Facility Default and Order to Show cause, again giving the facility ten days to respond. *See Exhibit 4.* The nursing facility did not respond to the letter.

As the nursing facility chose not to appear to dispute the appellant's challenge to its intended notice of discharge, the appellant's appeal of such notice is approved.

Order

The nursing facility is hereby ordered to rescind the Notice of Intent to Transfer or Discharge dated March 30, 2024. If the appellant has already been discharged, the nursing facility is ordered to re-admit the appellant or otherwise reverse the effect of such notice of discharge.

Compliance with 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, Office of Medicaid, at the address on the first page of this decision.

Mariah Burns
Hearing Officer
Board of Hearings

cc: Respondent: AdviniaCare Eastpointe, Attn: Thomassine Dale, Tom Pogar, 255 Central Avenue, Chelsea, MA 02150, 617-884-5700 x2641