

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2407780
<b>Decision Date:</b>	6/6/2024	<b>Hearing Date:</b>	05/31/2024
<b>Hearing Officer:</b>	Alexandra Shube	<b>Record Open to:</b>	06/05/2024

**Appearance for Appellant:**

*Via telephone:*

Pro se

**Appearances for Nursing Facility:**

*Via telephone for Saugus Rehab and Nursing:*

Brian Hachey, Esq.

Evelyn Foleke, Director of Social Services

Roselie Pierre, RN, Director of Nursing

Analiese Carter, Executive Assistant



*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 Discharge – Failure to Pay
<b>Decision Date:</b>	6/6/2024	<b>Hearing Date:</b>	05/31/2024
<b>Nursing Facility's Reps.:</b>	Brian Hachey, Esq., et al.	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center 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 of Intent to Transfer/Discharge with Less than 30 Days Notice (Expedited Appeal) dated May 8, 2024, Saugus Rehab and Nursing (hereinafter, "the facility") informed the appellant of its intent to discharge her on [REDACTED] because she failed, after reasonable and appropriate notice, to pay for (or has failed to have Medicaid or Medicare pay for) services rendered at the facility (see 130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on May 15, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge or transfer an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

At the request of the hearing officer, the record was held open until June 5, 2024 for the facility's attorney to provide copies of the billing statements provided to the appellant and confirmation that the facility was named representative-payee by Social Security Administration (SSA).

## Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge her due to her failure to pay for her stay.

## Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

## Summary of Evidence

The appellant appeared at the hearing via telephone. The nursing facility, represented by its attorney, the director of social services, the director of nursing, and the executive assistant, also appeared at the hearing via telephone.

According to the testimony and documentation, the facility provided the following: the appellant has been a resident of the facility since [REDACTED], and has had no payor source for most of her time there. She currently owes the facility \$169,572.96, a ledger of which was provided in the facility's pre-hearing submission, along with the appellant's clinical record. She has no active MassHealth application, although she did apply for MassHealth long-term care coverage in February, 2023. That application was denied for failure to provide all requested verifications. She has rejected attempts by the facility to help her complete an application, including applying for conservator. She has made no other efforts to secure a payor source, although she has a monthly income of about \$5,000 between her Social Security and pension. The facility became representative-payee of her Social Security effective February, 2024 and now receives \$2,445.70 per month from Social Security,<sup>1</sup> which is not enough to cover her monthly bill for room and board or the balance she has accrued. Progress notes provided document repeated discussions regarding paying her bill, as well as previous discharge notices for failure to pay.<sup>2</sup>

The executive assistant delivers the bill by hand to the appellant every month. Monthly room and board at the MassHealth pending rate (what the facility expects the Medicaid rate would be if the appellant had MassHealth long-term care coverage) is between about \$7,200 per month and

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<sup>1</sup> At hearing, the facility was not certain about the representative-payee status, but during a brief record open period after the hearing, the facility's attorney confirmed that the facility is representative-payee and provided a copy of the letter from Social Security Administration (SSA). See Exhibit 5.

<sup>2</sup> Board of Hearings records indicate the two most recent nursing facility discharge appeals (#2312451 and #2404243) were both approved. Appeal #2312451 was approved because the appellant had an appeal pending related to the appellant's MassHealth long-term care application and eligibility (that appeal, #2313189, was later denied for failure to provide requested verifications). Appeal #2404243 was approved based on deficiencies in the discharge notice.

\$7,500 per month. It is not the private rate, which would be more than \$450 per day. If the private rate were used, her monthly bill would be around \$15,000 per month. Given that the facility is billing her at the MassHealth rate, the facility also includes patient liability as a monthly line item of \$5,000, which would be similar to her estimated Patient Paid Amount (PPA).

The director of social services testified that the business office has had difficulty working with the appellant. Social services at the facility got [REDACTED] involved with the appellant's case to help find appropriate housing in the community. The appellant is capable of living independently in the community and, with her income of about \$5,000, can afford to do so. They found the appellant an apartment in the community but she turned it down. The facility also suggested she could live with her daughter but she declined that option as well. The proposed discharge location is a homeless shelter. The shelter has its own clinic, and a partnership with a local hospital. The facility could help the appellant set up services at the shelter and in the community.

The director of nursing stated that the appellant is capable of administering her own medications. She does not require skilled care or physical therapy. She does not meet the criteria for nursing facility level of care. While she has a history of anxiety and PTSD, it does not affect her activities of daily living (ADLs), and she has no cognitive deficits. She can use her wheelchair independently but is not compliant with her walker. She can transfer independently, but if she asks for help, the facility must assist and she is a one-person transfer when that occurs. The appellant is independent with most other ADLs and self-care. The facility's medical director, who has overseen the appellant's care for about one year, documented that the appellant is "alert and oriented x3 and capable of communicating her needs... Her affective and emotional state appeared calm and reflective. [She] is vitally stable for discharge and would thrive in the community or shelter system."

The appellant testified that she entered the facility for rehabilitation due to an issue with the artery in her left leg which required an operation. She acknowledged that she receives the bill every month from the executive assistant, but she has a problem with the bills. She stated they were not itemized and included medical expenses but could not provide further details.<sup>3</sup> The appellant stated that she turned down the apartment located for her because it was a small studio apartment and she did not like it. She does not want to go to the shelter, but also stated she does not want to stay at the facility. She testified that she thinks she can care for herself and take her own medications. Although she can walk, she has some trouble with it because of her breathing issues.<sup>4</sup> She stated that her Social Security is about \$2,500 per month but she is no longer receiving it because it goes to the facility. Additionally, her pension is about \$3,000 per month and goes into

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<sup>3</sup> During the record open period, the facility's attorney provided copies of the monthly statements provided to the appellant. Those statements show "Room & Board charges" and "Patient Liability." There are no medical bills or procedures included in them. See Exhibit 5.

<sup>4</sup> The director of nursing commented that the breathing is likely related to her cardiovascular disease. Her healthcare providers have recommended smoking cessation to help, but she has refused.

a bank account.

## Findings of Fact

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

1. The appellant was admitted to the facility in [REDACTED] and made no payments to the facility until February 2024, when the facility became representative-payee for her Social Security benefit (Testimony and Exhibit 4).
2. On May 8, 2024, the facility issued a Notice of Intent to Transfer/Discharge with Less than 30 Days Notice (Expedited Appeal) because the appellant failed, after reasonable and appropriate notice, to pay for (or has failed to have Medicaid or Medicare pay for) services rendered at the facility (Testimony and Exhibit 1).
3. On May 15, 2024, the appellant timely appealed the discharge notice (Exhibit 2).
4. The appellant currently owes the facility \$169,572.96 (Testimony and Exhibit 4).
5. The facility has provided the appellant with billing statements (Testimony and Exhibits 4 and 5).
6. The appellant has no skilled nursing needs, is primarily independent with her ADLs, and is independent with her wheelchair (Testimony and Exhibit 4).
7. The proposed discharge location is a homeless shelter which is a safe discharge location given the appellant's needs (Testimony and Exhibits 1 and 4).
8. The facility, along with [REDACTED] has tried to assist the appellant with housing in the community and found an apartment that the appellant turned down (Testimony and Exhibit 4).
9. The appellant does not want to go to the shelter or to her daughter's home, refused the apartment, and does not want to stay at the facility (Testimony).
10. The facility's medical director documented the reasons for the appellant's intended discharge in her facility medical record.

## Analysis and Conclusions of Law

The requirements for a nursing facility-initiated transfer or discharge are set forth at 130 CMR 456.429, 456.701 through 456.704, and 610.028 through 610.030. The regulation permits

transfer or discharge only when one of the following circumstances is met: (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 MassHealth or Medicare pay for) a stay at the nursing facility;** or (6) the nursing facility ceases to operate. (See 130 CMR 610.028(A), emphasis added)

Additionally, pursuant to 130 CMR 610.028(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).

In this case, the facility is seeking to discharge the appellant for failing to pay for her stay at the facility. The facility notified the appellant of the debt owed to the facility by both providing billing statements to the appellant and through ongoing conversations between the facility and the appellant. While the appellant applied for MassHealth in February 2023, she did not submit all the required verifications and that application was denied. She has not re-applied for MassHealth, she has not made any private payments (other than through the facility becoming representative-payee for her Social Security effective February 2024), and she remains without a payor source. The appellant acknowledged that she has not paid (despite an income of about \$5,000 per month) and has twice before been given discharge notices for failure to pay.

Despite her non-payment and testifying that she does not want to remain in the facility, the appellant argued that she would not go to the proposed discharge location and did not like the apartment unit that social services helped her find. According to her clinical record and the medical director of the facility, she does not have any skilled nursing needs, is primarily independent with her ADLs, and could safely live in the community. The appellant also stated she could care for herself. Through its testimony and documentation, the facility has sufficiently demonstrated that the appellant has failed to pay for her stay at the facility after reasonable and appropriate notice.

In addition to the MassHealth-related regulations discussed above, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute provides 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.

The facility has proposed a discharge to a homeless shelter. While it may not be the appellant's preferred location, the proposed discharge location is safe and appropriate, and the appellant does not have a right to stay at the facility without paying. Through its testimony and documentation, the facility has demonstrated that the appellant is primarily independent with her ADLs, does not require any skilled nursing care, and can safely live in the community. Social services has been engaged with the appellant in discharge planning and finding housing. Additionally, the shelter has a partnership with a local hospital and its own clinic where the appellant can set up services if needed. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, the appeal is denied.

## **Order for Nursing Facility**

Proceed with the planned discharge no earlier than five (5) days after the date 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.

## 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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc: Saugus Rehab & Nursing, Attn: Ryan Murphy, Administrator, 266 Lincoln Avenue, Saugus, MA  
01906  
[REDACTED]