

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



## CORRECTED DECISION

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2408182
<b>Decision Date:</b>	7/31/2024	<b>Hearing Date:</b>	06/17/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**  
Pro se

**Appearance for the Skilled Nursing Facility:**  
Ann Marie Ester, Social Work Director; Nicole Fiola, Administrator; Rachel Hicks, OT; Anne Nadeau, Nursing Director



*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 Home Discharge; Skilled Nursing Needs
<b>Decision Date:</b>	7/31/2024	<b>Hearing Date:</b>	06/17/2024
<b>MassHealth's Rep.:</b>	Ann Marie Ester, et. al.	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	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

On May 20, 2024, the nursing facility issued a 30-day notice that the appellant would be discharged to a motel for which the facility would pay for three days because the appellant's health sufficiently improved so that she no longer needs the services provided by the facility. *See* 130 CMR 610.028 and Exhibit 1. The appellant filed this appeal in a timely manner on May 22, 2024. *See* 130 CMR 610.015(B) and Exhibit 1. Notice of transfer or discharge from a nursing facility is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by the Skilled Nursing Facility

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

### Issue

The appeal issue is whether the nursing facility proved that the appellant's health sufficiently improved so that she no longer requires skilled nursing services and that they abided by the requirements of M.G.L. c. 111, §70E when crafting a discharge plan.

## Summary of Evidence

The appellant is an adult and represented herself at hearing. The skilled nursing facility was represented at hearing by Social Work Director, the Administrator of the Facility, the Director of Nursing, and an occupational therapist. The following is a summary of the testimony and evidence provided at hearing:

The appellant has been admitted to and discharged from the facility on numerous occasions since suffering a stroke in August of 2021. Her most recent admission date was [REDACTED] 2023, for treatment for cocaine dependence. The facility reported that the appellant has undergone both physical and occupational therapy and has completed all necessary inpatient treatment. Furthermore, she is not currently receiving any skilled nursing services. The facility also submitted the appellant's clinical record, which included a narrative and discharge plan from the appellant's physician. The clinical record supports the assertions made by the facility at hearing.

The appellant reported several instances where she felt as if she was mistreated by the facility. She reported her intention to close several open criminal cases and attempt to have them sealed in order to obtain housing, but no such documentation of those efforts was provided. She reported that she did not have an apartment prior to her admission to the facility, and, at one point during the hearing stated "I don't have to be there no more." Her desire to remain in the facility was related to her attempts to obtain housing, not due to any ongoing health concerns.

The parties both reported that a previous hearing took place before the Board of Hearings. The facility reported that, at that hearing, the appellant was in a similar situation regarding her housing. The appellant reported that the hearing resolved because the facility was found to not have met their burden of proof. Board of Hearings records indicate that the facility rescinded the discharge notice to pursue discharge planning pursuant to an approved Moving Forward Plan Waiver and the appellant withdrew the appeal. See BOH Appeal Number 2304859, July 18, 2023.

## Findings of Fact

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

1. The appellant is a current resident of the nursing facility and has been in and out numerous times since August of 2021 after suffering a stroke. The appellant's most recent admission was on [REDACTED] 2023, for treatment for cocaine dependence. Testimony, Exhibit 4 at 9.
2. During her stay at the facility, the appellant received physical and occupational therapy and has since completed all necessary inpatient treatment. Testimony, Exhibit 4 at 37-43.

3. On May 20, 2024, the facility issued a 30-day notice of discharge to the appellant, reporting that her health had sufficiently improved such that she no longer requires skilled nursing care. The discharge location was a hotel for which the facility will pay for three days. Exhibit 1.
4. On May 22, 2024, the appellant filed a timely notice of appeal. Exhibit 2.
5. The appellant is not currently receiving any skilled nursing services. She does not have any health needs that cannot be safely met in the community, and any follow-up care she may require can be treated on an outpatient basis. The appellant's clinical record supports this. Exhibit 4, *generally*, Testimony.
6. The appellant was previously unhoused before admission to the facility. Testimony.
7. The appellant's previous appeal resolved on July 18, 2023; the nursing facility agreed to rescind the discharge notice to pursue discharge planning pursuant to an approved Moving Forward Plan Waiver and the appellant withdrew the appeal. See Appeal Number 2304859.

## 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 initiated by a nursing facility. MassHealth has enacted regulations that mirror the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 *et seq.* and in the Fair Hearing Rules at 130 CMR 610.000 *et seq.* Thus, when issuing a notice of discharge for a resident, the nursing facility must comply with the requirements set forth within those regulations regardless of whether the resident is a MassHealth member.

Under 130 CMR 610.028, a resident may only be discharged from a nursing facility under the following circumstances:

- (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 Medicaid or Medicare pay for) a stay at the nursing facility; or

(6) the nursing facility ceases to operate.

When, as it is here, the transfer or discharge is sought due to the circumstances specified in (2) above, the resident's clinical record must contain documentation by the resident's physician to explain the transfer or discharge. See 130 CMR 610.028(B); 130 CMR 456.701(B). The facility must also typically provide 30-days' notice, but it may give less than 30-days' notice where 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." 130 CMR 610.029(B)(1).

Furthermore, the nursing facility must demonstrate that it has complied with the requirements under M.G.L. c. 111, §70E, which states the following:

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.

Thus, to determine whether the nursing facility has met its burden of proof in properly discharging a resident, a two-pronged analysis must be considered. First, the nursing facility must show that it complied with the requirements of 130 CMR 610.028 in issuing the notice, and second that c. 111, §70E has been followed as part of the resident's discharge plan. After hearing, and for the following reasons, I find that the nursing facility has met its burden of proof and is permitted to discharge the appellant accordingly.

Here, the nursing facility issued the discharge notice at hand because they assert that the appellant's health has improved and that she does not require skilled nursing services. See Exhibit 1. The facility sufficiently demonstrated that the appellant's needs do not require skilled nursing care and can be met on an outpatient basis. The appellant had been receiving both physical and occupational therapy treatment during her time in the facility, and documentation was provided indicating that discharge is appropriate. See Exhibit 4 at 21-23. The reporting physician met with the appellant to conduct an examination in anticipation of discharge and made no note of any concerns or skilled nursing treatment that the appellant might require. *Id.* The representatives from the nursing facility credibly testified that the appellant is not currently receiving any skilled nursing care for any of her diagnoses.

The appellant made note of her displeasure with her treatment at the facility, but appeared to agree that she no longer requires any of the skilled services the facility provides. It seems that her desire to remain at the facility is because she is hoping to obtain housing sometime soon and is concerned about her ability to do so if she is discharged. However, given that the appellant was in a similar situation with her housing approximately a year ago, I do not see this as reason to require

the facility to remain housing the appellant when she possesses no skilled nursing needs.

I therefore find that the nursing facility sufficiently demonstrated that the appellant's health has improved sufficiently so as not to require skilled nursing care as required by 130 CMR 610.028(2).

Next, the nursing facility must demonstrate that sufficiently prepared and oriented the resident to discharge to a safe and appropriate place pursuant to G.L. c. 111 §70E. In this case, the nursing facility has done so. Though the facility's intention is to discharge the appellant to a motel, they have demonstrated in several ways that this is both safe and appropriate for her. First, although the appellant does use a wheelchair, she is not wheelchair bound and often uses a walker to ambulate, making mobility less of a concern for her. Second, although the appellant reports that she has made recent strides in her efforts to obtain housing, she provided no evidence that any such housing is imminently available to her; in fact, there was testimony that the parties found themselves in a similar position at a hearing the year prior, although that hearing resolved on different grounds. Finally, the appellant has a history of being unhoused and did not have an apartment prior to her admission. She does not appear to have any medical needs that cannot be safely treated in the community.

As such, I find that the nursing facility has adequately demonstrated compliance with the requirements of M.G.L. c. 111, §70E in creating a discharge plan for the appellant. They have therefore met their burden of proof at hearing, and the appellant may be discharged from the facility in accordance with 130 CMR 610.030(A). The facility is reminded that the appellant may not be discharged until 30 days after the date of this decision.

For the foregoing reasons, the appeal is hereby DENIED.

## **Order for the Skilled Nursing Facility**

None, except that the appellant may not be discharged until 30 days after the issuance 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.

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Mariah Burns  
Hearing Officer  
Board of Hearings

