

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2412113
Decision Date:	08/30/2024	Hearing Date:	08/23/2024
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearances for Nursing Facility:

Steve Cook – Administrator  
Elizabeth Bohan – Regional Dir. Soc. Serv.  
Jill Carver – 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>	Denied	<b>Issue:</b>	Nursing Facility Discharge
<b>Decision Date:</b>	08/30/2024	<b>Hearing Date:</b>	08/23/2024
<b>Nursing Facility's Reps.:</b>	Steve Cook; Elizabeth Bohan; Jill Carver	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Telephonic	<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 Transfer/Discharge Notice dated July 8, 2024, the respondent nursing facility informed the appellant that she would be discharged to another nursing facility on August 7, 2024. (Exhibit 1.) The appellant filed this timely appeal on August 6, 2024. (Exhibit 1; 130 CMR 610.015(B).) Nursing facility residents have the right to appeal any nursing facility-initiated transfer or discharge. (130 CMR 610.032(C).)

### Action Taken by Nursing Facility

The nursing facility seeks to discharge the appellant to another nursing facility "as a result of your failure, after reasonable & appropriate notice to either pay for (or to have paid by Medicare, Medicaid or private insurance) your stay at our facility." (Exhibit 1.)

### Issue

The appeal issues are whether: (1) the facility has valid grounds to discharge the appellant; (2) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028 and 610.029; and (3) the facility has provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place pursuant to MGL Ch. 111, § 70E.

## Summary of Evidence

The appellant has resided in the nursing facility since 2022, and she is covered by MassHealth long-term-care benefits. As part of this coverage, the appellant is assessed a patient-paid amount (“PPA”) that equates to her gross monthly income, less certain allowable deductions. The appellant and the nursing facility agreed that the appellant’s PPA was set at \$2,098 per month. The appellant has been paying some, but not all of her PPA since she entered the nursing facility. At the time the discharge notice was issued, the appellant owed the nursing facility around \$8,000 in past-due PPA.<sup>1</sup>

The appellant acknowledged that she does not pay the entirety of her PPA. She testified that she continues to pay for a life insurance policy and for a storage unit in the community. She testified that her storage unit costs approximately \$640 per month in rent, but it has all of her belongings, many of which are very valuable to her. The nursing facility offered to store the appellant’s belongings for free, but the appellant testified that she would not allow her stuff to be stored at the nursing facility.

The nursing facility’s representatives explained that the facility to which the appellant would be discharged was an associated facility. That facility is aware of her unwillingness to pay the entirety of the PPA. However, that facility has lower overhead and operating expenses, and is better able to absorb the loss of income than the facility at which the appellant currently resides. Therefore, the discharge location is just as safe and appropriate as the current facility, and the reasons are driven solely by accounting purposes from the facility’s perspective.

The appellant testified that she did not want to be transferred to another facility because she heard that facility was not as nice, and she liked the facility at which she is currently residing. When asked if she would rather move to another facility or move her belongings into the facility’s storage area, she said she would rather move herself. The appellant did not have any confusion regarding the notice she had been provided and did not dispute the grounds for discharge. She offered to pay another \$300 per month toward the cost of her care, but the facility said they would only accept her paying the full PPA moving forward. The appellant declined that offer.

## Findings of Fact

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

- 1) The appellant is clinically eligible for long-term-care services, and she is currently covered by MassHealth. (Testimony by nursing facility representatives.)

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<sup>1</sup> The accounting submitted by the nursing facility reflects that the appellant has a past-due balance of \$8,812.40 as of August 1, 2024. The respondent did not provide a historical accounting of the appellant’s payments. (See Exhibit 3, p. 7.)

- 2) The appellant owes the facility a PPA of \$2,098 per month, which she refuses to pay the entirety. (Testimony by the nursing facility's representative; testimony by the appellant.)
- 3) Because of this recurring non-payment, the appellant had a historical debt to the nursing facility in excess of \$8,000 at the time the facility issued its notice of discharge. (Testimony by nursing facility representatives; Exhibit 3, p. 7.)
- 4) The appellant does not intend to start paying the entirety of her PPA moving forward. (Testimony by the appellant.)
- 5) The discharge is to another nursing facility where the appellant would continue to receive the same care and services. (Testimony by nursing facility's representative.)

## **Analysis and Conclusions of Law**

A nursing facility may only discharge or transfer a resident for one of six reasons:

- (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.

(130 CMR 610.028(A); see also 130 CMR 456.701(A).)

When the transfer or discharge is for one of the first five reasons, the nursing facility must also document the basis for the transfer or discharge in the resident's clinical record. (130 CMR 610.028(B); 130 CMR 456.701(B).) Further, the documentation must be made by either the resident's physician for the first two reasons, or a physician for the third or fourth reason. (130 CMR 610.028(B).) Non-payment does not need to be documented by a physician.

The discharge notice must be hand delivered to the resident and mailed to a designated family member, and it must state 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 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).)

Typically, a nursing-facility must provide 30-days-notice of its intent to discharge. (130 CMR 610.029(A).) An emergency discharge may proceed "as soon as practicable" in certain of the following circumstances. (130 CMR 610.029(B); see also 130 CMR 610.015(B)(4) (allowing 14 days to appeal emergency discharge notice).)

A nursing-facility resident who requests a hearing to dispute their discharge "pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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>2</sup> (M.G.L. ch. 111, § 70E.)

The appellant agrees that she is not paying her full obligation to the nursing facility, and she owes the facility more than \$8,000 in back-due PPA. Moreover, the appellant refuses to pay her full PPA moving forward. The identified expenses she listed are not allowable deductions from the calculation of a PPA for long-term-care residents. (See 130 CMR 520.026.) The facility offered to store her belongings at no cost, and the appellant refused. She testified that she would rather move to the other nursing facility than move her stuff from the storage unit for which she pays rent. Therefore, the nursing facility has appropriate grounds for discharging the appellant.

The parties also agree that the nursing home has provided proper notice to the appellant of its intent to discharge, and that the facility’s accounting records are correct. The appellant does not want to move to another facility because she does not believe that it will be as nice, but she does not raise any medical concerns that she will not receive appropriate care at the other nursing facility. I find that the nursing home issued a valid notice of discharge and there are no medical reasons why the appellant cannot be safely and appropriately discharged to another nursing facility. The nursing facility may proceed to discharge the appellant no sooner than 30 days after the date of this decision, pursuant to 130 CMR 610.030(A). This appeal is DENIED.

## **Order for the Nursing Facility**

Proceed with discharge no sooner than 30 days from the date of this decision.

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<sup>2</sup> The term “referee” in the statute refers to a Board of Hearings hearing officer.

## 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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Christopher Jones  
Hearing Officer  
Board of Hearings

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Respondent: Medford Rehab & Nursing Center, Attn: Administrator, 300 Winthrop Street,  
Medford, MA 02155