

**Office of Medicaid  
BOARD OF HEARINGS**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2414529
<b>Decision Date:</b>	10/29/2024	<b>Hearing Date:</b>	10/11/2024
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**



**Appearances for Nursing Facility:**



– Administrator

– 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; Danger to Others
<b>Decision Date:</b>	10/29/2024	<b>Hearing Date:</b>	10/11/2024
<b>Nursing Facility's Reps.:</b>	[REDACTED]	<b>Appellant's Rep.:</b>	Pro se
<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 30-Day Notice of Intent to Discharge Resident dated September 23, 2024, the respondent nursing facility informed the appellant that it would discharge him to a specific homeless shelter on October 23, 2024. (Exhibit 1.) The appellant filed this timely appeal on September 23, 2024. (Exhibit 1; 130 CMR 610.015(B).) Nursing facility-initiated discharges are valid grounds for appeal. (130 CMR 610.032(C).)

### Action Taken by Nursing Facility

The respondent sought to discharge the appellant with 30-days' notice because "the safety of the individuals in the nursing facility is endangered."

### 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 at 130 CMR 610.028-.029 and 456.701-.702; 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

This is the appellant's third fair hearing regarding the same facts. A prior fair hearing decision, Appeal No. 2411072 (Sep. 20, 2024), made the following factual findings:

1. The appellant was admitted to the facility in late [REDACTED] after falling and breaking his right leg . . . .
2. By notice dated June 21, 2024, the nursing facility planned on discharging the appellant because "The health of individuals in the facility would otherwise be endangered." The location of discharge in the June 21, 2024 notice was to the "community" . . . .
3. Previously, on March 8, 2024, the facility notified the appellant that it planned to discharge him on April 8, 2024 to [a specific] Transitional Living Center because "Your health has improved sufficiently that you no longer need the services provided by the facility" . . . .
4. On April 2, 2024 the facility rescinded the discharge notice of March 8, 2024 because "his insurance's decision to cut him from skilled care was incorrect" . . . .
5. It is undisputed that while a resident, the appellant possessed, used, and on multiple occasions was intoxicated from drinking alcohol . . . .
6. The use and possession of alcohol is in violation of the facility's policy prohibiting alcohol. This policy was acknowledged and agreed to by the appellant . . . .
7. On September 3, 2024, the facility's physician medically cleared the appellant for discharge.

(Appeal No. 2411072, p. 3.)<sup>1</sup>

Appeal No. 2411072 overturned the discharge because the June 21 discharge notice did not include a specific discharge location, and therefore, the discharge notice did not satisfy regulatory requirements. The decision further held that the March 8, 2024, discharge notice could not be used to identify the discharge location because "this notice was rescinded by the facility on April 2, 2024, and cannot be used in conjunction with the June 21, 2024 notice to satisfy the notice requirements of 130 CMR 610.028(C)(4)." (Appeal No. 2411072, p. 4.) The decision goes on to state that the approval is "without prejudice- i.e., the facility may issue a new discharge notice at any time," and the appeal was "approved only because there has been an insufficient notice of discharge to the appellant." (Id.)

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<sup>1</sup> A redacted copy of this fair hearing decision is included in the administrative record at Exhibit 4.

The appellant acknowledged that he had consumed alcohol and THC at the facility, but he argued that the medical staff there had taken him off pain medication, so he needed to self-medicate. The appellant argued that he did nothing illegal in Massachusetts, and he has never threatened anyone and is never a danger to others. The nursing facility administrator highlighted that there are illicit substance policies in the clinical record that show the appellant was informed that consuming alcohol and illicit substances was prohibited in the facility and considered a danger to others. There is also a signed policy that rooms may be searched to find alcohol in the submitted nursing facility records. (See Exhibit 3, pp. 18-21.) The appellant argues that these documents were created after he became a resident, and that they were created specifically to get rid of him. These documents are signed by the resident and have adoption dates from prior to his admission.

The nursing facility administrator reviewed the clinical record, including a doctor's note from October 1, 2024. Such documents state that the appellant was examined, found independent with all activities of daily living, was medically stable, and cleared for discharge to the community. (Exhibit 3, pp. 36-37.) By documentation dated October 2, 2024, the occupational therapists determined that the appellant was completely independent with activities of daily living and no longer required nursing or therapy services of any form. (Exhibit 3, p. 39.) When asked why the discharge was not also based on clinical improvement, the administrator responded that the appellant continued to be screened for payment by his insurance company at the time of the discharge notice. Because clinical improvement had been the underlying basis for the original notice that nursing facility had rescinded, the facility was hesitant to rely on it while the appellant's insurance coverage was still screening him as eligible for long-term-care services. The administrator testified that the appellant's insurance company has since denied further coverage.

The appellant alleged that all these clinical documentations were fabrications, and he testified that he had not been seen by a doctor in the past 10 months at the facility. The appellant testified that the therapists had worked with him daily because his right arm and leg are useless. The appellant did not believe that his therapists would have written what is in the documentation and noted that the therapists had just identified that he had a bolt coming out of his leg. The appellant has a follow-up appointment with an orthopedist, and he believes the surgeon made an error because he should not have a bolt coming out of his leg. The appellant acknowledged that he was independent with his activities of daily living, though it takes him extra time to accomplish tasks, and he relies upon a wheelchair.

The social worker for the facility testified that the appellant receives case management assistance from both the Department of Mental Health ("DMH") and an organization called City Block. She testified that the appellant has refused multiple housing options in the past. The appellant repeatedly interrupted these explanations and disputed their truth. He went back and forth between saying that he never met with his DMH counselor and testifying that they did not actually find him housing. He then clarified that he would not live in a sober home and the only other housing they found him had rent of \$1,400 per month, and his income is only a little over \$1,500. The social worker testified that housing option has a sliding scale for rent and includes all

necessities, such as utilities and they provide meals. The appellant said that this was another lie. (See Exhibit 3, pp. 78, 80, 86, 90, 95.)

The only objection to the current discharge notice raised by the appellant was that it was copied to his sister. His sister is his inactivated health-care proxy, but she has no authority over his care at this time. The nursing facility administrator testified that they had been told at an earlier appeal that they needed to copy the discharge notice to a representative for the appellant. He refused to identify one, so they copied his sister as she had been involved in his care.<sup>2</sup>

## Findings of Fact

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

- 1) All facts found in Appeal No. 2411072, and reviewed above, are incorporated herein. (Exhibit 4.)
- 2) The appellant was again clinically cleared for discharge by a physician on October 1, 2024. (Exhibit 3, pp. 36-37.)
- 3) The appellant was discharged from all therapies and found independent with all activities of daily living on October 2, 2024. (Exhibit 3, p. 39.)
- 4) On September 23, 2024, the nursing facility issued another notice of intent to discharge the appellant because the safety of other are endangered by his continued residence at the facility. This notice identified a specific homeless shelter to which the appellant would be discharged. (Exhibit 1.)

## 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;

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<sup>2</sup> The appellant asked that his sister not be copied on this fair hearing decision.

(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 resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2) ... ." (130 CMR 610.028(B)(1).)

The discharge notice must be "hand-deliver[ed] to the resident and mail[ed] to the authorized or legal representative," 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).)

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>3</sup> (G.L. c. 111, § 70E.)

The appellant has already been found to be a danger to others in the facility, and discharge was only approved “due to an insufficient discharge notice ... lacking a specified place of discharge.” (Exhibit 4, p. 4; 130 CMR 610.085(A).) Therefore, the facility has valid grounds to discharge the appellant.

The facility has corrected its previous notice insufficiency. The appellant objects to his sister being copied on his discharge notice, arguing that she is not his authorized representative while his health care proxy remains inactivated. While this may pose problems in another venue, I do not find that it violates the regulatory notice requirements. Therefore, this discharge notice satisfies the regulatory requirements.

Finally, the appellant’s clinical record details that the appellant can be discharged to a shelter at this time. The nursing facility has endeavored to provide preparation, orientation, and housing assistance to the appellant, but he has resisted that assistance. While the appellant has alleged a change in his clinical condition, that change is not reflected in the clinical record. Further, the appellant agreed that he is independent with his activities of daily living, though he continues to use a wheelchair.

Therefore, 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 the specified homeless shelter. The nursing facility may proceed to discharge the appellant no sooner than 30 days after the date of this decision, pursuant to 130 CMR 456.704(A). This appeal is DENIED.

## **Order for Nursing Facility**

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

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<sup>3</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

cc: Respondent: Westford House Nursing & Rehab, Attn: Administrator, 3 Park Drive, Westford, MA 01886