

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2415355
Decision Date:	11/15/2024	Hearing Date:	11/08/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearances for Skilled Nursing Facility:

Via Telephone:



*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

Appeal Decision:	Denied	Issue:	Nursing Facility Discharge
Decision Date:	11/15/2024	Hearing Date:	11/08/2024
Nursing Facility's Rep.:	Miatta Edi-Osagie, et al.	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown MassHealth Enrollment Center Remote	Aid Pending:	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 August 29, 2024, [REDACTED] (hereinafter, "the facility") informed the appellant of its intent to discharge him on September 29, 2024 because his health has improved sufficiently so that he no longer needs the services provided by the facility and he has 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 October 7, 2024¹ (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).

¹ The Board of Hearings initially dismissed the appeal because it was not received within the time specified by regulation 130 CMR 610.015, which is within 30 days after a nursing home resident receives written notice of discharge or transfer; however, the appellant's request to vacate the dismissal was granted. Ex. 3.

Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge him due to his failure to pay for his stay and because his health has improved sufficiently that he no longer needs the services provided by the facility.

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 hearing via telephone. The appellant submitted numerous emails prior to hearing which were entered into the hearing record (Ex. 5). The nursing facility appeared at hearing via telephone and was represented by its administrator, business office manager, aftercare coordinator, substance abuse counselor, director of nursing, director of rehabilitation services, director of social services, and the director of staff development. The facility submitted pages from the appellant's nursing facility record which were entered into the hearing record (Ex. 6, pp. 1-320).

The facility testified as follows: the appellant, who is over the age of 65, was admitted to the facility on [REDACTED] primarily for alcohol-induced acute pancreatitis and severe epigastric pain. (Testimony and Ex. 6, pp. 135-136). According to medical records, he has a history of psychotic disorder with delusions due to known physiological condition, alcohol abuse (in remission)², paranoid schizophrenia, diabetes mellitus type 2, hypertension, gastro-esophageal reflux disease (GERD), ischemic cardiomyopathy, and other conditions. (Testimony and Ex. 6, pp. 2, 102, and 135-136). He was admitted under his Tufts skilled nursing benefit which ended in July 2023. (Ex. 6, pp. 144, testimony). Then, the appellant was switched to MassHealth pending while the facility tried to assist him in completing the MassHealth application. In its efforts to do so, the facility also engaged a Medicaid consultant. (Testimony). He did not cooperate and would not sign the MassHealth application. (Testimony and Ex. 6, pp. 56, 59). He has been without a payor source since July 2023 and continues to refuse to apply for MassHealth. (Testimony and Ex. 6, pp. 56, 59).

The business office manager stated that, since the appellant does not have (and refuses to apply for) MassHealth, the facility has been billing him at the private room and board rate. (Testimony). He has not paid for his stay since July 2023 and the current outstanding balance is \$276,772. (Testimony and Ex. 6, pp. 109). Statements are provided to the appellant in his room

² In testimony at hearing, the appellant repeatedly denied any history of drug or alcohol abuse.

every month. (Testimony and Ex. 6, pp. 140).

In addition to non-payment and his refusal to apply for MassHealth, the appellant's health has improved sufficiently that he no longer needs the services provided by the facility. (Testimony and Ex. 6, pp. 1). The appellant is independent with all activities of daily living (ADLs) and can manage his own care needs. (Testimony and Ex. 6, pp. 56). On August 27, 2024, the appellant's physician at the facility wrote "The patient is medically stable to be discharged home with medications and services. Social service input is noted and appreciated. He does not meet nursing home level of care." (Testimony and Ex. 6 at 1). This physician oversees the appellants care at the facility and has four nurse practitioners who work under him at the facility and take progress notes on the appellant. (Testimony).

On August 8, 2024, staff reported to the social worker that the appellant stated he was being held against his will and he wished to be discharged. (Testimony and Ex. 6, pp. 57). The staff member reported that the resident was yelling and becoming increasingly agitated during the interaction. (Testimony and Ex. 6, pp. 57). When the social worker and staff member went to speak to the appellant about the discharge process, the appellant became even more accusatory and hostile toward the social worker. (Testimony and Ex. 6, pp. 57). The social worker attempted to calm the appellant and explain the 30-day discharge process, but the appellant became upset and kicked the social worker. (Ex. 6, pp. 57). The social worker noted that the resident is the primary barrier to a safe and appropriate discharge. (*Id.*). He has a history of yelling and screaming at staff and other residents and his aggressive and hostile behavior was complicating the discharge planning process. (*Id.*).

After the appellant's physician stated that the appellant was cleared for discharge, the facility issued the 30-day notice of intent to discharge notice on August 29, 2024. (Testimony and Ex. 1). A social services note indicates that the social worker, accompanied by the appellant's nurse and security, hand-delivered the discharge notice to the appellant on August 29, 2024. (Testimony and Ex. 6, pp. 56). The note indicates that the appellant did not wish to talk to the social worker and the social worker explained that she was leaving the notice on his bedside table on top of his keyboard. (Ex. 6, pp. 56).

The facility testified that, since July 2023, it has continually tried to work with the appellant on discharge planning and getting services, including MassHealth, in place. An April 30, 2024 social services note indicates that the social worker made a referral to the Waiver Program. (Testimony and Ex. 6, pp. 59). On April 11, 2024, the program coordinator from Massachusetts Rehabilitation Commission (MRC) attempted to meet with the appellant who declined to engage. (Testimony and Ex. 6, pp. 59). On April 18, 2024, the MRC program coordinator made a second attempt to meet with the appellant about the application for the Waiver Program, but because he lacked current MassHealth benefits, she could not proceed. (Testimony and Ex. 6, pp. 59). The social worker consulted with the business office who attempted to get the appellant's MassHealth benefits reinstated, but the appellant refused to sign the necessary

paperwork. (Testimony and Ex. 6, pp. 59). The social worker provided the appellant with contact information for Springwell Elder Services but noted that he routinely refuses to engage or complete required documentation needed to access services that could facilitate his discharge to the community. (Testimony and Ex. 6, pp. 59).

The facility has also tried to involve Advocates Community Crisis Stabilization Program (Advocates) to assist with finding housing and other services in the community. (Testimony). In April 2024, the facility attempted to get the appellant into a treatment program in the community through Advocates, but the appellant refused because he stated he did not have a substance abuse issue. (Testimony). The aftercare coordinator also met with the appellant in June 2024 to discuss discharge planning and assist with finding housing. (Testimony and Exhibit 6, pp. 58). On August 5, 2024, records also indicate that the aftercare coordinator assisted the appellant in submitting a referral to Advocates to assist with discharge to the community. (Testimony and Exhibit 6, pp. 57). The aftercare coordinator noted that the appellant planned to return to the community with aftercare services including a primary care physician and any necessary durable medical equipment. (Exhibit 6, pp. 57).

The facility testified that the only service the facility does for him now is give him his medications, but he has no skilled nursing needs. (Testimony). The facility has had nurses work to educate the appellant on blood glucose monitoring and he is able to perform the task. (Testimony and Ex. 6, pp. 62). The appellant is independent with his wheelchair and has no physical or occupational therapy needs. (Testimony). He had a fall in the bathroom on September 2024, but there was no injury and no change in his status. (Testimony and Ex. 6, pp. 65). A screen for therapy after the fall showed that therapy was not indicated. (Testimony and Ex. 6, pp. 301-306). The proposed discharge location is a shelter in the community that is handicapped accessible. There is a family health center next door where the appellant can be set up with a primary care physician and receive care. (Testimony). As part of his discharge, the facility would set him up with Visiting Nurses Association (VNA) services, arrange a new primary care physician, and provide him with his medications. (Testimony).

The local ombudsman has also been involved with discharge efforts. (Testimony). Records indicate that, on September 19, 2024, the social worker was asked to offer assistance to the appellant on appealing the discharge notice. The administrator had received a call from the ombudsman stating that the appellant was not aware of if and how to appeal. (Ex. 6, pp. 55). The social worker attempted to explain the process to the appellant and the consequences if he does not appeal, but he was argumentative. (*Id.*). The social worker left the appellant's room and returned with a nurse to provide him with a new copy of the discharge notice. (*Id.*).

On September 30, 2024, the social worker and administrator met with the appellant to discuss his upcoming discharge because he had still not appealed the discharge notice. (Ex. 6, pp. 55). The appellant was argumentative, stated he never received the notice and the facility did not give him the correct paperwork, and insisted he was not leaving the facility. (*Id.*). The social

worker and administrator explained he had plenty of time to appeal and since he had not, he would be discharged. (*Id.*). The appellant swore and yelled at the social worker and administrator to leave his room. (*Id.*). Records also indicate that the facility again tried to explain the discharge process on October 3, 2024. (Ex. 6, pp. 54). When the appellant asked about his medication, the administrator attempted to explain the process and that the doctor would write the discharge order and he would receive his medications, but the appellant continued to interrupt and speak over the administrator. (*Id.*).

The appellant testified that he does not want to be in the facility and wants to be discharged, but he has issues with the notice and the safety of the discharge proposed by the facility. (Testimony). As to the notice, the appellant pointed out that his name is spelled wrong and the facility did not fill in the line on the notice for the time and date of when the notice was hand-delivered. (Testimony and Ex. 1 and 5). The notice is addressed to "[REDACTED]" when it should have stated "[REDACTED]." When asked by this hearing officer at hearing, the appellant stated he also goes by [REDACTED] (Testimony). He also argued that the notice was not appropriately served to him because it was not mailed (Testimony and Ex. 5).

The appellant does not agree with the discharge location to the shelter and argued that discharging him to a homeless shelter is illegal.⁴ (Testimony). He needs his medications, wants certain dental work completed, and wants an appointment with a cardiologist before being discharged. (Testimony). But he testified that he is independent with his wheelchair and would be capable of giving himself his medications. He sometimes needs help in and out of the shower, but once he is in the shower, he is fine on his own. He can get in and out of bed and in and out of his wheelchair independently. (Testimony). He stated that he has never met the doctor that the facility referenced, but spoke to him once to get a prescription refilled. (Testimony). He is looking for housing, not alcohol or drug abuse treatment because he does not have a substance abuse problem. (Testimony). He stated that no one has spoken to him about the discharge and he knows nothing about the shelter. (Testimony). As to the local ombudsman, he stated that she has not responded to him in ages and he has a grievance filed against her. (Testimony). He argued that the shelter is not a safe discharge location and he needs more time to prepare for the discharge. He does not have insurance right now and needs time to set that up so he can continue with dental work and have an appointment with a cardiologist. (Testimony). Before he can be safely discharged, he also needs to have a supply of his medications and find a new doctor. (Testimony).

He acknowledged that he has not paid for his stay at the facility and that he has not and will not sign the MassHealth application. (Testimony). He does not want to fill out the MassHealth

³ Multiple emails from the appellant to the Board of Hearings show that the name [REDACTED] is connected to the appellant's email address. (Ex. 5).

⁴ At hearing, he could not reference the specific law making discharge to a shelter illegal, but he was given the opportunity to provide the law after hearing via email. In that email received on November 8, 2024, he referenced M.G.L. c.111, §70E and stated that the discharge location was not safe. (Ex. 7).

application because it requires him to be a long-term care resident and he does not want to be in the facility long-term. (Testimony). He has issues with the care he has received at the facility, including a wasp sting to his face from a wasp nest outside his room. (Testimony and Ex. 5). The appellant explained that these payment issues were caused by events with MassHealth and his Tufts insurance beginning in July 2023.⁵ (Testimony). He said Tufts never notified him of the cancellation. (Testimony). He alleged that there was fraudulent insurance documentation causing these insurance issues and being forced to state that he was a long-term care resident. (Testimony). He does not need to stay at the facility but wants a safe discharge and is upset about the alleged insurance fraud. (Testimony).

Findings of Fact

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

1. The appellant, who is over the age of 65, was admitted to the facility on [REDACTED], primarily for alcohol-induced acute pancreatitis and severe epigastric pain.
2. He was admitted under his Tufts skilled nursing benefit which ended in July 2023 and he has not had a payor source since then.
3. The appellant has refused to apply for MassHealth benefits.
4. The appellant has been cleared for discharge by his physician at the facility who noted that the appellant is medically stable and does not meet nursing home level of care.
5. The appellant is independent with his ADLs, independent with his wheelchair, and has no skilled care needs.
6. The appellant has an outstanding bill at the facility totaling \$276,772.
7. The facility has attempted to engage in discharge planning with the appellant since July 2023, but the appellant has not been cooperative.
8. In addition to engaging the facility's social services and aftercare coordinator, the facility has also attempted to utilize multiple different community programs and services in aiding with the appellant's discharge, including MRC, Advocates, Springwell Elder Services, the Waiver Program, and local ombudsman.

⁵ On October 11, 2023, MassHealth issued a termination notice to the appellant because he did not complete his annual renewal within the allowed time. This matter was already appealed with and heard by the Board of Hearings on December 8, 2023. A written decision was issued denying the appeal because the appellant did not submit the annual renewal. See Board of Hearings decision for appeal #2310921.

9. The appellant is not eligible for any Waiver Program through MassHealth because he does not have and refuses to apply for MassHealth benefits.
10. On August 29, 2024, the facility hand-delivered the 30-day notice of intent to discharge notice to the appellant.
11. The proposed discharge location is a homeless shelter.
12. Because the appellant did not appeal the notice until October 7, 2024, the facility continued attempts to explain and coordinate the discharge process to the appellant, but he was resistant and non-cooperative.
13. The appellant's request for a fair hearing was initially dismissed for lack of timeliness, but ultimately, the Board of Hearings vacated the dismissal at the appellant's request.

Analysis and Conclusions of Law

Pursuant to 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged only when:

- (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) a stay at the nursing facility;**
- or
- (6) the nursing facility ceases to operate.

130 CMR 610.028(A); 456.701(A); (Emphasis added).

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).

130 CMR 610.028(B).

130 CMR 610.028(C) lays out the discharge notice criteria as follows:

(C) Before a nursing facility discharges or transfers any resident, the nursing facility must hand-deliver to the resident and mail to a designated family member or legal representative, if the resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands:

- (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 MassHealth agency, 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 610.029; and
 - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;
- (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. § 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. § 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.

If a hearing is requested, in accordance with 130 CMR 610.015(B)(4), and the request is received before the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision. 130 CMR 610.030(B).

The first issue that needs to be addressed here is whether the facility followed the proper procedures in issuing its notice. The appellant believed that the notice from the facility was illegal and should not even have to be appealed because it is invalid. The sufficiency of the notice, however, is an issue governed by regulations that should be addressed at hearing. The appellant argued in one of his email submissions that the facility's notice was not mailed to him and that violated regulation 130 CMR 610.015(A). 130 CMR 610.015 states that the "MassHealth agency must send written timely notice to the member **except as provided in 130 CMR 610.027.**" (Emphasis added). 130 CMR 610.027(C) provides that the MassHealth agency need not send timely notice, as defined in 130 CMR 610.015(A)... when the member has been placed in a nursing facility or chronic hospital..." Significantly, the nursing facility is not the MassHealth agency and a nursing facility's notice requirements are specifically outlined in 130 CMR 610.028(C), as stated above. 130 CMR 610.028(C) requires that the **notice must be hand-delivered to the resident**. There is no requirement that a nursing facility discharge notice be mailed, except to a designated family member or legal representative, if the resident has made such a person known to the facility. According to nursing facility records, the appellant is responsible for himself and there was no representative to mail a copy to. There is no dispute that the appellant has received notice. The appellant has carefully analyzed the notice himself and social services records from the facility indicate that the notice was hand-delivered to the appellant on August 29, 2024, the date on the notice. Social services records also indicate it delivered a second copy of the discharge notice to the appellant on September 19, 2024.

There are some errors in the notice that should be acknowledged and it appears that the facility should update its forms; however, none of these flaws are fatal to the notice and they did not prejudice the appellant in any way. First of all, the notice was addressed to [REDACTED] when it should have stated "[REDACTED]." When asked by this hearing officer at hearing, the appellant stated he also goes by Lawrence. Indeed, multiple emails from the appellant to the Board of Hearings show that the name [REDACTED] is connected to the appellant's email address. While the error was careless on the part of the facility, the notice was clearly intended for the appellant, who received it timely when it was hand-delivered to him on August 29, 2024.

The appellant also pointed out that the facility did not fill in the line on the notice for the time and date of when the notice was hand-delivered. The notice is dated August 29, 2024 and nursing facility records indicate it was properly hand-delivered to him on August 29, 2024 and, again, a copy on September 19, 2024 when he expressed confusion over the discharge process. The appellant's request for a fair hearing was originally dismissed for not being timely; however, at his request, the Board of Hearings considered the fair hearing request timely and the dismissal was vacated. He received his appeal and was not harmed by that. Furthermore, while there are many specific requirements that must be in a nursing facility discharge notice, the date and time at which it was hand delivered, while helpful to determine the timeliness of a request for fair hearing, is not required pursuant to the criteria in 130 CMR 610.028(C).

The notice meets all criteria listed in 130 CMR 610.028(C). Most importantly, it clearly lists the action taken by the facility; the specific reasons for discharge; the effective date of discharge; and the location to which the appellant is to be discharged. The notice explains his right to a fair hearing, how to request one, and who to contact at the facility if he had any questions. The notice also provided contact information for the long-term care ombudsman program, Disability Law Center, Centers for Public Relations, and local legal services office. The Fair Hearing Request form included with the facility's notice included the wrong fax number and address for the Board of Hearings and referenced the "Division of Medical Assistance" instead of the "Office of Medicaid"; however, page three of the notice itself includes the Board of Hearings' correct address where it explains to fill out the Fair Hearing Request form, make a copy for himself, and send a copy to "the Office of Medicaid, Board of Hearings at: 100 Hancock St., 6th Floor, Quincy, MA 02171," as required in regulation 130 CMR 610.028(C)(5)(a). For these reasons, the notice is sufficient and meets the requirements of 130 CMR 610.028(C).

The next issue on appeal is whether the appellant's health has improved sufficiently so that he no longer needs the services provided by the nursing facility. The appellant was admitted to the facility nearly two years ago primarily for alcohol-induced acute pancreatitis and severe epigastric pain. At this point, his health has improved and he is independent with all his ADLs. The only service the facility does for him now is give him his medications, but he has no skilled nursing needs. On August 27, 2024, the doctor overseeing the appellant's care at the facility stated that the appellant "is medically stable to be discharged home with medications and services. Social service input is noted and appreciated. He does not meet nursing home level of care." While the appellant testified that he does not know this doctor, the doctor is listed as his primary care physician at the facility. The facility representatives testified that the doctor oversees the appellant's care and oversees the four nurse practitioners who see the appellant and take progress notes that the physician reviews.

The appellant is independent with his wheelchair, washes himself, and transfers independently. The appellant had a fall in the bathroom on September 11, 2024, but there was no injury and no change in function. The most recent screen for therapy on September 17, 2024 showed that therapy was not indicated. The appellant acknowledged in his testimony that he would be able to administer his own medications. The appellant testified that he is independent with his wheelchair, grooming and bathing, although he needs help in and out of the shower. He also stated he can get in and out of bed and in and out of his wheelchair on his own. He stated that he does not need to stay at the nursing facility but was upset about insurance fraud and the lack of a safe discharge plan. The appellant is independent with all ADLs, he has no skilled therapy needs, he is not receiving PT or OT, and he has no skilled care needs. The SNF physician examined the appellant and determined the appellant no longer needs skilled nursing facility level of care and may be discharged with medications. The evidence supports that the appellant's health has improved sufficiently so that he no longer needs the services provided by the nursing facility.

The next issue is whether the appellant has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility. The facility provided statements showing that the appellant's current outstanding balance owed to the facility is \$276,772 based on the private room and board rate because he does not have MassHealth (or even a MassHealth application pending). The facility credibly testified that the appellant has not made any payments since his Tufts coverage ended in July 2023. The facility attempted to work with the appellant to file for MassHealth long-term care coverage, even having a Medicaid consultant work on his case. But the appellant was not cooperative and would not sign the paperwork. The appellant agreed that he has not paid. He also testified that he did not and would not sign the MassHealth paperwork because he does not want to be at the facility and the MassHealth documents were forcing him to agree to long-term care which he does not want. Through its testimony and documentation, the facility has sufficiently demonstrated that the appellant has failed to pay for his stay at the facility.

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 Federal Centers for Medicare and Medicaid defines "sufficient preparation" within the meaning of 42 CFR 483.15(c)(7) to mean that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence. (see *Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance*, Appeals Court No. 03-P-879, 2004).

The facility has met its burden of providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The facility intends to discharge the appellant to a homeless shelter. The shelter is handicapped accessible and has a family health center next door that provides medical care where the facility would set the appellant up with a new primary care physician. The appellant is receiving no skilled services at this time. The appellant is independent with ADLs and self-care. The nursing facility physician noted that the appellant is medically cleared for discharge and does not require skilled nursing facility level of care. As part of his discharge, the facility would release the appellant to the shelter with his medications; set up VNA services; and arrange the new primary care physician in the community. The records show that the facility has attempted to work with the appellant on discharge planning and obtaining MassHealth; however, he has been resistant.

Nursing and social services notes frequently document him being argumentative and combative with nursing facility staff during their efforts to discuss his discharge. Records show the facility has been educating him on blood glucose monitoring and he is able to perform it. The facility has also tried to involve various community resources, including MRC, Advocates, Springwell Elder Services, and the local ombudsman, in its discharge planning, but the appellant has declined to participate. The facility also tried to get him set up with Waiver Services, but it is a MassHealth program and he has refused to sign the MassHealth application. The appellant cannot claim to need health insurance in order to be safely discharged, but then refuse to apply for that health insurance. The facility has involved the appellant, to the extent possible, in discharge planning, but the fact that the appellant has chosen not to cooperate is out of the control of the nursing facility.

Based on testimony and the appellant's nursing facility record, the facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer to a safe and appropriate place.

For these reasons, the appeal is denied.⁶

Order for Nursing Facility

Proceed with the planned discharge no less than 30 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.

⁶ The sole issue on appeal is the facility's discharge notice dated August 29, 2024. Any issues the appellant has with his MassHealth coverage is outside of the scope of this appeal. Furthermore, the 2023 termination of his MassHealth benefits was already adjudicated in the decision for appeal #2310921. The appellant can re-apply for MassHealth benefits at any time, but has chosen not to do so. Similarly, any issues he has with Tufts insurance is also outside the scope of this appeal.

Implementation of this Decision

If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc: Respondent: