

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2415639
<b>Decision Date:</b>	12/12/2024	<b>Hearing Date:</b>	10/30/2024
<b>Hearing Officer:</b>	Christine Therrien	<b>Record Open to:</b>	12/09/2024

**Appearances for Appellant:**



**Appearance for Nursing Facility:**

Maria Craft, Administrator



*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>	NF Discharge
<b>Decision Date:</b>	12/12/2024	<b>Hearing Date:</b>	10/30/2024
<b>Nursing Facility Rep.:</b>	Maria Craft	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center Telephonic		

### 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 Transfer or Discharge Resident" dated 9/12/24, the nursing facility, [REDACTED], informed the appellant of the facility's intent to discharge him to the [REDACTED] because "[the appellant has] failed after reasonable and appropriate notice to pay for [his] stay at the facility." (130 CMR 610.028; 130 CMR 456.701; and Exhibit 1). The appellant filed a timely appeal on 10/9/24. (130 CMR 610.015(B); 130 CMR 456.703; and Exhibit 2). Challenging a notice of transfer or discharge initiated by a nursing facility is a valid ground for appeal to the Board of Hearings. (130 CMR 610.032(C)). The record was initially left open until 11/26/24 to give the appellant the opportunity to complete a MassHealth LTC application, and subsequently extended through December 9, 2024 for the submission of an update by the appellant. (Exhibit 5).

### Action Taken by Nursing Facility

The nursing facility notified the appellant that it sought to discharge him due to his failure to pay for his stay at the facility.

## Issue

The appeal issue is whether the nursing facility can discharge the appellant to the designated location pursuant to the governing state and federal laws and regulations which include, but are not limited to, 130 CMR 610.028 and 130 CMR 456.701.

## Summary of Evidence

The NF representative testified that the appellant was admitted to the facility from an acute care hospital for the third time on [REDACTED]. The appellant is [REDACTED] with diagnoses of Congestive Heart Failure (CHF), Chronic Obstructive Pulmonary Disease (COPD), and Type 2 diabetes. (Exhibit 4, p. 5). The nursing facility (NF) representative testified that the appellant has never applied for MassHealth LTC benefits. The appellant has an outstanding bill to the NF for \$29,781. (Exhibit 4, p. 30).

The NF representative testified that the appellant no longer requires skilled care. The appellant's Medicare stopped covering the appellant on 8/23/24. (Exhibit 4, p. 8). The appellant appealed the Medicare termination of NF coverage, and Medicare denied the appeal stating that the appeal "process includes a medical record review from an independent, actively practicing doctor (physician reviewer) to decide if services meet acceptable standards of care, are medically necessary, and are provided in the most appropriate setting; based on a review of your medical record and the information provided, a physician reviewer has determined that the decision from your healthcare provider was medically appropriate." (Exhibit 4, p. 9-10).

The NF representative testified that the appellant is capable of independently performing all his activities of daily living (ADLs) and instrumental activities of daily living (IADLs) per the physician's progress note dated 9/25/24. (Exhibit 4, p. 131). The NF representative testified that the appellant is capable of being discharged to the community with Community Transition Services. The NF representative testified that the appellant was discharged from occupational therapy (OT) on 9/18/24. (Exhibit 4, p. 136). The OT discharge evaluation dated 8/23/24 states that the appellant "has reached maximum potential max skilled services and [appellant] has met long term/short term goals," and "[i]nstructed [appellant] in discharge planning." (Exhibit 4, p. 24). Further, the OT discharge evaluation states that a functional maintenance program is not indicated currently, and the appellant's prognosis to maintain his current level of functioning is good with strong family support. (Exhibit 4, p. 24). The OT discharge evaluation states that the appellant is independent with feeding, personal hygiene, dressing, bladder and bowel care, and ambulation, and the appellant requires minimal assistance with bathing and transfers from his bed to a chair and back. (Exhibit 4, p. 24).

Further, the appellant met 3 of his 5 long-term physical therapy (PT) goals as of 8/23/24. The appellant's last two long-term PT goals were a self-selected walking pace of .70 meters per second,

in which the appellant achieved a pace of .46 meters per second as of 8/23/24, and safely ambulating 150 feet using a two-wheeled walker outdoors with modified independence, in which the appellant achieved a distance of 50 feet by 8/23/24. (Exhibit 4, p. 26). The NF representative testified that the appellant's spouse lives at [REDACTED] but the appellant did not want to be discharged there, so the NF listed the [REDACTED] as his discharge location.<sup>1</sup>

The appellant's spouse testified that their home has been condemned, and it has been difficult to get access to the documents she needs to apply for LTC benefits for the appellant. The appellant's spouse testified that she submitted the appellant's LTC application at the end of August, but has not been able to provide all the necessary documentation. The appellant's spouse testified that she did not think it is safe for the appellant to be discharged now because he needs more PT to build up his strength and he has fallen due to his shakiness. The appellant's spouse testified that the appellant had an appointment that day with a cardiologist, and was scheduled to have a heart valve replacement procedure. Following the hearing, the NF representative sent an email to the hearing officer stating the appellant had a heart valve replacement procedure on 11/18/24, but was not in the hospital for the required 3-day stay to have Medicare start covering his NF stay when he returned to the facility.

The record was left open until 11/26/24 to allow time for the appellant to complete gathering the remaining documents to finish applying for LTC benefits. When the hearing officer closed the record, the appellant had not completed the application for LTC benefits. The appellant sent an email to the hearing officer on 12/9/24 stating that retrieving the necessary documents has been difficult because he needs a new identification from the Registry of Motor Vehicles, and his spouse is still working on the application.

## Findings of Fact

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

1. The appellant was admitted to the facility from an acute care hospital for the third time on [REDACTED]
2. The appellant is [REDACTED]
3. The appellant is diagnosed with Congestive Heart Failure (CHF), Chronic Obstructive Pulmonary Disease (COPD), and Type 2 diabetes. (Exhibit 4, p. 5).
4. Until very recently, the appellant never applied for MassHealth LTC benefits.

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<sup>1</sup> [REDACTED] provides a Transitional Housing Shelter that can house families and individuals for up to two years.

5. The appellant has an outstanding bill to the NF for \$29,781. (Exhibit 4, p. 30).
6. The appellant's Medicare stopped covering the appellant's nursing facility stay on 8/23/24. (Exhibit 4, p. 8).
7. The appellant appealed the Medicare termination of NF coverage.
8. Medicare denied the appellant's appeal, stating that the appeal "process includes a medical record review from an independent, actively practicing doctor (physician reviewer) to decide if services meet acceptable standards of care, are medically necessary, and are provided in the most appropriate setting; based on a review of your medical record and the information provided, a physician reviewer has determined that the decision from your healthcare provider was medically appropriate." (Exhibit 4, p. 9-10).
9. Through a "30-Day Notice of Intent to Transfer or Discharge Resident" dated 9/12/24, the nursing facility, [REDACTED] ECF, informed the appellant of the facility's intent to discharge to the [REDACTED], because "[the appellant] has failed after reasonable and appropriate notice to pay for [his] stay at the facility" (Exhibit 1).
10. The appellant filed a timely appeal of this notice with the BOH on 10/9/24 (Exhibit 2).
11. The appellant is capable of independently performing all his ADLs and IADLs per the physician's progress note dated 9/25/24. (Exhibit 4, p. 131).
12. The appellant was discharged from OT on 9/18/24. (Exhibit 4, p. 136).
13. The OT discharge evaluation dated 8/23/24 states that the appellant "has reached maximum potential max skilled services and [the appellant] has met long term/short term goals," and "[i]nstructed patient in discharge planning." (Exhibit 4, p. 24).
14. The OT discharge evaluation stated that a functional maintenance program is not indicated at this time, and the appellant's prognosis to maintain his current level of functioning is good with strong family support. (Exhibit 4, p. 24).
15. The OT discharge evaluation states that the appellant is independent with feeding, personal hygiene, dressing, bladder and bowel care, and ambulation, and the appellant requires minimal assistance with bathing and transfers from his bed to a chair and back. (Exhibit 4, p. 24).
16. The appellant met 3 of his 5 long-term PT goals as of 8/23/24. The appellant's last two long-term PT goals were a self-selected walking pace of .70 meters per second, in which the appellant achieved a pace of .46 meters per second as of 8/23/24, and safely

ambulating 150 feet using a two-wheeled walker outdoors with modified independence, in which the appellant achieved a distance of 50 feet by 8/23/24. (Exhibit 4, p. 26).

17. The appellant's spouse lives at [REDACTED], but the appellant did not want to be discharged there, so the NF has the [REDACTED] listed as his discharge location.
18. The appellant's home has been condemned (Testimony of appellant's spouse).
19. The LTC application was submitted at the end of August, 2024, but not all the necessary documentation has been provided to MassHealth.
20. The appellant had a heart valve replacement procedure on 11/18/24, but was not in the hospital for the required 3-day stay to have Medicare start covering his NF stay when he returned to the facility.
21. The record was left open until 11/26/24 to allow the appellant to complete gathering the required documents needed for his MassHealth LTC application. When the hearing officer closed the record, the appellant had not completed the application for LTC benefits.

## 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 follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.002 apply:<sup>2</sup>

"Nursing facility" - a Medicare skilled nursing facility or Medicaid nursing facility licensed by the Department of Public Health to operate in Massachusetts, or a distinct Medicaid- or Medicare-certified unit within a facility.

"Discharge" - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for

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<sup>2</sup> The regulatory language in the MassHealth Nursing Facility Manual often has identical (or near-identical) regulatory counterparts which can be found within the Commonwealth's Fair Hearing Rules or the federal government regulations; in this case, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that in 130 CMR 456.002. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted or required.

the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.

"Transfer" — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;
- (2) a Medicaid-certified bed to a Medicare-certified bed;
- (3) a Medicare-certified bed to a Medicaid-certified bed;
- (4) one nursing facility to another nursing facility; or
- (5) a nursing facility to a hospital, or any other institutional setting.

A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

Based on the above definition, the NF is attempting to discharge the appellant to a hotel in the community via its notice dated 9/12/24. (Exhibit 1 and 130 CMR 456.002).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations specifically lists the only circumstances and conditions that allow for the transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice -- if these requirements are not met, the facility must permit the resident to remain in the facility.

The regulation at 130 CMR 456.701(A) and (B) reads as follows:

**456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility**

(A) A resident may be transferred or discharged from a nursing facility **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 MassHealth or Medicare pay for) a stay at the nursing facility; or**
- (6) the nursing facility ceases to operate.

(B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), **the resident's clinical record must contain documentation to explain the transfer or discharge**. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or(4).

(Emphasis added)

The NF is attempting to discharge the appellant pursuant to 130 CMR 456.701(A)(5) due to his failure to pay. The documentation and clinical record submitted by the NF and found in Exhibit 4 comply with the requirement of the first paragraph found in 130 CMR 456.701(B).

In addition to the MassHealth-related regulations referenced above, the NF also has an obligation to comply with all other applicable state laws, including M.G.L. c. 111, §70E. The key paragraph of that statute, which is directly relevant to these types of appeals, reads 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 clinical record submitted by the NF documents that the NF has tried to prepare and orient the appellant in order to ensure a safe discharge to a safe and appropriate place. The appellant's physician has reviewed the discharge plan and agrees the appellant can be appropriately cared for in the community with services that are available to him. (Exhibit 4, p. 131). Further, Medicare reviewed the appellant's appeal of Medicare termination of coverage for skilled nursing care, and Medicare denied the appeal, stating that the appeal "process includes a medical record review from an independent, actively practicing doctor (physician reviewer) to decide if services meet acceptable standards of care, are medically necessary, and are provided in the most appropriate setting; based on a review of your medical record and the information provided, a physician reviewer has determined that the decision from your healthcare provider was medically appropriate." (Exhibit 4, p. 9-10).

While the appellant's spouse asserts that discharge is not appropriate now because she thinks the appellant needs more PT to build up his strength, the evidence shows that the appellant no longer requires skilled care.

Based on the record, the NF has complied with all applicable and relevant state and federal legal requirements governing nursing facility discharges, the NF's action is appropriate and reasonable, and there is insufficient evidence to support the appellant's appeal of the discharge. The appellant has not completed a MassHealth LTC application, Medicare is no longer paying for his stay, and he has an outstanding balance with the NF for \$29,781. (Exhibit 4, p. 30).



Accordingly, this appeal is DENIED.

Per 130 CMR 456.704(A) and 130 CMR 610.030(A), the nursing facility must stay the discharge of the appellant for at least 30 days from the date of this decision.

## **Order for Nursing Facility**

Proceed with the planned discharge to the [REDACTED], MA, with appropriate community transition services. Per 130 CMR 456.704(A) and 130 CMR 610.030(A), such discharge shall not take place any earlier than 30 days from the date of this decision.

## **Notification of Your Right to Appeal to Court**

If either party disagrees 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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Christine Therrien  
Hearing Officer  
Board of Hearings

[REDACTED]