

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2416747
<b>Decision Date:</b>	11/12/2024	<b>Hearing Date:</b>	11/05/2024
<b>Hearing Officer:</b>	Casey Groff		

**Appearance for Appellant:**



**Appearance for Nursing Facility:**

Shawna Weeks, Administrator  
Joanne McGee, Business Office Manager



*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>	Approved	<b>Issue:</b>	Nursing Facility Discharge - Expedited
<b>Decision Date:</b>	11/12/2024	<b>Hearing Date:</b>	11/05/2024
<b>Nursing Facility Reps.:</b>	Shawna Weeks; Joanne McGee	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Board of Hearings, 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

Through a notice dated 10/22/24, the [REDACTED] (“the nursing facility”) informed Appellant that he would be discharged to the community in less than 30 days. See Exhibit (“Exh.”) 1; 130 CMR 610.029(B). Appellant filed a timely appeal on 10/31/24. See 130 CMR 610.015(B)(5); Exh. 2. An attempt to discharge a nursing facility resident is valid grounds for appeal. See 130 CMR 610.032(C).

### Action Taken by Nursing Facility

The nursing facility sought an expedited discharge of Appellant from the facility on grounds that he (1) failed to pay for his nursing facility stay, and (2) no longer required nursing facility services.

## Issue

The issue on appeal is whether the nursing facility met the requirements set forth under 130 CMR §§ 610.028-029 and 456.701-704 in seeking to discharge Appellant to the community with less than 30-days' notice.

## Summary of Evidence

At hearing, the nursing facility was represented by its administrator and its business office manager (collectively "the facility representatives"). Appellant represented himself, *pro se*. All parties attended the hearing remotely.

The nursing facility administrator testified that Appellant is a current resident of the facility. He was initially admitted for short-term rehabilitation after undergoing a spinal fusion back surgery earlier this year. Until 9/30/24, Appellant's stay was covered through his Tufts SCO insurance plan, which managed his MassHealth benefit. At his last screening, Tufts determined that Appellant did not qualify for extended coverage of nursing facility services. On 9/30/24, MassHealth notified Appellant that his benefit was ending because he needed to submit a conversion application for long-term care (LTC) coverage. The facility representatives testified that despite their efforts to educate and assist him in this process, Appellant was hesitant to pursue a LTC application.

On 10/22/24, the facility served Appellant with a "Notice of Intent to Discharge Resident with Less than 30 Days' Notice." See Exh. 1. In the notice, the facility informed Appellant that it intended to discharge him to the community on 10/31/24 because he had "no payor source since 9/29/24 [and] no longer needs [nursing facility] level of care." See Exh. 1. The designated discharge location, the facility explained, is a group home located within the same region as the facility. The group home has confirmed that it is able to accept Appellant.

According to the facility administrator, Appellant has completed his short-term rehabilitation goals and is independent with care. He does not require any assistive device to walk, he does not use a cane or wheelchair, he leaves the facility on a regular basis, he runs errands and drives a car.

The facility business office manager testified that at the time of admission, the facility was aware that Appellant did not have a destination to return to once he completed services. Since June of 2024, the facility social worker helped Appellant prepare for discharge by exploring various housing options in the community. The social worker was able to find several placements, including group and sober homes, all of which Appellant refused. They also looked into an assisted living apartment, but it did not work out due to the cost. The facility testified such efforts were documented in Appellant's record. While Appellant has taken some initiative to look for housing, his search is narrowed to a particular location of a single town which greatly

limits his options. The business office manager testified that Appellant has had no payor source since 9/30/24. As of 11/1/24, Appellant's unpaid nursing facility bills have accrued to \$28,148.

The administrator testified that because Appellant was reluctant to pursue the LTC conversion, the facility enlisted an agency that specializes in MassHealth applications. This eventually led to Appellant filing a MassHealth LTC application on 10/23/24, which is currently pending. The facility acknowledged that if approved, Appellant's outstanding nursing facility bills may be retroactively covered, and, in this case, he would only owe a patient paid amount (PPA), which the Medicaid specialist projected to be approximately \$2,000 per month based on Appellant's income. However, it also possible that due to Appellant's functionality, he may not pass LTC screening criteria. The facility indicated that it may be months before MassHealth can make an eligibility determination. Accordingly, the facility billed Appellant the projected PPA of \$2,000 for the month of October.

At the time of the scheduled hearing, the only documentation submitted by the facility was a copy of the discharge notice and a "care plan conference meeting summary" form. All entry fields on the care plan summary form were left empty and/or were redacted. See Exh. 3. When asked if the Appellant's clinical record contained documentation from his physician to support the discharge, the facility representatives indicated that they were "not sure" and "would have to check," but noted that they could produce the Tufts screening that determined Appellant did not qualify for extended coverage based on his high functionality.

Appellant appeared at hearing and testified as follows: he is over the age of 65 and has several medical conditions including arthritis and stenosis in his spine and neck. He sees multiple specialists including an orthopedic surgeon and cardiologist. He was deemed disabled by the surgeon that performed his back surgery. Because his insurance ended, he is concerned he will not be able to access his doctors or effectively manage his ongoing medical issues.

Appellant testified that he was never informed of an outstanding balance of \$28,148. The only bill he received from the facility was on 10/28/24 and showed that he owed \$2,000. Appellant testified that he was approved for Section 8 housing and is close to finding a place. The Massachusetts Rehab Commission (MRC) is also helping him with this process. Appellant explained that his search is not as narrow as the facility described. The reason he leaves the facility every day is because he is actively searching for a place to live. Appellant testified that the facility did not, as they alleged, present him with realistic housing options. Specifically, one was a sober house and the other was an apartment that cost \$3,500 per month, both of which, he believed, were reasonable to decline.

## **Findings of Fact**

1. Appellant is a resident of the nursing facility; he is over the age of 65 and has diagnoses including arthritis and stenosis in his spine and neck.
2. Appellant was initially admitted to the facility for short-term rehabilitation after undergoing a spinal fusion back surgery.
3. Since his admission, Appellant completed his rehabilitation goals; he is independent with care, he does not use any assistive devices to ambulate, he drives a car, and he leaves the facility on a regular basis for errands.
4. At Appellant's last screening, a Tufts SCO reviewer determined that Appellant did not qualify for coverage of extended nursing facility services.
5. On 9/30/24, MassHealth informed Appellant that his benefit was ending because he needed to submit a conversion application for MassHealth long-term care coverage.
6. Since June of 2024, the facility has been assisting Appellant in a search to find housing in the community and has also educated Appellant on the process of seeking MassHealth LTC benefits through submitting a conversion application.
7. As of 10/22/24, Appellant had not accepted any of the housing options presented by the facility, nor had he submitted a LTC conversion application to MassHealth.
8. On 10/22/24, the facility served Appellant with an expedited discharge notice advising him that he would be discharged to a group home in the community on 10/31/24 because he had "no payor source since 9/29/24 [and] no longer needs [nursing facility] level of care."
9. On 10/23/24, Appellant, with the help of a Medicaid specialist, filed a MassHealth LTC application, the status of which remained pending.
10. Between 9/30/24 and 11/1/24, Appellant accrued a total balance of \$28,148 for his nursing facility services.
11. On 10/28/24, the facility gave Appellant a bill for \$2,000, reflecting his anticipated PPA if approved for MassHealth LTC services.
12. As if the hearing date, the facility had not received any payment from Appellant to go towards either his PPA or the \$28,148 balance on his account.

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC § 1396r(c), guarantees all residents of Medicaid and/or Medicare certified nursing facilities, the right to advance notice of, and the right to appeal, any transfer or discharge initiated by such a facility. The federal law requires state Medicaid agencies to provide a fair mechanism for hearing appeals on nursing facility-initiated transfers and discharges. See 42 U.S.C. § 1396r; 42 CFR §§ 483.204 § 483.206. Massachusetts, through its Medicaid agency, MassHealth, has enacted regulations that mirror the above-referenced federal protections, which can be found at 130 CMR 456.000 et seq. and 130 CMR 610.00 et. seq.

Under the applicable MassHealth regulations, a nursing facility cannot discharge or transfer a resident unless certain criteria are met. First, the facility must cite proper grounds for the discharge. The resident may *only* be discharged in 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 the Division or Medicare pay for) a stay at the nursing facility; or*
- (6) the nursing facility ceases to operate.

See 130 CMR 610.028(A) (emphasis added); see also 130 CMR 456.701(A).

Furthermore, the stated basis for the intended discharge must be documented in the resident's clinical record.<sup>1</sup> See 130 CMR 610.028(B); 130 CMR 456.701(B). Where the facility is seeking to discharge a resident under subsection (1) or (2), above, as is the case here, the necessity of such discharge must be documented by the "*resident's physician.*" Id. (emphasis added). If the discharge is necessary under either subsection (3) or (4) above, the documentation must be made by "a physician." Id.

Next, the nursing facility must ensure that it provides the resident with adequate notice of the discharge or transfer. MassHealth Fair Hearing Rules at 130 CMR 610.028(C) establish the

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<sup>1</sup> The only exception to this rule is when the discharge is made pursuant to subsection (6), above, i.e., the nursing facility ceases to operate. Id.

format and content requirements of the notice itself.<sup>2</sup> Here, there is no allegation or evidence to suggest the 10/22/24 discharge notice, as written, was deficient or failed to meet the criteria imposed under 130 CMR 610.028(C).

MassHealth regulations also require that the nursing facility provide the resident with at least 30 days advance notice of the intended discharge. See 130 CMR 610.029(A). As an exception to this rule, the facility may provide an expedited discharge notice, i.e., less than 30 days, for any of the following “emergency” discharge/transfer circumstances:

- (1) 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.
- (2) *The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.*
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs, and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

See 130 CMR 610.029(B) (emphasis added).

Through its 10/22/24 notice, the nursing facility sought an expedited discharge of Appellant to a group home in the community on 10/31/24, less than the standard 30-day notice requirement. The cited bases for discharge were his (1) failure to pay, and (2) clinical improvement. Failure to pay, however, is not one of the enumerated grounds under which a facility can pursue an emergency or expedited discharge of a resident.<sup>3</sup> Therefore, the only valid basis cited for the

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<sup>2</sup> In summary, 130 CMR 610.028(C) requires: that the facility hand-deliver the notice to the resident (and provide a mailed copy to any designated family member or legal representative); that the notice be legible and written in 12-point or larger, in a language the resident understands, and that it contain the following information: (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 a fair hearing by the MassHealth agency, including how and when to send the request, as well as the effect of requesting a hearing; (6) contact information for the local long-term-care ombudsman office; (7) if applicable, the contact information of the agency responsible for the protection and advocacy of developmentally disabled individuals, (8) if applicable, the contact information for the agency responsible for the protection and advocacy of mentally ill individuals; (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office; and (10) the name of someone at the nursing facility who is available to assist the resident with any of the foregoing.

<sup>3</sup> Even if the facility could proceed with an expedited discharge on this ground, the evidence suggests that Appellant did not receive “reasonable and appropriate notice” of his failure to pay, or that Appellant failed to have

discharge, is that Appellant's health improved such that he did not require a nursing facility level of care. At hearing, the facility representatives provided credible testimony indicating that Appellant is largely independent with his care and that he no longer qualified for continued nursing facility coverage based on his last SCO screening. The facility, however, did not demonstrate that Appellant's physician documented the basis for discharge as required under both 130 CMR 610.028(B) and 610.029(B)(2) and See 130 CMR 610.028(B). Absent such evidence, the facility may not proceed with discharging Appellant pursuant to its 10/22/24 notice.<sup>4</sup>

Based on the foregoing, this appeal is APPROVED.

## **Order for Nursing Facility**

Rescind discharge notice dated 10/22/24. The facility may issue a new discharge notice with appeal rights at any time.

## **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.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

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MassHealth pay for his stay as required under 130 CMR 610.028(A)(5). While Appellant does not have an unfettered right to stay at the facility without paying for his care, the evidence shows that he received only one invoice for \$2,000 *after* the discharge notice was issued, and that he had a pending MassHealth LTC application at the time of hearing.

<sup>4</sup> Because the facility did not present sufficient evidence that the grounds for an expedited discharge were appropriately documented in Appellant's record, it is unnecessary to address the question of whether it satisfied M.G.L. c.111, § 70E (which states: 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.)



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Casey Groff  
Hearing Officer  
Board of Hearings

cc: Respondent:

