

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417382
Decision Date:	1/27/2025	Hearing Date:	December 07, 2024
Hearing Officer:	Brook Padgett	Record open:	January 17, 2025

Appellant Representative:

Pro se

Nursing Facility Representative(s):

Norma B-Mullings, Administrator
Krystal Gagnon, Director of Social Services



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 610.028 Nursing Home Discharge
Decision Date:	1/27/2025	Hearing Date:	December 17, 2024
Nursing Facility Rep:	N. B-Mullings K. Gagnon	Appellant Rep.:	Pro se
Hearing Location:	Charlestown		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a 30-day Notice of Intent to Discharge Resident notice dated November 01, 2024, stating: "The purpose of this letter is to inform you that the [REDACTED] seeks to discharge you to [REDACTED] on [REDACTED] 24. The reason for the discharge is: You have failed after reasonable and appropriate notice to pay for (or failed to have Medicare or Medicaid pay for) your stay at the nursing facility." (Exhibit 1). The appellant filed this appeal timely on November 13, 2024. (130 CMR 610.015(B); Exhibit 2). Discharge from a nursing facility is valid ground for appeal. (130 CMR 610.028(A); 42 CFR Ch IV §483.200 et seq.).

Action Taken by MassHealth

The nursing facility seeks to discharge the appellant for failure to pay for his stay.

Issue

Has the appellant, despite reasonable and appropriate notice, failed to pay for his stay at the nursing facility?

Summary of Evidence

The administrator from [REDACTED] stated the appellant was admitted to the facility on [REDACTED] 2024 with a history of methicillin resistant Staphylococcus Aureus infection (MRSA), major depressive disorder (single episode), anxiety disorder, alcohol dependence (in remission), opiate use, Hepatitis C, difficulty walking, weakness, and chronic pulmonary disease. The appellant was previously a resident at [REDACTED] until he was hospitalized at [REDACTED] from [REDACTED] 2024 to [REDACTED] 2024. Upon his return on August 06, 2024 his medical notes state he was alert and oriented x 3 with no acute distress, respiratory clear, cardiovascular regular rate and rhythm, musculoskeletal weakness, stable mood with no other reported symptoms.

The Director of Social Services testified that the appellant applied for MassHealth long term care services but was denied on October 29, 2024 for failure to provide verifications. The appellant was instructed to provide MassHealth with the requested verifications to determine his eligibility, but he has refused. Although the appellant states he has no money, he receives Social Security income (he stopped his deposit to his resident fund management account when he reentered the facility) and has many packages and food delivered to him at [REDACTED]. On November 22, 2024 the appellant was given a printout of his past due bills. The appellant has been approached numerous time concerning his need to pay for his stay or complete a MassHealth application, but he has refused because he states he intends to leave and is looking for a place where he can live independently. The appellant is independent in all activities of daily living (ADLs), including transfers and mobility, and he can ambulate with a cane. He often leaves the facility throughout the day, and functions safely within the community. The appellant can live independently and is no longer in need of nursing facility placement. The nursing facility physician has recommended the appellant be discharged as his needs can be met in the community. Currently the appellant is in arrears in the amount of \$2,439.00 (\$813.20 a month x 3)¹ and has made it clear he does not intend to pay or follow up with his MassHealth application. The nursing facility submitted patient notes into evidence and a record of the balance due. (Exhibit 4, pgs. 1-263).

The appellant responded by stating he intends to leave the facility when he is able to locate a place of his own. The appellant argued he had to go to the ER because he was not receiving proper care at the facility, and he contracted an infection in the heel of his foot. The appellant maintained he requires 24-hour skilled nursing care. The appellant stated he is trying as hard as he can to leave but he needs to find a place he can afford.

At the request of the hearing officer the record remained open until January 17, 2025 for the appellant to submit medical records indicating he requires skilled nursing care; evidence of the renewal of his MassHealth long term care application to determine current eligibility; and/or

¹ The facility representative stated that the facility is only charging the appellant what they have calculated to be his Private Pay Amount (PPA) in the event he becomes eligible for MassHealth.

payment of nursing facility outstanding debt. (Exhibit 6).

No additional information was submitted prior to the close of the record open period.

Findings of Fact

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

1. The appellant was previously a resident at [REDACTED] until he was hospitalized at [REDACTED] from [REDACTED] 2024 to [REDACTED] 2024. (Exhibit 4).
2. The appellant was readmitted to the facility on [REDACTED] 2024 with a history of MRSA, major depressive disorder, opiate use, Hepatitis C, difficulty walking, weakness, and chronic pulmonary disease. (Exhibit 4).
3. Medical notes dated [REDACTED] 2024 state the appellant is alert and oriented x 3 with no acute distress, respiratory clear, cardiovascular regular rate and rhythm, musculoskeletal weakness, stable mood with no other reported symptoms. (Exhibit 4).
4. The appellant applied for MassHealth long term care and was denied on October 29, 2024 for failure to provide verifications. (Exhibit 4).
5. The appellant has refused to provide MassHealth with the requested missing verifications. (Exhibit 4).
6. The appellant receives Social Security income. (Testimony)
7. On November 22, 2024 the appellant was notified of his past due bills at the nursing facility. (Exhibit 4).
8. The appellant does not receive any skilled or rehabilitative care and requires no assistance with his ADLs. (Exhibit 4).
9. The appellant maintains he intends to leave [REDACTED] as soon as he can locate a place where he can live independently. (Exhibit 4).
10. The appellant is currently in arrears in the amount of \$2,439.00 (\$813.20 a month x 3). (Exhibit 4).
11. The appellant's discharge plan is to a shelter where he will live independently in the community with the services that are available to him. (Exhibit 4 and Testimony).

12. The appellant's physician has reviewed the discharge plan and is in support of the discharge and agrees the appellant can be appropriately cared for in the community with available services. (Exhibit 4).

Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility when the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have the Division or Medicare pay for) his or her stay at the facility (130 CMR 610.028(A)(5)).² The regulations require the nursing facility to provide reasonable and appropriate notice (130 CMR 610.028(A)(5)) and the transfer or discharge must be documented by the resident's clinical record (130 CMR 610.028(B)(1)).³

The record indicates the appellant has been a resident of [REDACTED] since [REDACTED] 2024 and has failed to pay for his care since his admission. The appellant has an unpaid balance of more than \$2,439.00. The appellant was notified of his arrearage beginning November 22, 2024.

On November 01, 2024 the appellant received a 30-day Notice of Intent to Transfer or Discharge a Resident from the nursing facility. The notice indicated the facility planned to discharge the appellant to a shelter on [REDACTED] MA on [REDACTED] 2024 because he has failed to pay for his stay at the nursing facility. The notice included the appellant's right to appeal the discharge and the name of a person at the nursing facility who is responsible for supervising the discharge.

Prior to discharge the nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which went into effect in November of 2008.⁴ The nursing facility notice lists the [REDACTED] as the discharge location and the facility intends to provide the appellant with a list of services with telephone numbers, rates, and hours that are available to the appellant in the community. 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. The appellant has Social Security income to pay for supplemental services that are not available to him at the shelter and despite potential

² 130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility (A) A resident may be transferred or discharged from a nursing facility only when: (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; ...

³ 130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility (B) 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.

⁴ The key paragraph of that statute, which is directly relevant to this appeal, 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."

MassHealth eligibility, he refuses to facilitate the completion of his MassHealth application.

There was also no credible evidence offered by the appellant to counter the current position of the nursing facility that he has failed to pay or have a third party pay for his care at the facility from August 2024 to the present. Further the appellant submitted no relevant, reliable evidence demonstrating that he requires 24-hour skilled nursing care or that he would be unable to safely reside at [REDACTED]

The nursing facility has met its burden of providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge and therefore, the nursing facility's notice of discharge dated November 01, 2024 meets the requirements of MGL c.111, §70E. The record supports the nursing facility's claim that the appellant has failed to pay for his stay at the nursing facility after reasonable and appropriate notice. The record also demonstrates that the nursing facility has complied with the applicable state and federal notice requirements; this appeal is therefore DENIED.

Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B), the appellant may not be discharged any earlier than 30 days from the date of this decision.

Implementation of this Decision

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, at the address on the first page 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.

Brook A. Padgett
Hearing Officer
Board of Hearings

[REDACTED]