

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2417566
Decision Date:	1/8/2025	Hearing Date:	01/03/2025
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearance for Nursing Facility:

Via telephone:

Michelle Dolan, Director of Business Office


Lisa Kubiak, CEO

Laura Ziter, 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

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge
Decision Date:	1/8/2025	Hearing Date:	01/03/2025
Nursing Facility's Rep.:	Michelle Dolan, et al.	Appellant's Rep.:	
Hearing Location:	Springfield 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 notice dated October 17, 2024, the skilled nursing facility, Mary Ann Morse Healthcare Center ("the facility"), informed the appellant of the facility's intent to discharge her to her home on November 18, 2024 because she 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 November 15, 2024 (see 130 CMR 610.015(B) 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)).

Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge her due to her failure to pay for her stay at 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 was represented at hearing by two attorneys and her power of attorney (POA). The facility was represented by its director of the Business Office, a social worker, and its CEO. All parties appeared at hearing via telephone.

The facility testified as follows: the appellant was admitted on [REDACTED] under her [REDACTED] Medicare benefits which covered her through March 20, 2024. The appellant never paid her [REDACTED] copayment. Other than one payment of \$2,700 for a bed-hold while the appellant was in the hospital, the facility has not received any payment for her stay since March 21, 2024. The appellant did not apply for MassHealth until September 2024 which will only reach back until June 1, 2024, if she is approved. The facility was recently notified that her long-term care application was denied for being over assets. The facility has sent the appellant and her representatives bills every month since April 2024, but the appellant has not even attempted to pay her patient paid amount (PPA). The proposed discharge location is the appellant's home where she lived prior to her admission. With twenty-four seven care, the appellant can be safely discharged to her home. The facility will put in a referral for Visiting Nurse Association (VNA) services and set her up with a home care agency, but she will need to privately pay to cover any gap in services. The facility has spoken to the appellant's POA about this plan and the POA stated that the appellant would be unable to pay for that level of care. The appellant owes the facility \$129,320 through December 2024, which includes the private pay rate for room and board and her outstanding [REDACTED] copayment.

The appellant's attorney argued that she has made attempts to reach out to the facility and its attorney to come to a payment agreement but has not been getting a response from the facility. The appellant would need to take equity out of her home to pay for her stay and the attorney did not want the appellant to take out more equity than was needed. The final payment amount is undetermined, which was why she did not want the appellant to pay the full bill without first coming to an agreement with the facility or getting approved for MassHealth and learning the PPA. When asked why the appellant did not apply for MassHealth until September 2024, the attorney stated that the appellant is a widow and her sister-in-law, who is the POA, has had to step in and help. It has taken a long time to get all the information put together. She added that the application was filed on August 28, 2024, and the appellant is only about \$2,500 over assets. To pay for the eventual home equity loan, the appellant is renting her home. The renters entered a one-year lease agreement beginning in [REDACTED]. Because of the renters, the appellant cannot return to her home and she does not have anywhere else to go. She cannot afford the

twenty-four seven care that is necessary to allow her to live safely in the community. She does not have family members who can care for her or help pay for her care.

Findings of Fact

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

1. The appellant currently resides in the nursing facility, but, other than one payment of \$2,700 for a bed-hold while she was hospitalized, she has not made any payments to the facility since her [REDACTED] Medicare coverage ended on March 20, 2024 (Testimony and Exhibit 4).
2. On [REDACTED] the facility issued a 30-Day Notice of Intent to Discharge because the appellant 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 (Testimony and Exhibit 1).
3. The proposed discharge location is the appellant's home which she owns and where she lived prior to her admission to the facility (Testimony and Exhibit 1).
4. The appellant requires twenty-four seven care (Testimony and Exhibit 4).
5. The facility will put in a referral for VNA services and set her up with a home care agency, but she will need to privately pay to cover any gap in services (Testimony and Exhibit 4).
6. The outstanding balance owed to the facility for her unpaid [REDACTED] copayment and room and board at the private pay rate from [REDACTED] is \$129,320 (Testimony and Exhibit 4).
7. The appellant did not apply for MassHealth benefits until August or September 2024 and was recently denied long-term care benefits for being over assets (Testimony).
8. There are renters in the appellant's home for a one-year lease that began in [REDACTED] (Testimony).

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

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).

In this case, according to the notice under appeal, the facility is seeking to discharge the appellant to her home for failing to pay for her stay at the facility. The appellant entered the facility on [REDACTED] under her [REDACTED] Medicare benefits which covered her stay through [REDACTED]. She has not paid her Tufts co-pay and has not paid the facility since March 21, 2024, other than \$2,700 for a bed-hold while she was in the hospital. Despite entering the facility in [REDACTED] she did not apply for MassHealth until August or September 2024 and still has not been approved for MassHealth long-term care benefits. The facility has sent monthly bills to the appellant and her representative since April 2024. Her balance owed through December 2024, based on the private pay rate, is \$129,320.00. The appellant's attorney's argument that she attempted to reach out to the facility to make a payment arrangement but had difficulty reaching the facility and/or its attorney is irrelevant and not persuasive. The appellant 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.

The appellant does not have a right to remain in the nursing facility without paying and she clearly owes the nursing facility money; however, 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 facility has proposed a discharge to the appellant's home which she owns and where she lived before she entered the facility. The facility testified that the appellant could be safely discharged home with twenty-four seven care. The facility would put in a referral for VNA services and set her up with a home care agency, but the appellant would have to privately pay for some care, which the appellant's POA has stated the appellant cannot afford. Additionally, there are renters in the appellant's home who have a one-year lease that began in [REDACTED]. The appellant cannot physically return to the discharge location due to the renters and there are no other family members who can take her in. Furthermore, while the appellant might be safe with twenty-four seven care, realistically, neither she nor her family can afford it and she would not likely receive that level of care. While the appellant does not have a right to remain in the nursing facility without paying, the facility has not shown that the proposed discharge location in the October 17, 2024 notice under appeal is safe and appropriate.¹

For this reason, the appeal is approved.

Order for Nursing Facility

Rescind the 30-Day Notice of Intent to Discharge Resident dated October 17, 2024.

¹ There is nothing in this decision prohibiting the facility from issuing a new 30-Day Notice of Intent to Discharge listing a safe and appropriate discharge location; however, the discharge location proposed in the notice under appeal is not safe or appropriate given the appellant's need for twenty-four seven care and the inability to return to her home due to the renters.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

CC:

[REDACTED]

Respondent: Mary Ann Morse Healthcare Center, Attn: Laura Ziter, 45 Union Street, Natick, MA 01760