

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418179
Decision Date:	01/10/2025	Hearing Date:	12/17/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	12/20/2024

Appearance for Appellant:



Appearances for Respondent:

Jerry Labelle, Administrator
Stacie Moran, Director of Social Services
Brianna Boudreau, Business Office
Elizabeth Worden, Rehabilitation Director



*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 – failure to pay
Decision Date:	01/10/2025	Hearing Date:	12/17/2024
Respondent's Rep.:		Appellant's Rep.:	Spouse
Hearing Location:	Tewksbury (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

By notice dated November 14, 2024, [REDACTED] ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on December 14, 2024. Exhibit 1. Appellant filed a timely appeal on November 26, 2024. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through December 20, 2024 to allow the parties to provide additional information. Exhibit 5.

Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

Summary of Evidence

Respondent, a skilled nursing facility licensed in Massachusetts, was represented at telephonic hearing by its administrator, director of social services, business office representative, and rehabilitation director. Respondent's representatives submitted documents in support, Exhibit 4. Appellant appeared by phone and was represented by her spouse, also a nursing facility resident. A summary of testimony and documentary evidence follows.

By hand-delivered letter dated November 14, 2024, Respondent informed Appellant of its intent to discharge Appellant from the facility to her home. Exhibit 1. A copy of the notice was provided to Appellant's spouse. The notice stated that Respondent sought to discharge Appellant on December 14, 2024 because Appellant "has failed after reasonable and appropriate notice, to pay for her stay at the facility." *Id.* The notice identified the director of social services as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long term care ombudsman, the disability law center, centers for public representation (including a disabled persons' protection commission) and local legal service offices. *Id.* Respondent testified that the notice was also delivered to Appellant's spouse, who resides in the same room as Appellant. Appellant's spouse also received a notice of discharge and filed an appeal (Appeal No. 2418180). On January 7, 2025, the Board of Hearings denied Appeal No. 2418180 and ordered the facility to proceed with discharge of Appellant's spouse after a 30 day stay from the date of decision.

Appellant was admitted to the facility in [REDACTED] with medical history and diagnoses including multiple sclerosis, hemiplegia on the right side, and type 2 diabetes mellitus with hyperglycemia. She is wheelchair dependent. Exhibit 4 at 9. Appellant was approved for MassHealth coverage of long-term care and owed a patient paid amount (PPA). Notices from MassHealth indicated that the PPA increased from \$5771.20 to \$2,048.20 effective March 1, 2024, and increased again to \$2,222.20 effective April 1, 2024. *Id.* at 20-26. Appellant's PPA has not been paid and Appellant has an outstanding balance of \$24,453.00. *Id.* at 8. Though the billing statement indicated that payment was received for October and November 2024, Respondent clarified during the record open period that this was incorrect. Currently, Appellant has made no PPA payments. Appellant has not appealed any MassHealth notice.

Respondent representatives testified that the discharge location is Appellant's home where she resided with her spouse prior to admission. The home is handicap accessible. Appellant is totally dependent for daily activities. Appellant was evaluated for personal care attendant (PCA) services through LifePath and approved for 47.5 PCA hours per week and a referral for meals on wheels. *Id.* at 9. Documentation indicated that Appellant had 66 PCA hours prior to her admission and her spouse is working to appeal this decision to secure more hours for Appellant. A representative from LifePath is also working to get an updated Hoyer lift for Appellant in the home. *Id.* Respondent representatives testified that upon discharge, they will set up a PT-1 through MassHealth to transport Appellant home. There is no discharge note in the file because the physician has not issued the letter yet and plans to do so closer to the time of discharge.

Appellant's spouse testified that he first admitted to the facility after recovering from an illness. During that time, Appellant was hospitalized. Appellant's spouse was satisfied with the care at the facility and sought to have Appellant admitted. Appellant's spouse testified that they were urged to apply for MassHealth and were told that MassHealth would take care of everything. Appellant's spouse completed the lengthy application and only after approval learned they would be charged a huge amount. Appellant's spouse emphasized that Respondent's representatives were not at fault, but that Appellant and spouse received misinformation from previous facility employees.

Appellant's spouse argued that the VA should be paying the bill, as Appellant is a disabled veteran who was injured in Vietnam. Appellant's spouse conceded that the facility is owed money and should be paid.

Appellant is not able to walk or move around, and Appellant's spouse suspects that Appellant has dementia that is increasing. Appellant cannot go anywhere without the spouse. Appellant's spouse is her health care proxy and has to advocate on Appellant's behalf due to staffing shortages. Appellant's spouse testified that he was able to perform tasks in the home during a home visit a year prior and was approved for discharge home by his physical therapist. However, he was discharged with 24/7 care, which he cannot secure. Appellant's spouse feels stuck at the facility as a result. Appellant's spouse needs time to set up care for Appellant, including appealing the number of PCA hours approved and hiring a PCA. Appellant's spouse testified that he was told they need a safer Hoyer lift, but he has used the one he has at home for Appellant's transfers for five years without incident.

Respondent's administrator offered to rescind the notice of discharge if the October and November payments were confirmed and payments would continue going forward, to allow time for the home care situation to be sorted. However, as the October and November payments had not been made and there were no arrangements for Appellant or her spouse to pay in the months going forward, Respondent declined to rescind the notice of discharge. Exhibit 5.

Findings of Fact

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

1. Appellant was admitted to the facility in [REDACTED] with medical history and diagnoses including multiple sclerosis, hemiplegia on the right side, and type 2 diabetes mellitus with hyperglycemia. She is wheelchair dependent. Exhibit 4 at 9.
2. Appellant was approved for MassHealth coverage of long-term care and owes a PPA to the facility. Notices from MassHealth indicated that the PPA increased from \$771.20 to \$2,048.20 effective March 1, 2024, and increased again to \$2,222.20 effective April 1, 2024. *Id.* at 20-26.

- a. Appellant did not appeal these notices.
3. Appellant's PPA has not been paid and Appellant has an outstanding balance of \$24,453.00. *Id.* at 8.
4. By hand-delivered letter dated November 14, 2024, Respondent informed Appellant of its intent to discharge Appellant from the facility to her home. A copy of the notice was provided to Appellant's spouse. Exhibit 1.
5. The notice stated that Respondent sought to discharge Appellant on December 14, 2024 because Appellant "has failed after reasonable and appropriate notice, to pay for her stay at the facility." *Id.*
6. The notice identified the director of social services as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long term care ombudsman, the disability law center, centers for public representation (including a disabled persons' protection commission) and local legal service offices. *Id.*
7. Appellant filed a timely appeal on November 26, 2024. Exhibit 2.
8. Appellant's home is handicap accessible and has a Hoyer lift. Respondent is working with LifePath to update Appellant's Hoyer lift.
9. Appellant was approved for 47.5 PCA hours per week and received a referral for meals on wheels. Appellant's spouse is appealing this approval to try to get an increase of PCA hours. *Id.* at 9.
10. Respondent representatives testified that upon discharge, they will set up a PT-1 through MassHealth to transport Appellant home.
11. On January 7, 2025, the Board of Hearings denied Appeal No. 2418180 and ordered the facility to proceed with discharge of Appellant's spouse after a 30 day stay from the date of decision.

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 action initiated by a nursing

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

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

Prior to discharge or transfer, 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, in a language the member understands, the following:

- (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.

130 CMR 610.028(C).

Pursuant to 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C) when the discharge is being made on an emergency basis. *See also* 130 CMR 456.702(A).

Further, Mass. Gen. Laws ch. 111, §70E provides that “[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.” Finally, federal regulations require that a nursing facility “**provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.** This orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7) (emphasis added).

In this matter, Respondent seeks to discharge Appellant for failure to pay her PPA. There is little dispute between the parties, as Appellant’s spouse acknowledges the outstanding bill, and Respondent recognizes that Appellant has significant care needs in returning to the community. The records and testimony demonstrate that Respondent is engaging in appropriate discharge planning for Appellant and her spouse. Respondent has satisfied its statutory and regulatory requirements in providing notice of discharge to Appellant. Accordingly, this appeal is denied.

Order for Respondent

Proceed with the discharge as set forth in the notice dated November 14, 2024, but not earlier than 30 days from 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

[REDACTED]

Respondent:

[REDACTED]