

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418180
Decision Date:	01/07/2025	Hearing Date:	12/20/2024
Hearing Officer:	Radha Tilva	Record Open to:	12/23/2024

Appearance for Appellant:



Appearances for Nursing Facility:

Jerry Labelle, Administrator
Stacey Moran, Director of Social Services
Brenna 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 home discharge - nonpayment
Decision Date:	01/07/2025	Hearing Date:	12/20/2024
Nursing Facility Reps.:	Jerry Labelle, Stacey Moran, Breanna Boudreau, Elizabeth Worden	Appellant's Rep.:	██████████
Hearing Location:	Telephonic	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 November 14, 2024, ██████████ (hereinafter “the nursing facility”) issued a 30-Day Notice of Intent to Discharge the Resident to his home effective December 14, 2024 (Exhibit 1). The appellant filed this appeal in a timely manner on November 26, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge or transfer an individual from a nursing home facility is valid grounds for appeal (see 130 CMR 610.032).

The record was reopened on December 20, 2024, to request more detailed information regarding the invoices. On December 23, 2024, the nursing facility submitted the billing statement from January 1, 2024 through December 31, 2024 (Exhibit 6).

Action Taken by Nursing Facility

The nursing facility issued a 30-Day Notice of Intent to Discharge the Resident to the appellant for his failure to pay for his stay.

Issue

The appeal issue is whether the nursing facility was correct in issuing a 30-Day Notice of Intent to Discharge the Resident, dated November 14, 2024.

Summary of Evidence

The appellant entered the facility on [REDACTED]. On November 14, 2024, the nursing facility issued a Notice of Intent to Discharge the appellant to his home by December 14, 2024 (Exhibit 1). The reason for the discharge is because appellant has failed, after reasonable and appropriate notice, to pay for his stay at the facility (Exhibit 1). The nursing facility was represented at hearing by the Administrator, Director of Social Services, Business Office Manager, and Rehabilitation Director. The appellant represented himself, *pro se*. All parties appeared by telephone. The nursing facility explained that since August 1, 2024, appellant has accumulated bills totaling \$92,123.62 (nursing facility testimony). The appellant's medical conditions include hypertensive heart and chronic kidney disease with heart failure, type 2 diabetes, morbid obesity, hypertension, COPD, and difficulty walking (Exhibit 4, p. 9). When appellant entered the facility, he did require a greater level of supervision (nursing facility testimony). The appellant is mostly wheelchair-bound but is independent in the wheelchair and able to walk 15 feet now (nursing facility testimony). The appellant will require support services in the home, and the nursing facility has worked with both the VA and MassHealth to obtain PCA hours; however, both benefits cannot be used at the same time (Exhibit 4, p. 11). The clinical notes provided by the nursing facility reflect frequent discussion and action regarding obtaining VA services at home for the appellant (Exhibit 4, pp. 9-12). In addition, the notes reflect that the appellant's home is handicap-accessible, the appellant is independent with transfers and toileting, and that the facility will be putting meals on wheels in place for him upon discharge (Exhibit 4, p. 10).

The facility submitted a transaction record from January 1, 2023, through December 31, 2024, reflecting a balance of \$77,923.62 (Exhibit 5). In addition, a notice dated March 21, 2024, from MassHealth reflecting a change in the patient-paid amount from \$4,309.33 to \$5,566.33 was also included (Exhibit 4, p. 16). There is no record of appellant appealing that notice to the Board of Hearings.

The appellant appeared by telephone and testified on his own behalf. The appellant is a 100% disabled VA veteran, and did not think that he would ever have to pay for his medical care. The appellant agrees that the bill to the nursing facility is not paid but believes that the VA should be paying it. The appellant wants to make sure he goes home safely. He stated he was recently diagnosed with colon cancer and he wants to ensure he can get help with that when the need arises. The appellant has a wife who is also a resident at the facility, and he does not want to go home without her. The nursing facility representative testified that it was the plan of the facility to have appellant go home first, and then his wife. The appellant would like to make sure that the

home is accessible for his wife, and believes that he will need to have a Hoyer lift put in for her return. In addition, the appellant needs to try to get more PCA hours for his wife before her return and believes that he has an appeal with the Board of Hearings for that.

Findings of Fact

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

1. The appellant entered the facility on [REDACTED] with medical conditions including hypertensive heart and chronic kidney disease with heart failure, type 2 diabetes, morbid obesity, hypertension, COPD, and difficulty walking.
2. On March 21, 2024, MassHealth issued a notice reflecting a change in the patient-paid amount from \$4,309.33 to \$5,566.33 owed by the appellant to the facility effective January 1, 2024.
 - a. The appellant did not appeal that notice.
3. The appellant owes over \$77,923.62 to the nursing facility for his care.
4. The appellant refuses to pay this amount, as he believes the VA should be responsible.
5. On November 14, 2024, the nursing facility issued a Notice of Intent to Discharge the appellant to his home which the appellant timely appealed to the Board of Hearings.
6. The nursing facility has been working with the VA to ensure that the appellant has services upon discharge in his home.
7. The appellant is independent with transfers and toileting and has a home that is handicap-accessible.
8. The appellant's wife lives in the nursing facility with him, and he does not want to leave the facility without her.
9. The appellant would like to make sure the home is handicap accessible for his wife and believes that he will need to put a Hoyer lift in for her.
10. The appellant would also like to get more PCA hours for his wife and states that he has appealed a notice of her complement of PCA hours to the Board of Hearings.

Analysis and Conclusions of Law

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). As the discharge is for nonpayment, no documentation from a physician in the clinical record is required; however, the clinical record must be documented. The record provided by the facility does document appellant's failure to pay and their discharge plans including, but not limited to, obtaining home services for the appellant (see Exhibits 4 and 6).

In addition to these requirements the regulations require the nursing facility to issue a Notice of Intent to Discharge in compliance with 130 CMR 610.028(C), which states the following:

- (C) Before a nursing facility discharges or transfers any resident, 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 the following, in a language the member understands:
- (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.

The nursing facility has met the notice requirements above. Although a copy was not provided to appellant's son, the nursing facility responded during the record-open period that the appellant is his own person, very alert and oriented, and declined to indicate that the notice should be copied to his son (Exhibit 6). The appellant did not raise the fact that the notice was not sent to his son as an issue at hearing. Based on a review of the record, the discharge notice meets the requirements listed at 130 CMR 610.028(C).

With respect to the issue of nonpayment, as outlined above, a nursing facility resident may be transferred or discharged when the resident has failed, after reasonable and appropriate notice, to pay for (or has failed to have the MassHealth agency or Medicare) a stay at the nursing facility. The appellant does not dispute that he has failed to pay for his stay in the nursing facility. The statement provided at hearing, dated December 1, 2024, totaling \$92,123.62 does not provide a breakdown or show how the \$92,123.62 total was derived. According to the transaction report submitted by the facility post-hearing, the total amount due is actually \$77,923.00. While the latter number seems to be more reflective of the actual amount owed by the appellant, the bottom line is that the appellant has failed to pay his patient-paid amount owed to the facility and believes that he is not responsible for it. In addition, the MassHealth notice dated March 21, 2024

increasing the appellant's PPA has not been appealed, and thus the patient-paid amount of \$5,566.33 per month is what is owed to the facility by the appellant. Through its testimony and documentation, the facility has sufficiently demonstrated that the appellant has failed to pay for his stay at the facility.

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 federal Centers for Medicare and Medicaid defines "sufficient preparation" within the meaning of 42 CFR 483.15(c)(7) to mean that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence (see, Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance, 61 Mass. App. Ct. 320 (2004)).

The facility has met its burden of providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The facility intends to discharge the appellant to his home which is accessible. The nursing facility sought in-home care for the appellant to help him meet his needs, from the VA and MassHealth. The appellant's testimony supports that he eventually wants to go home, but wants to make sure his wife goes with him and that his home is set up properly for them. In addition, he wants to ensure that his wife receives the appropriate number of PCA hours to help her as her needs are greater than the appellant's. The clinical notes provided frequently document the facility trying to set up the appropriate services for the appellant, including in-home PCA hours along with meals delivered to the home.

Based on testimony and the appellant's nursing facility record, the facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer to a safe and appropriate place.

For these reasons, the appeal is DENIED.

Order for the Nursing facility

Proceed with the planned discharge no earlier than 30 days after 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.

Implementation of this Decision

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.

Radha Tilva
Hearing Officer
Board of Hearings

cc: 