

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418209
Decision Date:	1/16/2025	Hearing Date:	01/03/2025
Hearing Officer:	Christine Therrien		

Appearances for Appellant:



Appearances for Nursing Facility:

Michelle Clark, Administrator; Stacey Sullivan,
Social Worker; Erica Olsen, SUD Counselor

*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:	NF Discharge
Decision Date:	1/16/2025	Hearing Date:	01/03/2025
Nursing Facility Reps.:	Michelle Clark, Stacey Sullivan, Erica Olsen	Appellant's Reps.:	Pro se; Guardian
Hearing Location:	Tewksbury MassHealth Enrollment Center Telephonic		

Authority

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

Jurisdiction

Through a 30-Day Notice of Intent to Transfer/Discharge Resident dated 11/4/24, the appellant was notified that Southeast Rehab. ("the NF") intends to discharge the appellant to the [REDACTED]. The notice states that the reason for the discharge is that "the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident." (Exhibit 1). The appellant filed a timely appeal on 11/27/24. (130 CMR 610.015(B); Exhibit 2). Discharge or transfer of a nursing facility patient is valid grounds for appeal. (130 CMR 610.028(A); 42 CFR Ch IV §483.200 et seq.). The hearing was rescheduled from 12/27/24 to 1/3/25 because the appellant's guardian was unavailable on 12/27/24.

Action Taken by Nursing Facility

The facility intends to discharge the appellant from the nursing facility.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 610.028, in determining that the safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident and therefore he should be discharged.

Summary of Evidence

The appellant is [REDACTED] years old. The nursing facility administrator testified that, on [REDACTED] the appellant was admitted to the nursing facility from a hospital with the diagnoses of adult failure to thrive, chronic pain syndrome, and a urinary tract infection (UTI) (Exhibit 4). The nursing facility submitted the appellant's progress notes, which state that the appellant has no current diagnoses and does not require skilled care. (Exhibit 4). The progress notes further state that the appellant is stable (Exhibit 4.) The appellant's guardian testified that he was appointed guardian a year ago because the appellant made suicidal statements when his mother, with whom he lived, was removed from their home which is now condemned. The appellant's guardian testified that the appellant subsequently was living in a hotel in the community which became as dirty as the prior condemned home. The appellant's guardian testified that the appellant asked him for money because he could not manage his finances. The appellant's guardian testified that the appellant had outpatient surgery and contracted a UTI so the guardian had the appellant admitted to the hospital.

The nursing facility administrator testified that the appellant is being discharged because he refuses to follow the smoking policy which states in part that all smoking materials will be held by the facility. (Exhibit 4).¹ The NF administrator testified that the facility has confiscated smoking materials from the appellant on numerous occasions in violation of the smoking policy. (Exhibit 4, pp. 12, 13, 15, 16, 18, 20). The NF administrator testified that the appellant has violated the smoking policy which states that all smoking materials are to be kept by staff. (Exhibit 4, p. 9). The NF administrator testified that the facility has repeatedly reviewed the smoking policy with the appellant, and the appellant has signed the policy indicating he will comply with it. (Exhibit 4, p. 9). The nursing facility administrator testified that the appellant's disregard for the smoking policy puts the appellant's health at risk if he was injured outside while smoking and no one knew where he was. It also puts everyone in the facility at risk because oxygen is in use, which could ignite. He has been issued numerous warnings about his smoking. The nursing facility administrator testified that the appellant leaves the facility without authorization to go to a nearby store.

The NF administrator testified that the appellant was admitted on a 30-day convalescent care

¹ The nursing facility smoking policy is that all cigarettes, igniting and smoking materials will be kept in a secure location designated at the facility. Residents will not be permitted to retain such items in their possession. Any new cigarettes, igniting and smoking materials must be turned over to staff immediately upon arrival to the facility (Testimony).

categorical determination. (Exhibit 4, p. 18).² The NF Social Worker testified that the NF has set up multiple housing interviews for living situations but the appellant refuses all of them because his dog is not allowed. The appellant stated he would not live someplace where his dog is not allowed. The appellant's guardian testified that the appellant's dog lives with his parents and will soon have to go into foster care. The dog is brought to the NF occasionally for visits. The appellant's guardian testified that the appellant is like a teenager and uses his money for other things that are not essential and would thrive in a structured environment like a rest home.

Findings of Fact

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

1. The appellant is [REDACTED] years old.
2. On [REDACTED] the appellant was admitted to the NF from a hospital with the diagnoses of adult failure to thrive, chronic pain syndrome, and a UTI.
3. The appellant's progress notes state that the appellant has no current diagnoses and does not require skilled care.
4. The appellant's guardian was appointed a year ago because the appellant made suicidal statements when his mother, with whom he lived, was removed from their home, which is now condemned.
5. The appellant subsequently was living in a hotel in the community.
6. The appellant had outpatient surgery and contracted a UTI, so the guardian had the appellant admitted to the hospital.
7. Through a 30-Day Notice of Intent to Transfer/Discharge Resident dated 11/4/24, the appellant was notified that the NF intends to discharge the appellant to the [REDACTED]
8. The appellant filed a timely appeal of this discharge notice with the Board of Hearings.
9. The appellant is being discharged because he refuses to follow the smoking policy, which states in part that all smoking materials will be held by the facility

² Pursuant to MassHealth Nursing Facility Bulletin 186 pertaining to the Preadmission Screening and Resident Review (PASRR) process (June, 2024), Convalescent Care is a type of categorical determination that applies to an individual who screened positive for suspicion of serious mental illness on the Level I PASRR Screening who will be directly admitted to a nursing facility after being hospitalized to treat a medical condition (excluding psychiatric care), and the individual's admission does not meet all of the requirements of an exempted hospital discharge (EHD). The Convalescent Care categorical determination is time-limited.

10. The facility has confiscated smoking materials from the appellant on numerous occasions in violation of the smoking policy, and has been issued numerous warnings about his smoking (Exhibit 4, pp. 12, 13, 15, 16, 18, 20).
11. The NF administrator testified that the facility has repeatedly reviewed the smoking policy with the appellant, and the appellant has signed the policy indicating he will comply.
12. The appellant's disregard for the smoking policy puts the appellant's health at risk if he was injured outside while smoking and no one knew where he was and also puts everyone at risk because oxygen is in use, which could ignite.
13. The appellant leaves the facility without authorization to go to a nearby store.
14. The appellant was originally admitted on a 30-day convalescent care categorical determination.
15. The NF has set up multiple housing interviews for living situations, but the appellant refuses all of them because his dog is not allowed.

Analysis and Conclusions of Law

A resident may be transferred or discharged from a nursing facility when the health or safety of individuals in the nursing home is endangered or would otherwise be endangered (130 CMR 610.028(A)(3) and (4)).

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:

- (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 home is endangered;
- (4) the health of individuals in the nursing home 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

The appellant has been given multiple warnings about violating the smoking policy, yet he continued this activity, endangering the health and safety of individuals in the nursing facility.

A resident may be transferred or discharged from a nursing facility when the health of the individuals in the nursing facility would otherwise be endangered (130 CMR 610.028(A)(4)). A transfer or discharge on this ground must be documented by the resident's clinical record (130 CMR 610.028(B)). The documentation must be made by a physician, although not specifically the resident's physician (130 CMR 610.028(B)(1)). The NF has provided the appellant's clinical record that has documented that the appellant's behavior endangers the safety of individuals in the nursing facility. The clinical record shows that the appellant has a history of maintaining smoking materials in his room. The discharge notice meets the criteria set out in 130 CMR 610.028(C) and 130 CMR 456.701(C).³

In addition to the MassHealth-related regulations discussed above, the NF also has an obligation to comply with all other applicable state laws, including 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

³ 130 CMR 610.028(C) and 130 CMR 456.701(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 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 Division's Board of Hearing 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.

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.

While the discharge location is a homeless shelter, the appellant's clinical record shows the appellant does not have any current diagnoses which would prevent him from being discharged to this location. The NF has met with the appellant to discuss his discharge plan and has set up housing interviews for the appellant, which the appellant has refused because his dog would not be allowed at the residence. The appellant's failure to cooperate with the discharge plan does not negate the efforts by the NF. These actions by the NF meet the facility's obligations set forth in G.L. c. 111, § 70E. The appellant's guardian's only concern was finding a structured environment where the appellant could thrive. This concern is not relevant to whether the facility has met its regulatory and statutory obligations. The NF has provided sufficient preparation for the appellant to ensure a safe and orderly transfer and has met the requirements of M.G.L. c.111, §70E.

The totality of the evidence presented is sufficient to warrant discharge under 130 CMR 610.028(A)(4).

Therefore, this appeal is **DENIED**.

Order for Nursing Facility

Proceed with notice of discharge. The appellant may not be discharged any 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.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

cc: Respondent: Southeast Rehab, Attn: Administrator, 184 Lincoln Street, North Easton, MA 02356