

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2418885
<b>Decision Date:</b>	2/10/2025	<b>Hearing Date:</b>	1/31/2025
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**



**Appearance for Facility:**

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

**Interpreter:**

N/A



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Discharge, Non-payment
<b>Decision Date:</b>	2/10/2025	<b>Hearing Date:</b>	1/31/2025
<b>Facility's Rep.:</b>	Norma B-Mullings, Administrator, Krystal Gagnon, Director of Social Services	<b>Appellant's Rep.:</b>	David Pardee
<b>Hearing Location:</b>	Remote (Tel)	<b>Aid Pending:</b>	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 December 27, 2024, [REDACTED] (hereinafter "the nursing facility" or "facility") issued a 30-Day Notice of Intent to Discharge Resident to [REDACTED] for the specific reason: "You have failed after reasonable and appropriate notice to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility. " (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1). The Appellant filed this appeal in a timely manner on January 13, 2025 (130 CMR 610.015(F); Exhibit 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

### Action Taken by MassHealth

The nursing facility issued a 30-Day Notice of Intent to Discharge Resident for the specific reason: "You have failed after reasonable and appropriate notice to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility. " (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

## Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701, in issuing to the Appellant a 30-Day Notice of Intent to Discharge Resident for the specific reason: You have failed after reasonable and appropriate notice to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility. “ (130 CMR 456.701; 130 CMR 610.029(B); Exhibit 1)

## Summary of Evidence

The Appellant is an individual under the age of 65 who is seeking appeal of a 30-Day Notice of Intent to Discharge Resident for the specific reason: “You have failed after reasonable and appropriate notice to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility. “ (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1).

The nursing facility was represented telephonically at the Hearing by its Administrator, as well as the Director of Social Services. The Appellant represented himself. The Hearing was scheduled as a video Hearing, however, at the time of the Hearing, no one appeared virtually. A call placed to the facility revealed that the facility was unaware of the Hearing having been scheduled as a virtual Hearing. The Appellant also stated he believed the Hearing was telephonic. In response to inquiry posed, the Appellant stated he wished to proceed telephonically. The Hearing was conducted via telephone.

The facility’s representatives stated that attempts were made to have the Appellant pay, but the attempts have been unsuccessful (Testimony). The Billing Statement as well as records of the conversations the facility has had with the Appellant are included within the facility’s submission (Exhibit 5<sup>1</sup>). Within the submission by the Nursing Facility, there is a statement dated January 1, 2025, listing an amount due of \$7,196.00. For purposes of this appeal, with a Discharge Notice date of December 27, 2024, the relevant Statement indicates that the Appellant had a previous balance of \$6,296.50. (Exhibit 5, pg. 8). Adding the current charges for the entirety of December 2024, the new balance due was \$7,196.00 in the January 1, 2025 statement. (Exhibit 5, pg. 8).

In an Administrator Progress Note, dated [REDACTED] 2024, the writer recorded:

The Business Office Manager alerted this writer that she had a conversation with resident about paying his PPA which has now become due. This writer has a conversation with resident about his PPA so he could understand that Mass

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<sup>1</sup> Exhibit 5 was mailed to the Board of Hearings. The pages are numbered by hand. Pages 201-248 were not included within the submission and are not included within this Administrative Record.

Health just sent what he owed to the facility based on information given from him to Mass Health. Resident stated he is not going to pay even though he has over \$7000 deposited into his account at the bank. Resident gave his bank card to his family to withdraw all the funds. Resident was seen by C.N.A with over \$3500 taped to his body when giving care. (Exhibit 5, pg. 146-147)

In a Social Service Interim Progress Note, dated [REDACTED] 2024, the author noted that the Appellant had been advised when his coverage within the facility would end. The Appellant responded that he did not want to go and would appeal the decision. (Exhibit 5, pg. 145)

In an Administrator Progress Note, dated [REDACTED] 2024, it is memorialized:

This writer and the Director of SS met with the resident following a hearing withdrawal to see if the resident would make a payment to resolve the 30 days' notice for non-payment. Resident shared with us that he does not have any money to pay and also spend [SIC] December's social security. Both Individuals explained that he owes payment from July to date and that he got money from his mother inheritance totaling approximately \$8000. Resident shared that he gave his family \$3500 for his mother funeral expenses and spend [SIC] the rest on drugs. Director of SS shared the approximate amount of money that resident consumed in drugs from July to date (\$9,000), Resident said he cannot take it back and that he had absolutely no money to make a payment. Resident also shared that [SIC] he is interested in going to a program on discharge if the facility was able to secure placement. SAC and ACC notified of resident interest. Resident will be reissued another 30 days' notice for nonpayment and be referred to Psych. (Exhibit 5, pg. 108)

In a Social Service Interim Progress Note, dated [REDACTED] 2025, it was noted that the Appellant gave a social worker \$240.00 and a card to give to his nephew. (Exhibit 5, pg. 61) The facility confirmed that the Appellant has made no payment to the facility. (Testimony)

In a Dietitian Note dated [REDACTED] 2025, it was noted that the Appellant had been hospitalized in [REDACTED] of 2025 for approximately a week "with SOB, acute on chronic hypoxic respiratory failure." (Exhibit 5, pg. 43) Additionally, in a screening note, dated [REDACTED] 2025, it was written that the Appellant was having issues with his pacemaker. (Exhibit 5, pg. 40) At Hearing, the Appellant stated that he did not have a pacemaker. (Testimony). The facility stated that it was believed that the notation was made in error. (Testimony) The Appellant did confirm that he had, in fact, recently been hospitalized. (Testimony)

No testimony was offered regarding the appropriateness of the discharge location. The location listed on the Notice is a shelter. (Exhibit 1) Although there are voluminous medical records within the facility's submission (Exhibit 5), lacking is any information related to the

appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking within the facility's submission is documentation regarding any preparation or orientation provided to the Appellant (Exhibit 5). The sole reference within this Record is a notation within a Physician Progress Note, dated [REDACTED] 2024 that the Appellant requires a wheelchair:

Resident was seen yesterday for update on upcoming discharge. He has a scheduled discharge date for [REDACTED] 2024. Measures and preparations towards a safe discharge home included the need for a personal wheelchair. He has a right leg amputation and is unable to ambulate with neither a walker nor a cane. He requires the need for a wheelchair for a safe mobility inside home. Prescription for wheelchair has been sent. Case discussed with resident, nursing staff, and PT/OT." (Exhibit 5, pgs. 100-101)

The Appellant testified that he received the Billing Statement as well as the Discharge Notice dated December 27, 2024, which is the subject of this appeal. (Testimony, Exhibit 1) The Appellant stated the money he had was utilized for his mother's burial costs. (Testimony) The Appellant denied that he spent in excess of \$9,000 on drugs in the time period the facility outlined supra. (Testimony) The Appellant stated that he does not have the money to pay for his stay at the facility. (Testimony) In response to inquiry posed, the Appellant stated that he had resided in the shelter several years ago, and that he stayed on an upper floor, which he would not be able to access due to his current mobility. (Testimony) No additional evidence was presented regarding the appropriateness of the discharge location, nor any preparation or orientation provided to the Appellant.

## Findings of Fact

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

1. The Appellant is an individual under the age of 65 who is seeking appeal of a 30-Day Notice of Intent to Discharge Resident for the specific reason: "You have failed after reasonable and appropriate notice to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility. " (130 CMR 456.701); 130 CMR 610.029(B); Exhibit 1).
2. Within the submission by the Nursing Facility, there is a statement dated January 1, 2025 listing an amount due of \$7,196.00. The relevant Statement indicates that the Appellant had a previous balance of \$6,296.50 (Exhibit 5, pg. 8).
3. In an Administrator Progress Note, dated [REDACTED] 2024, the writer recorded that a discussion was had with the Appellant regarding payment. The Appellant refused to pay. Although the Appellant had had funds in his account, he gave his debit card to his

family to empty the account. The Appellant had been observed with over \$3500 taped to his body. (Exhibit 5, pg. 146-147)

4. On [REDACTED] 2024, the Appellant met with the representatives of the Facility regarding non-payment. The Appellant reported he had given some money to his family for his mother's funeral expenses, and then spent the rest of the money he had received from his mother's inheritance on drugs. (Exhibit 5, pg. 108)
5. In a Social Service Interim Progress Note, dated [REDACTED] 2025, it was noted that the Appellant gave a social worker \$240.00 and a card to give to his nephew. (Exhibit 5, pg. 61) The facility confirmed that the Appellant has made no payments to the facility. (Testimony)
6. The Appellant was hospitalized for a week in [REDACTED] 2025. (Exhibit 5, pg. 43)
7. No testimony was offered regarding the appropriateness of the discharge location. The location listed on the Notice is a shelter. (Exhibit 1) Although there are voluminous medical records within the facility's submission (Exhibit 5), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking within the facility's submission is documentation regarding any preparation or orientation provided to the Appellant (Exhibit 5). The sole reference within this Record is a notation within a Physician Progress Note, dated [REDACTED] 2024 that the Appellant requires a wheelchair. (Exhibit 5, pgs. 100-101)

## 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 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.<sup>2</sup>

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

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<sup>2</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

following, as codified within 130 CMR 456.701(C):

- (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 Hearings 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 456.702; and
  - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 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. s. 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.

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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 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 Division or Medicare pay for a stay at the nursing facility); or
- (6) the nursing facility ceases to operate.

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (4), the resident's clinical record must contain documentation to explain the transfer or discharge. Pursuant to 130 CMR 456.701(B), the documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

130 CMR 456.702: Time Frames for Notices Issued by Nursing Facilities:<sup>3</sup>

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<sup>3</sup> See also 130 CMR 610.029: Time Frames for Notices Issued by Nursing Facilities

(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).

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician. (emphasis added)
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).



(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are emergency discharges or emergency transfers.

(1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.

(2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.

(3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.

(4) The resident has not resided in the nursing facility for 30 days immediately prior to receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429, must comply with the requirements set forth in 130 CMR 456.701 and must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

(C) If the request for a hearing is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, if the request for a hearing is received within the applicable time period as described in 130 CMR 456.703(B)(3), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

The nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.<sup>4</sup>

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In this case, the facility initiated the discharge proceedings because it determined that the Appellant had failed, after reasonable and appropriate notice, to pay for (or failed to have MassHealth or Medicare pay for) a stay at the nursing facility (Exhibit 1). The Record adequately supports the facility's position regarding nonpayment (Exhibit 5). The facility has notified the Appellant of the debt owed and these efforts constitute reasonable and appropriate notice of the debt owed to the Facility (Exhibit 1, Exhibit 5, Exhibit 5, pg.8 , Testimony).

The Appellant does not dispute that he has failed to pay the facility (Testimony). Rather, he stated that he does not have the money to pay the facility. However, ample evidence has been provided that despite having money from social security each month as well as other monies, the Appellant has not made payment to the facility. These statements regarding not having money do

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<sup>4</sup> See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

not relieve the Appellant of his financial responsibility to the facility for his care.

However, payment is not the sole consideration in this appeal. The facility has specific regulatory requirements that must be met before an Appellant may be discharged. Specifically, the facility must also comply with G.L. c. 111, § 70E. Per this statutory provision, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. No testimony was offered regarding the appropriateness of the discharge location. The location lists a shelter for discharge (Exhibit 1). Although there are voluminous medical records within the facility's submission (Exhibit 5), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the Appellant. Also lacking is documentation regarding any preparation or orientation provided to the Appellant (Exhibit 5). This is particularly concerning in the instant appeal where the Appellant had been recently hospitalized prior to the Hearing. Merely noting that the Appellant requires a wheelchair does not provide the requisite preparation for the Appellant, nor does it assuage the requirement to show that the discharge location is appropriate. These statutory requirements must be met prior to discharge of a resident. Within this Record, based upon the testimony from the facility as well as the documentary evidence submitted, the requirements of G.L. c. 111, § 70E have not been met.

On this Record, the Appellant has met his burden, by a preponderance of evidence, to show the invalidity of the administrative determination. Accordingly, this appeal is APPROVED.

## **Order for MassHealth**

Rescind the December 27, 2024, 30-Day Notice of Intent to Discharge Resident.

## **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 this nursing facility fails to implement the above order, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Patrick Grogan  
Hearing Officer  
Board of Hearings

