

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2419061
<b>Decision Date:</b>	12/27/2024	<b>Hearing Date:</b>	12/19/2024
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



**Appearances for Nursing Facility:**

Erica Coates, Administrator  
Dr. Asif Merchant, Medical Director  
Christine Faulkner LPN, Unit Manager  
Lesley King RN, Director of Nursing



*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/Transfer/ Facility Cannot Meet Resident's Needs
<b>Decision Date:</b>	12/27/2024	<b>Hearing Date:</b>	12/19/2024
<b>Nursing Facility's Reps.:</b>	Erica Coates, Dr. Asif Merchant, Christine Faulkner LPN, Lesley King RN	<b>Appellant's Rep.:</b>	██████████
<b>Hearing Location:</b>	Quincy Harbor South	<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

On December 12, 2024, ██████████ ("the nursing facility") issued a "Notice of Intent to Transfer or Discharge Resident With Expedited Appeal" informing the appellant that it sought to transfer/discharge her to ██████████ explaining that "[t]he transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility[.]" (See 130 CMR 610.028(A)(1); 610.029(B)(3); Exhibit (Ex.) 1; Ex. 7, pp. 3-5). The appellant's daughter, acting on the appellant's behalf, submitted a timely appeal to the Board of Hearings on December 9, 2024. (See 130 CMR 610.015(B)(6), 610.029(C), and Ex. 2). A notice of intent to transfer or discharge a nursing facility resident and/or to not readmit resident following hospitalization or other medical leave of absence from the facility with less than 30 days' notice is valid grounds for appeal. (See 130 CMR 610.015(F); 610.032(C)).

### Action Taken by Respondent

The nursing facility initiated the appellant's discharge from the facility with less than 30 days' notice.

## Issue

The appeal issues are whether the nursing facility was correct, pursuant to 130 CMR 610.028 and 610.029, in determining that the appellant should be discharged from the facility with less than 30 days' notice and whether the facility has met all the requirements for discharge required by law.

## Summary of Evidence

According to documentation the facility submitted to BOH prior to the hearing, the appellant is an individual who is over the age of 65 with diagnoses that include the following: Essential (Primary) Hypertension, Hypothyroidism (unspecified), Personal History of Traumatic Brain Injury, Constipation (unspecified), Pain (unspecified), Thrombocytopenia (unspecified), Anemia (unspecified), Insomnia (unspecified), Other Abnormalities of Gait and Mobility, Muscle Weakness (generalized), Encounter for Immunization, Dysphagia (oropharyngeal phase), Personal History of COVID-19, Unspecified Dementia with Unspecified Severity and Other Behavioral Disturbance., Unspecified Blepharitis (unspecified eye, unspecified eyelid), Other Nonthrombocytopenic Purpura, Polyarthrititis (unspecified), Chronic Kidney Disease (Stage 3, unspecified), Moderate Protein-Calorie Malnutrition, Combined Forms of Age-Related Cataract (bilateral), Fever (unspecified), Dermatitis (unspecified), Wheezing, Functional Dyspepsia, Dry Eye Syndrome of Bilateral Lacrimal Glands, Vitamin Deficiency (unspecified), and Flatulence. (Ex. 7, p. 7).

The documentation included clinical notes dated November 22 through November 30, 2024 describing the appellant's care at the nursing facility for that time period. (Ex. 7, pp. 7-10). On November 22, 2024, the appellant was seen for bilateral non-traumatic purpura and a scratch on her left arm. (Ex. 7, p. 10). The appellant was combative with care, and a foam pad was added to her bedside table for safety. (Ex. 7, p. 10). It was noted that the appellant had a history of thrombocytopenia, which may contribute to bruising. (Ex. 7, p. 10). During this time period, there were several incidents of combativeness during care, including yelling and swinging arms. (Ex. 7, pp. 9-10). Skin tears and purpura were noted, with treatments including steri-strips and foam dressing. (Ex. 7, pp. 8-9). On [REDACTED], the appellant's daughter insisted on taking the appellant to the hospital for a skin tear, despite the nursing facility staff's attempts to treat her on-site. (Ex. 7, p. 8). The appellant was transferred to the hospital on [REDACTED] after the appellant's daughter called 911. (Ex. 7, p. 7). A note written by the medical director on November 29, 2024 remarked about ongoing issues with the appellant's daughter's mistrust of the facility, frequently demanding emergency room transfers, which the staff believes is detrimental to the appellant's well-being. (Ex. 7, p. 7).

At the hearing, the nursing facility was represented by the facility's administrator, the medical director, the director of nursing, and a unit manager. The appellant was represented by her daughter, who was serving as her activated health care proxy. All participants in the hearing attended the hearing telephonically.

The nursing facility's administrator and medical director spoke first and stated the following. The appellant has been a resident at the nursing facility since [REDACTED]. (Testimony). Since that time, she has had multiple hospitalizations due to various health issues. (Testimony). The medical director explained that while the facility was equipped to manage many medical needs, certain conditions required hospital transfers, which could disrupt a patient's well-being, particularly for elderly individuals like the appellant. (Testimony). The administrator added that frequent transfers to emergency rooms and hospitals were detrimental to the appellant, as she felt more comfortable and received better care at the facility, where she was familiar with the staff. (Testimony).

The medical director highlighted the risks of hospital visits, such as hospital-acquired infections and pressure injuries, advocating for managing care within the facility, a practice increasingly recognized for elderly patients. (Testimony). Despite these efforts, the appellant was hospitalized at [REDACTED] (Testimony). Both the administrator and the medical director expressed concerns that the appellant's daughter no longer trusted the facility due to repeated hospitalizations and dissatisfaction with the care provided. (Testimony).

The appellant's daughter spoke next. She raised concerns about her mother's care, pointing to several hospital transfers in the past, which were due to medical issues such as pain, difficulty swallowing, and infections. (Testimony). She felt that her mother did not receive timely or adequate responses regarding her care from the director of nursing and other medical staff. (Testimony). The appellant's daughter was concerned by the absence of progress notes in the appellant's medical record for the period October 30 through November 9, 2024, and noted that her mother had not been readmitted to the nursing facility after being hospitalized on [REDACTED] [REDACTED] (Testimony).

The appellant's daughter also stated that the facility attempted to discharge the appellant on September 12, 2024 for similar reasons. (Testimony; Ex. 8). At that time, the appellant had ongoing medical issues, and the daughter had to repeatedly contact the facility for assistance, without receiving any feedback. (Testimony). The appellant's daughter had appealed that determination to BOH, which was approved after a hearing. (Testimony; Ex. 8). BOH ordered the appellant readmitted to the facility. (Testimony; Ex. 8). The daughter emphasized that she had never refused medical treatment for her mother, but was concerned about the quality of care at the nursing facility. (Testimony).

In response, the medical director defended the facility's actions, suggesting that if the daughter no longer trusted the care, she could seek another provider. (Testimony). However, the daughter reiterated that her primary concern was her mother's well-being and the need for prompt and appropriate medical care. (Testimony). She also disputed claims from the unit manager that discharge paperwork had been provided, stating that no such paperwork had been given when she took her mother to the hospital. (Testimony). The appellant's daughter stated that although the hospital has cleared the appellant for discharge, she currently has no suitable place to go and is not being allowed to return to the facility due to the discharge notice. (Testimony).

## Findings of Fact

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

1. The appellant is an individual over the age of 65. (Testimony; Ex. 7, p. 7).
2. The appellant's diagnoses include the following: Essential (Primary) Hypertension, Hypothyroidism (unspecified), Personal History of Traumatic Brain Injury, Constipation (unspecified), Pain (unspecified), Thrombocytopenia (unspecified), Anemia (unspecified), Insomnia (unspecified), Other Abnormalities of Gait and Mobility, Muscle Weakness (generalized), Encounter for Immunization, Dysphagia (oropharyngeal phase), Personal History of COVID-19, Unspecified Dementia with Unspecified Severity and Other Behavioral Disturbance, Unspecified Blepharitis (unspecified eye, unspecified eyelid), Other Nonthrombocytopenic Purpura, Polyarthrititis (unspecified), Chronic Kidney Disease (Stage 3, unspecified), Moderate Protein-Calorie Malnutrition, Combined Forms of Age-Related Cataract (bilateral), Fever (unspecified), Dermatitis (unspecified), Wheezing, Functional Dyspepsia, Dry Eye Syndrome of Bilateral Lacrimal Glands, Vitamin Deficiency (unspecified), and Flatulence. (Ex. 7, p. 7).
3. The appellant has been a resident at the nursing facility since [REDACTED]. (Testimony).
4. Since that time, she has had multiple hospitalizations due to various health issues. (Testimony).
5. On [REDACTED], the appellant was seen for bilateral non-traumatic purpura and a scratch on her left arm; she exhibited combativeness during care, leading to the addition of a foam pad on her bedside table for safety; the appellant has a history of thrombocytopenia contributing to bruising; the appellant had incidents of combativeness, including yelling and swinging arms in subsequent days, with continued skin tears and purpura, treated with steri-strips and foam dressing. (Ex. 7, pp. 7-10).
6. On [REDACTED] despite the nursing facility staff's attempts to treat a skin tear on-site, the appellant's daughter insisted on hospital transfer, calling 911, leading to the appellant's transfer to [REDACTED]. (Testimony; Ex. 7, p. 10).
7. On December 12, 2024, the nursing facility issued a "Notice of Intent to Transfer or Discharge Resident With Expedited Appeal" informing the appellant that it sought to transfer/discharge her to [REDACTED] on [REDACTED] explaining that "[t]he transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility[.]" (Ex. 1; Ex. 7, pp. 3-5).
8. As of the date of the hearing, the hospital has cleared the appellant for discharge, but she currently has no suitable place for her discharge and cannot presently return to the facility.

(Testimony).

## Analysis and Conclusions of Law

According to 130 CMR 456.701 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 Nursing Facility Agency or Medicare) a stay at the Nursing Facility; or
- (6) the Nursing Facility ceases to operate. (Emphasis added).

When the facility discharges a resident under any of the circumstance specified in (1)-(5), above, the resident's clinical record must be documented. (130 CMR 456.701(B); 610.028(B)).

Prior to discharge or transfer, 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 Nursing Facility 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 456.701(C); 610.028(C)).

Generally, a nursing facility must notify the resident of discharge at least 30 days before the date the resident is to be discharged or transferred, except under certain circumstances. (130 CMR 610.029(A)). 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 when “[a]n 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” (emphasis added). (130 CMR 456.702(B)(3); 610.029(B)(3)).

As provided in 130 CMR 456.429: Medical Leave of Absence: Failure to Readmit, a nursing facility's failure to readmit a resident following a medical leave of absence will be deemed a transfer or discharge (depending on the resident's circumstances). Upon determining that it will not readmit the resident, the nursing facility must issue notice to the resident and an immediate family member or legal representative, if the resident has made such a person known to the facility, in accordance with 130 CMR 456.701(A) through (C), 456.702: Time Frames for Notices Issued by Nursing Facilities, and 130 CMR 610.028 through 610.030 (130 CMR 610.028(D)).

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.” Federal regulations also require that a nursing facility provide sufficient preparation for a safe and orderly discharge. (See 42 CFR 483.12(a)(7)).

The record does not demonstrate that the nursing facility was justified in issuing the notice of discharge, or more appropriately, the notice of failure to readmit. Based on the statements of the medical director and the documentation the facility submitted, there is nothing explicitly stating that the appellant's urgent medical needs cannot be met at the facility. The testimony and the written evidence indicates that the facility is equipped to manage the appellant's medical conditions. There was no evidence submitted or any testimony to support that the nursing facility's failure to readmit the appellant is necessary for the appellant's welfare nor that the

appellant's needs cannot be met in the nursing facility.

Further, the facility provided no testimony or evidence showing that they provided any preparation or orientation which would ensure that the appellant would be discharged or transferred to another safe and appropriate place. The appellant was sent to the hospital on an emergency basis at the instigation of her daughter. The appellant's daughter stated that the hospital has cleared the appellant for discharge. A hospital's emergency department is not an appropriate discharge location.

For the above reasons, the appeal is APPROVED.

## **Order for the Nursing Facility**

Rescind the December 12, 2024 notice. Do not discharge the appellant under this notice.

## **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.

## **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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

[REDACTED]



