

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2419339
<b>Decision Date:</b>	1/24/2025	<b>Hearing Date:</b>	01/17/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.	<b>Record Open to:</b>	01/22/2025

**Appearance for Appellant:**  
Pro se

**Appearances for Nursing Facility:**  
Amber Dubois, Business Office Manager;  
Andrew Mbugua, Facility Administrator;  
Lacey Ackerman, LSW, Director of Social  
Services



*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
<b>Decision Date:</b>	1/24/2025	<b>Hearing Date:</b>	01/17/2025
<b>Nursing Facility Reps.:</b>	Amber Dubois, Business Office Manager, <i>et al.</i>	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South 1 (Telephone)	<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 November 18, 2024, Watertown Nursing and Rehab (“the nursing facility”) informed Appellant that it sought to discharge him from the facility because he failed, after reasonable and appropriate notice, to pay for services rendered at the facility. *See* 130 CMR 610.028 and Exhibit 2. On December 18, 2024, Appellant filed a timely appeal of the discharge notice. *See* 130 CMR 610.015(B) and Exhibit 2. An attempt to discharge a nursing facility resident is valid grounds for appeal. *See* 130 CMR 610.032(C). At the conclusion of the hearing, the record was left open until January 22, 2025, for the appellant to reconsider his refusal to participate in his MassHealth Long-Term Care (LTC) conversion application and pay his monthly patient-paid amount (PPA) to the nursing facility.

### Action Taken by Nursing Facility

The nursing facility sought to discharge Appellant because it determined that after reasonable and appropriate notice, he failed to pay, and/or failed to have Medicare or Medicaid pay for, his nursing facility care.

## Issue

The issue on appeal is whether the nursing facility met the statutory and regulatory requirements set forth under 130 CMR §§ 610.028, 610.029 and 42 CFR Ch IV, subpart B, § 483.12(a) to discharge Appellant from the nursing facility pursuant to its November 18, 2024 discharge notice.

## Summary of Evidence

At the hearing, the nursing facility was represented by its business office manager, facility administrator, and director of social services. Based on testimony and documentary submissions, the nursing facility presented the following evidence: the appellant is under the age of 65 and was admitted to the nursing facility following complications with osteomyelitis.<sup>1</sup> Exhibit 5 at 3. His medical diagnoses include a methicillin resistant staphylococcus aureus (MRSA) infection, type 2 diabetes mellitus, morbid obesity, chronic obstructive pulmonary disease, acquired absence of right toes, a non-pressure chronic ulcer on his foot, chronic systolic (congestive) heart failure, unsteadiness on feet, and hyperlipidemia. *Id.* He ambulates in a wheelchair but is independent in performing activities of daily living (ADLs). Testimony. The submitted medical record indicates that the appellant was seen by a specialty wound physician for a “thorough wound care assessment and evaluation” on January 13, 2025, at the nursing facility. Exhibit 6 at 166. The treating physician documented nonhealing wounds on several areas on the Appellant’s body: “Patient has wounds on his right shin; left plantar lateral foot; right plantar foot; right posterior thigh; and left first toe.” *Id.* The wound care physician documented four (4) wound sites on the appellant’s body that would require the daily application of ointment and change of dressing for nine (9) days, and two (2) sites that were debrided during the appointment that will require daily application of medicated ointment and change of dressing over the wound for thirty (30) days, and also the elevation of the legs and off-loading of the wound during that time. Exhibit 6 at 166-170.

The business office manager testified that facility has not been paid for the appellant’s care since November 1, 2024. The appellant currently owes a balance of \$43,976.00 to the skilled nursing facility for payment for his care. Exhibit 6 at 9. The appellant has refused to pay for his care. By February 1, 2025, the balance owed to the nursing facility will be \$58,316.00. The appellant is a member of the Commonwealth CCA-ICO through MassHealth, and his short-term MassHealth eligibility was exhausted on October 31, 2024. The facility informed the appellant on November 1, 2024, that he needed to complete a MassHealth LTC conversion application. The appellant refused

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<sup>1</sup> “Osteomyelitis is an infection in a bone. It can affect one or more parts of a bone. Infections can reach a bone through the bloodstream or from nearby infected tissue. Infections also can begin in the bone if an injury opens the bone to germs.” Mayo Clinic. Osteomyelitis. See, <https://www.mayoclinic.org/diseasesconditions/osteomyelitis/symptoms-causes/syc-203759130> (last checked 1/22/2025).

the assistance of the facility with the LTC conversion application, and told the business office manager he would complete the application on his own. The business office manager testified that it was her impression that the appellant understood the conversation that they had about the conversion application. She stated that he responded to her that he won't pay his share of the bill to the facility; he has bills to pay and he needs to keep his storage unit. In order to estimate the Patient-Paid Amount for the appellant, the business manager asked the appellant what his monthly income is. He refused to give her an exact figure, and said it was around \$1,200.00 per month. She deducted the personal needs allowance amount (\$72.80) and presented the appellant with a bill on November 1, 2024, in the amount of \$1,127.20 for the month of November 2024<sup>2</sup>.

On November 7, 2024, MassHealth sent the appellant a Long-Term Care Conversion Information Request. Exhibit 6 at 5. The appellant received a copy of this letter on November 13, 2024 from the business office manager. The business office manager testified that she offered to meet with the appellant to go over the LTC conversion information request and assist him with completing it, and the appellant told her that he was working on an LTC application and he did not require assistance. *Id* at 7. The facility has documented several instances in November 2024 where staff members encouraged the appellant to apply for LTC MassHealth benefits; however, he has not done so, and he refuses to pay his income to the nursing facility because he uses his income to pay for his storage unit. *See* Exhibit 6, pp. 6-8. The appellant testified that if he loses the items in his storage unit, "I lose my whole life – everything I own is in storage; my business is in storage; thousands of dollars." Testimony. Five days after receiving a Long-Term Care Conversion Request in hand from the business office manager, on November 18, 2024, the appellant received the 30-Day Notice of Intent to Discharge Resident during a meeting in his room with the director of social services and a nursing facility vice-president. Testimony and Exhibit 6 at 84. This encounter was documented in the appellant's medical record:

SW and VP [REDACTED] provided resident with a bill. Resident stated he would not be paying it and was understanding that this will result in a discharge notice. SW issued resident a 30 day discharge notice and his rights were explained to him. Notice was faxed to Springwell LTC Ombudsman. Resident declined to sign.

*Id.*

On November 20, 2024, the Appellant signed a request for statements from his financial institution in the presence of the business office manager, and she faxed them to the financial institution on the Appellant's behalf. The business office manager was unable to meet with the appellant from November 20, 2024 – December 9, 2024, because the Appellant was admitted to the hospital during that time. The business office manager documented three (3) attempts to speak with the

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<sup>2</sup> The documentation submitted by the Nursing Facility indicates that the appellant received a copy of his November 2024 bill again on 11/7/2024.

Appellant in person about his outstanding LTC Conversion application between December 9, 2024 and January 10, 2025<sup>3</sup>. On December 10, 2024, the Appellant received a copy of his December 2024 invoice which indicated that he owed a balance of \$2,254.00 to the nursing facility. Exhibit 6 at 5. On December 12, 2024, the appellant's "Quarterly Care Plan" meeting was held in his room at the nursing facility. A nursing supervisor was also present with the facility's social worker. The note for this encounter indicates that the status of the appellant's "prepaid service for his cremation with a crematorium in Western Mass but does not remember the name. Agreed to tell SW once he has that information. No other questions or concerns." Exhibit 6 at 50.

The appellant received an additional invoice on December 19, 2024, which had been adjusted to account for private pay; the balance owed by the appellant to the nursing facility under the private pay rate was \$27,870.00 on that day. *Id.* at 4. On January 10, 2025, the business manager left a "private pay statement with dates 11/1-1/31" for the appellant in his room at the nursing facility; the balance owed to the nursing facility on that statement was \$43,976.00. *Id.* at 6.

On December 18, 2024, the director of social services documented in the appellant's medical record that she assisted the appellant with filing this appeal. The note goes on to state:

Resident is unsure of a discharge plan. Is hopeful he will be able to find a place by the time of his discharge. Resident is currently scheduled to be discharged to [homeless shelter], but has been provided a list of boarding houses that may be able to accommodate his needs. Resident reports he will look into that independently.

Exhibit 6 at 41.

On January 15, 2025, the director of social services met with the appellant regarding his upcoming discharge<sup>4</sup>. She documented that the appellant stated he "cannot do the long-term care conversion because he cannot afford a reduction in his funds to pay the patient paid amount." Exhibit 6 at 14. The social worker's notes from that day further state that she discussed the possibility of rest homes as potential discharge locations with the appellant, however "most are not ADA accessible and rest homes have a similar effect on his income so he is not open to rest homes as an option at this time." *Id.*

The facility has identified a local homeless shelter as a discharge location for the appellant. The

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<sup>3</sup> The business office manager was unable to speak with the Appellant between January 5, 2025 and January 10, 2025 because the Appellant was *again* admitted to the hospital. The nursing note from January 4, 2025 documents the incident that led to this hospitalization: "writer entered patient's room to assess their afternoon fingerstick and immediately noted the patient in respiratory distress." Exhibit 6 at 16.

<sup>4</sup> This is the only documented meeting between the appellant and a social worker at the nursing facility in January 2025. There are only four encounters between the appellant and a social worker documented in the entire medical record between 11/18/2024-1/15/2025, and only two involved discharge planning.

director of social services testified that she would have to refer the appellant to outpatient services. If the appellant was being discharged to a home, he would receive visiting nurses. She testified that she would work with the appellant to identify proper outpatient care. She stated that the nursing facility staff has tried to identify different discharge locations for the appellant and at this time, the homeless shelter is the only option they have identified for him. The director of social services stated that she is also working with the appellant to obtain a new power wheelchair through his insurance.

The appellant testified that he does not want to go to the homeless shelter. He lost his previous housing when he was hospitalized and sent to his current nursing facility in 2024. He has a brother who is serving as his health care proxy who helps him as much as he can, but he cannot live with his brother because his brother lives in an apartment and does not have space for him. After questioning, the Appellant stated he “would do what he has to do” to take care of the nonhealing wounds that he currently has on his body. He did not want to pay his PPA to the nursing facility because he believes he needs the items in the storage unit to sustain his business and his life. When it was noted by the hearing officer that he really needed to focus on getting healthy and worry about his health before his possessions, the appellant did not respond.

At the conclusion of the hearing, the hearing officer determined that the record would be held open until January 22, 2025 so that the appellant could reconsider filing the LTC-Conversion application and paying the outstanding PPA amounts he owed to the nursing facility. Exhibit 7. By email dated January 22, 2025, the director of social services confirmed that the Appellant refused to file the LTC-Conversion application or make any payment to the nursing facility. Exhibit 8.

## **Findings of Fact**

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

1. Appellant is a MassHealth member, under the age of 65, and was admitted to the nursing facility following complications with osteomyelitis, and diagnoses including type 2 diabetes mellitus, a MRSA infection, morbid obesity, chronic obstructive pulmonary disease, acquired absence of right toes, a non-pressure chronic ulcer on his foot, chronic systolic (congestive) heart failure, several non-healing wounds, and hyperlipidemia.
2. Appellant ambulates by a wheelchair and is independent in performing most ADLs.
3. Beginning on November 1, 2024, the facility business office manager informed appellant that his short-term MassHealth eligibility was exhausted on October 31, 2024 and that he needed to complete a MassHealth LTC conversion application; otherwise, he would be without any payor source.

4. On November 13, 2024, the business manager presented Appellant with the MassHealth Notice to Complete LTC-Conversion application; the Appellant responded that he would complete it himself, but that he would not pay the facility any of his income.
5. In subsequent meetings with the business office manager over the next few weeks, Appellant refused to complete the MassHealth LTC Conversion application or pay income to the facility.
6. Since November 1, 2024, Appellant has remained at the facility without a payor source.
7. As of the hearing date, Appellant accrued a total unpaid nursing home bill of \$43,976.00 and had not made any payments to the facility for the cost of his care.
8. On November 18, 2024, the facility presented Appellant with a “30-Day Notice of Intent to Discharge Resident” stating that it sought to discharge him to the Pine Street Inn homeless shelter on December 18, 2024, based on the reason that he “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.” Exhibit 1.

## 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 initiated by a nursing facility. MassHealth has enacted regulations that mirror the federal requirements concerning a resident’s right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility regulations at 130 CMR 456.000 et seq. and in the Fair Hearing Rules at 130 CMR 610.000 et seq.

MassHealth regulations at 130 CMR 610.028 set forth the requirements that a nursing facility must meet to initiate a transfer or discharge, and provides in part as follows:

(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 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.

See 130 CMR 610.028(A) (emphasis added); see also 130 CMR 456.701(A).

When the transfer or discharge is sought due to the circumstances specified in subsections (1) through (5), above, as it is here, the resident's clinical record must be documented.<sup>5</sup> See 130 CMR 610.028(B)(2).

In this case, the facility demonstrated that Appellant failed to pay for his nursing home care despite being given reasonable and appropriate notice of his payment obligations. The evidence shows that on November 1, 2024, the Appellant was informed by the business office manager of his obligation to complete the LTC-conversion application or else privately pay the nursing facility for his care. Since November 1, 2024, Appellant rejected continued efforts by the facility to assist him in filing the MassHealth application. As a result of Appellant's refusal to complete the LTC-conversion application and failure to secure a new payor source, he has accrued a substantial nursing home bill totaling \$43,976.00. Exhibit 6 at 9. As of the hearing date, Appellant had not made a single payment to the facility for the cost of his care. The facility has established proper grounds to discharge Appellant from the nursing facility under 130 CMR 610.028(A)(5), above, and this is documented in his clinical record.

While the facility has established proper grounds to discharge Appellant, it must also comply with all other applicable state laws before it can proceed with the discharge. In addition to the fair hearing regulations cited above, nursing facilities are subject to the requirements set forth in M.G.L. c. 111, § 70E, which states the following:

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.**

(emphasis added).

The facility proposes to discharge Appellant to a homeless shelter. Appellant has numerous complex diagnoses and is recovering from a recent MRSA infection and complications with a nonhealing wound. Since November 1, 2024, the Appellant has been hospitalized twice. While

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<sup>5</sup> When the basis for the discharge is due to reasons stated under subsections (1) through (4), above, the documentation must be made by a physician. However, in this case, where the basis for the discharge is due to Appellant's failure to pay under subsection (5), above, the regulation simply requires that the clinical record contain documentation of the basis for the discharge.



Appellant is independent in performing most ADLs, he ambulates solely by wheelchair and requires a discharge location that is handicapped accessible and can accommodate his physical limitations. The facility has not documented that they have made substantial efforts to secure Appellant with housing options that would meet his needs. I acknowledge the difficulty that exists in securing appropriate housing for someone with the medical needs of the Appellant, and a homeless shelter may indeed become, by default, an appropriate discharge location. However, as of the hearing date, the facility did not demonstrate it provided Appellant with sufficient “preparation and orientation” to ensure a safe and orderly discharge to the designated location. *See id.* Appellant currently uses a wheelchair to ambulate, and while the social worker indicated that she would assist him with ordering a new, power wheelchair through his insurance, the process had not yet been initiated, leaving open questions about when Appellant would have the necessary equipment needed to reside outside of the facility. Moreover, there was no evidence presented as to whether Appellant could attend day programs or receive social services during the daytime when the shelter is not accessible to residents, and there was no information provided as to which agency or nursing service, if any, will be performing the daily wound care that the Appellant requires.

Given Appellant’s physical limitations, the lack of evidence that alternative housing options were investigated, and uncertainties about the proposed discharge plan, the facility has not satisfied the standards outlined in M.G.L. c. 111, § 70E, above. Accordingly, the facility’s planned discharge is not authorized at this time. However, if Appellant’s balance to the facility remains unpaid, the facility may issue a new discharge notice, with appropriate notice to the appellant, at any time.

For these reasons, this appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the December 18, 2024 30-Day Notice of Intent to Discharge/Transfer Resident. The facility may issue a new discharge notice with appropriate discharge planning at any time if Appellant’s nursing home bill remains unpaid.

## **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.

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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings

cc: Respondent: Watertown Rehab & Nursing, Attn: Administrator, 59 Coolidge Hill Road,  
Watertown, MA 02472