

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2419628
Decision Date:	1/6/2025	Hearing Date:	01/03/2025
Hearing Officer:	Radha Tilva		

Appearance for Appellant:
Pro se, telephonic

Appearances for Nursing Facility:
Jennifer Nash, Social Worker
Lynn Wilson, Director of Social Services
Lyndsay Bibeau, Asst. Dir. of Nursing
Dorcas Awojulu, 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

Appeal Decision:	Denied	Issue:	Expedited nursing home discharge
Decision Date:	1/6/2025	Hearing Date:	01/03/2025
Nursing Facility's Reps.:	Jennifer Nash, Lynn Wilson, Lyndsay Bibeau, Dorcas Awojulu	Appellant's Rep.:	Pro se
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 December 23, 2024, [REDACTED] Rehabilitation and Health Center (hereinafter "the facility") issued a Notice of Intent to Discharge the Resident with Less than 30 Days' Notice (Exhibit 1). The appellant filed this appeal in a timely manner on December 23, 2024 (see 130 CMR 610.015(B) and Exhibit 2). A nursing facility's attempt to discharge a resident is valid grounds for appeal (see 130 CMR 610.032(C)).

Action Taken by MassHealth

The nursing facility notified appellant that it intended to discharge her from the facility in less than 30 days because her health had improved sufficiently such that she no longer required nursing facility care.

Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The facility was represented by a Social Worker, the Director of Social Services, an Assistant Director of Nursing, and the Director of Nursing. The appellant represented herself, *pro se*. The parties appeared by telephone at hearing.

At the hearing, the nursing facility representatives, through oral testimony and documentary submissions, presented the following evidence: Appellant entered the facility from a hospital for short-term rehabilitation on [REDACTED] 2024, to receive IV antibiotics with an admitting diagnosis of endocarditis (Exhibit 4, p. 5). Her secondary diagnosis included bacteremia, osteomyelitis, discitis, opioid use disorder/substance use disorder, GERD, methicillin-resistant *Staphylococcus aureus* (MRSA), hypertension, pain in the left knee, anxiety and depression (*Id.*). She received physical therapy at the facility and was discharged from it on [REDACTED] 2024. Her IV antibiotics were also discontinued, and she now receives antibiotics by mouth.

The appellant returned to her baseline, thus prompting the facility to issue a discharge notice (prior to the one prompting this appeal). The facility rescinded that notice at a previous Board of Hearings appeal, and reissued the notice under appeal on December 23, 2024 (Exhibit 1). The notice did not list a resident representative which the facility explained was a result of her not having family.¹ The admission record lists a sister as next of kin (Exhibit 4, p. 7). The facility sought discharge on December 26, 2024 to a medical shelter in [REDACTED] Massachusetts which they stated had a bed available for appellant (Exhibit 1).

A note from the resident physician, signed December 23, 2024, was submitted with the clinical record (Exhibit 4, p. 5). The physician stated that upon completion of IV antibiotics, appellant continued to complain of knee pain (*Id.*). At that time, further testing was ordered and both the X-ray and ultrasound completed were negative (*Id.*). She participated in PT and OT and has returned to prior level of functioning (*Id.*). Her rehab services within the facility have successfully concluded, and she is medically cleared to return to the community (*Id.*).

The clinical notes, including physical therapy notes were submitted electronically (Exhibits 4 to 6). The discharge physical therapy note states that the highest practicable level was achieved and the

¹ The appellant did not testify to her having any family or friends that should have been listed as the resident representative.

appellant can ambulate 150 feet on level surfaces, and 10 steps on stairs (Exhibit 4, p. 230). The note further states that the patient was seen for skilled PT services for safe community reintegration, and that she has “met the highest potential for now” (*Id.*). The physical therapy notes further stated and testimony corroborated that she could walk 150 feet times two to include turns, sidestepping, and stepping with a walker (Exhibit 4, p. 225). The clinical nursing notes also indicate that appellant refused to go to the methadone clinic for her dose which she receives outside of the facility (Exhibit 4, pp. 12 and 17). Per the facility’s testimony, the appellant currently uses a wheelchair in the facility and refuses to use a walker, though she is capable of using one. The facility will order a walker and provide the appellant with one upon discharge.

A screening was performed by Elder Services a few weeks prior to the hearing and the facility was told by the person who did the assessment that they no longer found her clinically eligible for nursing-facility services. Appellant’s current screening is approved until January 12, 2025, and will be denied after that.

The appellant appeared *pro se* and testified that her thigh and calves are still hurting and she wants to figure out what is wrong with her knee before discharge. She had an appointment on December 30, 2024 with an orthopedic doctor which the facility arranged, but missed it because her clothes were dirty and clean clothes have not been delivered to her. She did not want to go to the appointment appearing dirty. She cannot walk right, has no walker in her room, and is using a wheelchair to ambulate. She does not want to be discharged to the medical shelter.

The facility responded that they provide appellant with her medications and will assist appellant in setting up an appointment with a primary care doctor as soon as they determine what the discharge date is for her. An appointment was made with an orthopedic surgeon; appellant, however, refused to attend. The facility was unaware of her missing clean clothes until the night before this hearing. When asked if other types of accommodations had been considered, the facility stated that the appellant does not qualify for a rest home as she has a history of substance abuse, and likely no income source.

Findings of Fact

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

1. Appellant entered the facility from a hospital for short-term rehabilitation on [REDACTED] 2024 to receive IV antibiotics, with an admitting diagnosis of endocarditis.
2. Her secondary diagnosis included bacteremia, osteomyelitis, discitis, opioid use disorder/substance use disorder, GERD, MRSA, hypertension, pain in the left knee, anxiety and depression.
3. The appellant received IV antibiotics, OT and PT, while at the facility and was discharged from

all rehabilitation services.

4. The appellant presently uses a wheelchair in the facility, but is capable of using a walker with the ability to walk up to 300 feet.
5. A notice of intent to discharge the appellant was issued on December 23, 2024 seeking discharge of appellant to a medical homeless shelter in [REDACTED] Massachusetts on December 26, 2024.
6. The appellant does not want to go the shelter and wants the facility to help her figure out what is causing her knee pain.
7. Both an X-ray and ultrasound of her knee were performed, and were negative.
8. The facility helped arrange an appointment with an orthopedic specialist on December 30, 2024, to which the appellant refused to go.
9. The facility will help arrange for an appointment to a primary care doctor upon discharge, and make sure that appellant has all of her medications.
10. The appellant has no other known alternatives for housing.

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC §§ 1396r(c), guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility (See 42 U.S.C. § 1396r; 42 CFR § 483.204 § 483.206). Massachusetts has enacted statutory and regulatory requirements that mirror the federal resident rights protections, which are found in M.G.L. c. 111 § 70E and MassHealth regulations at 130 CMR 456.000 et seq., and 130 CMR 610.00 et seq.

The applicable MassHealth regulations set forth the following notice requirements that a nursing facility must provide a resident to initiate a transfer or discharge:

(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 610.029(B)(2) and 130 CMR 456.701(A)).

When a transfer or discharge is necessary under subsections (1) or (2) above, the resident's clinical record must be documented by the "resident's physician" (See 130 CMR 610.028(B)(1); 130 CMR 456.701(B)(1) (emphasis added)).²

Based on the regulatory authority and in consideration of the evidence in the record, appellant has not demonstrated that the facility issued the December 23, 2024 discharge notice in error. The facility cited proper grounds for discharge under 130 CMR 610.028(A)(2); specifically, that appellant no longer has a medical need to remain at the nursing facility. The evidence shows that appellant completed her course of therapy at the facility, which included IV antibiotics, was discharged from all PT and OT rehabilitation services, and successfully completed all rehabilitation services per the resident physician note. Appellant's physician at the facility has approved the discharge plan and has documented the grounds for discharge in appellant's clinical record in accordance with 130 CMR §§ 610.028(B)(1), 610.028(B)(2) (listing grounds for a nursing facility discharge) (See Ex. 4, p. 5).

Finally, before a nursing facility may discharge a resident, it must comply with the requirements set forth under 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.***

² Fair Hearing Rules at 130 CMR 610.028(C) set forth requirements the facility must adhere to related to the format and content of the discharge notice. A review of the 12/23/24 notice at issue reflects the facility hand delivered the notice to appellant; presented it in a readable format; included a description of the intended action, the basis for the discharge, the effective date of discharge, the location of discharge, and appellant's right to appeal the discharge notice, among the other enumerated requirements (See 130 CMR 610.028(C)). While no resident representative was listed in the notice, the testimony reflects that appellant is her own person and was not prejudiced by the facility failing to list her sister on the notice. There is no evidence or claim that the facility failed to comply with any of these requirements.

The evidence shows that the facility has been trying to ensure a safe and appropriate discharge from the facility to the medical shelter. The facility has testified that they will provide the appellant with a walker upon discharge and will also set her up with an outpatient appointment with her PCP so that she can continue to follow up with ongoing issues related to her knee as well. The PCP can also help appellant continue her methadone treatment, which the record reflects she was already doing outside of the facility. As it appears that appellant has no income, the medical shelter is a safe and appropriate place to discharge her given that appellant has no other viable options such as a rest home or her own home to go to. In addition, the resident's physician corroborates that appellant is safe to discharge to the community.

Based on the above, the nursing home issued a valid notice of discharge and there are no medical reasons why the appellant cannot be safely and appropriately discharged to a medical homeless shelter. The appeal is DENIED. The nursing facility may proceed to discharge the appellant no sooner than five days after the date of this decision, pursuant to 130 CMR 610.030(B).

Order for MassHealth

Proceed with discharge no sooner than five 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.

Compliance with this Decision

If this nursing facility fails to comply with 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.

Radha Tilva
Hearing Officer
Board of Hearings

[REDACTED]