

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2500261
Decision Date:	02/7/2025	Hearing Date:	1/22/2025
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearances for Respondent:

Christopher Gillissen, Administrator
Leah Stancombe, Social Worker



*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:	Nursing facility discharge – improved health
Decision Date:	02/07/2025	Hearing Date:	1/22/2025
Respondent's Reps.:	Administrator et al.	Appellant's Reps.:	
Hearing Location:	Quincy (remote)	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

By notice dated December 5, 2024, [REDACTED] ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on January 6, 2025. Exhibit 1. Appellant filed a timely appeal on January 6, 2025. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032.

Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

Summary of Evidence

Respondent, a skilled nursing facility licensed in Massachusetts, was represented at a telephonic hearing by its administrator and a social worker. Respondent's representatives submitted documents in support, Exhibit 4. Appellant appeared by phone and was represented by her friend. A summary of testimony and documentary evidence follows.

By hand-delivered letter dated December 5, 2024, Respondent informed Appellant of its intent to discharge Appellant from the facility to a local hotel. Exhibit 1. The notice stated that Respondent sought to discharge Appellant on January 6, 2025 because Appellant's health has improved sufficiently so that she no longer needs the services of the facility. *Id.* The notice identified the administrator as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long-term care ombudsman, the disability law center, centers for public representation (including a disabled persons' protection commission) and local legal service offices. *Id.*

Appellant admitted to the facility in early [REDACTED] with medical conditions and diagnoses including chronic obstructive pulmonary disease (COPD), chronic renal insufficiency (CRI), major depressive disorder, osteoarthritis of knees, type 2 diabetes, hypertension, and pituitary tumor with hypopituitarism. Exhibit 4 at 4.¹ She initially admitted under a Medicare stay and experienced hospitalizations during her residency at the facility. Respondent's representative testified that Appellant was deconditioned, with bilateral lower extremity pain and weakness and a kidney injury at the time of admission. Appellant could not walk well upon admission. However, Appellant has rehabilitated and is able to ambulate more easily with a walker. *Id.* at 263.

On both December 5, 2024 and January 17, 2025, Appellant's physician documented that Appellant has rehabilitated adequately and no longer needs skilled level of care. Appellant's physician wrote that Appellant's needs can be met in the community. Exhibit 4 at 4. Respondent's discharge plan included a call to Appellant's PCP to set up an appointment after discharge. *Id.* at 45.

Respondent's records show that Appellant has no impairment in her upper or lower extremities. *Id.* at 263. Appellant is independent with eating, oral hygiene, toileting hygiene, bathing, dressing, and personal hygiene. *Id.* at 270. Appellant is also independent with mobility and transfers. *Id.* at 271. Appellant scored a 15 out of 15 on the Brief Interview for Mental Status (BIMS) test which indicates cognitive functioning and the ability to make decisions. *Id.* at 298. Related to functional capacity, Respondent's notes and absentee registers from December 2024 and January 2025 show

¹ Exhibit 4 contains two minor pagination errors. First, page 106 was removed from the record because another resident's name was left unredacted. Second, a page between 109 and 110 did not have a page number. This unnumbered page is not specifically referenced in this decision and the remaining pages will be referenced as marked without adjustment.

that Appellant frequently leaves the facility on her own to go to the store. Exhibit 4 at 100-110. Appellant calls Montachusett Regional Transit Authority (MART) to arrange her own transportation. Upon discharge, the facility will schedule transportation for Appellant's departure via PT-1 and arrange for her prescriptions to be available at a community pharmacy.

Respondent provided social workers notes demonstrating how Respondent has offered assistance to Appellant in finding an appropriate discharge location. Respondent's social worker has met with Appellant on numerous occasions to determine where Appellant may want to go upon discharge. Appellant has insisted on staying in the area and will not give up marijuana to stay in a sober living environment. Exhibit 4 at 44-46. Appellant indicated that she would be open to a shelter as long as it was in the area. Respondent's social worker contacted multiple shelters on Appellant's behalf. *Id.* Appellant did not want to contact family to move in because she did not want to move to [REDACTED] *Id.* at 44. Respondent's notes also show that a community transition liaison from Aging Services of Central Massachusetts has also met with Appellant regarding discharge planning. *Id.* at 45. The community transition liaison reported to Respondent's administrator that Appellant has not completed a provided MassHealth waiver application and declined to provide areas to look for discharge placement. *Id.*

Respondent's notes indicate that Appellant asked that the facility put her up in a hotel for a month. *Id.* at 44. Respondent's administrator testified that the facility will pay for Appellant to discharge to a hotel for 3 days.

Appellant's representative primarily offered testimony. Appellant's representative did not dispute Appellant's short-term cognitive ability (which the BIMS score captures) but argued that Appellant's ability to comprehend beyond a 12-hour period is limited to the point where Appellant lacks the ability to make choices that are beneficial long-term. Appellant's diminished capacity in this respect makes it difficult for her to take steps to secure housing or care for herself. Appellant's representative used Appellant's refusal to go to [REDACTED] as an example, as this shows Appellant's inability to comprehend that the ramification of such a refusal could mean she ends up on the street. Appellant seeks immediate gratification and does not comprehend long-term consequences.

Appellant's representative has known Appellant for 25 years and has a long history of trying to assist Appellant, such as by assisting her in finding housing and food. Appellant has had difficulty maintaining housing due to her poor decision-making skills and anger issues. Appellant's representative testified that while Appellant may not need skilled care, she will not be successful living completely independently. Appellant's representative argued that Appellant requires a setting in between those two extremes, or she may end up on the street again. Last winter, Appellant sought shelter in Appellant's representative's car. Appellant was also couch-surfing with risky individuals and living in the park until the police cracked down and made arrests. Appellant's representative ultimately had Appellant hospitalized. Appellant's representative testified that these examples illustrate the mental illness that impacts Appellant's ability to live independently.

Appellant testified that she has one kidney, bad legs, and a tumor in her chest that has to be removed. Appellant does not want to go anywhere. Appellant argued that her legs need to be drained at the hospital, but the facility will not send her there. Appellant testified that staff will not answer her call button immediately when she needs a drink to manage her diabetes. Appellant acknowledged that Respondent's administrator has offered assistance when needed, such as when she needed to be hospitalized for a tooth infection.

Appellant requested help filling out applications for housing and for a MassHealth waiver. Appellant's representative offered to assist Appellant and meet with the community transition liaison. At the moment, Appellant is eligible for MassHealth payment of the nursing facility stay.

Findings of Fact

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

1. Appellant admitted to the facility in early [REDACTED] with medical conditions and diagnoses including COPD, CRI, major depressive disorder, osteoarthritis of knees, type 2 diabetes, hypertension, and pituitary tumor with hypopituitarism. Appellant was deconditioned, with bilateral lower extremity pain and weakness and a kidney injury at the time of admission. Exhibit 4 at 4.
2. Appellant has no impairment in her upper or lower extremities and can ambulate with a walker. *Id.* at 263.
3. Appellant is independent with eating, oral hygiene, toileting hygiene, bathing, dressing, and personal hygiene. Appellant is also independent with mobility and transfers. *Id.* at 270-271.
4. Appellant scored a 15 out of 15 on BIMS test which indicates cognitive functioning and the ability to make decisions. *Id.* at 298.
5. According to notes and absentee registers dated December 2024 and January 2025, Appellant frequently leaves the facility on her own to go to the store. Appellant calls MART to arrange her own transportation. Exhibit 4 at 100-110.
6. On both December 5, 2024 and January 17, 2025, Appellant's physician documented that Appellant has rehabilitated adequately and no longer needs skilled level of care. Appellant's physician wrote that Appellant's needs can be met in the community. *Id.*
7. Respondent's discharge plan included a call to Appellant's PCP to set up an appointment after discharge. *Id.* at 45. Respondent will also arrange transportation and prescriptions when the discharge date is known.

8. Respondent's social worker has met with Appellant on multiple occasions to determine where Appellant may want to go upon discharge, exploring options such as family, shelters, rest homes, and sober living. Exhibit 4 at 44-46.
9. Respondent's notes also show that a community transition liaison from Aging Services of Central Massachusetts has also met with Appellant regarding discharge planning and has provided to Appellant a MassHealth waiver application. *Id.* at 45.
10. By hand-delivered letter dated December 5, 2024, Respondent informed Appellant of its intent to discharge Appellant from the facility to a local hotel. Exhibit 1.
11. The notice stated that Respondent sought to discharge Appellant on January 6, 2025 because Appellant's health has improved sufficiently so that she no longer needs the services of the facility. *Id.*
12. The notice identified the administrator as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long-term care ombudsman, the disability law center, centers for public representation (including a disabled persons' protection commission) and local legal service offices. *Id.*
13. Appellant filed a timely appeal on January 6, 2025. Exhibit 2.
14. Respondent's notes indicate that Appellant asked that the facility put her up in a hotel for a month. *Id.* at 44.
15. Respondent's administrator testified that the facility will pay for Appellant to discharge to a hotel for 3 days.

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 some of 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.*

Per 130 CMR 456.701(A) 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 MassHealth Agency 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, the resident's clinical record must contain documentation to explain the transfer or discharge. 130 CMR 456.701(B); 130 CMR 610.028(B). For discharges subject to 130 CMR 456.701(A)(2) and 130 CMR 610.028(A)(2), the documentation explaining the discharge must be made by the resident's physician or PCP. 130 CMR 456.701(B)(1).

Prior to discharge or transfer, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative (if the resident has made such a person known to the facility), 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 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.

130 CMR 610.028(C).

Pursuant to 130 CMR 610.029(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) when the discharge is being made on an emergency basis. *See also* 130 CMR 456.702(A).

Further, 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.” Finally, federal regulations require that a nursing facility provide sufficient preparation for a safe and orderly discharge. *See* 42 CFR 483.15(c)(7).

The appeal issue is whether Respondent met its obligations when issuing the notice of discharge to Appellant. Respondent provided an acceptable reason for discharge and evidence showing that Appellant’s health has improved, including notes authored by Appellant’s physician. Respondent has also documented multiple attempts to assist Appellant in finding a suitable discharge location and has credibly testified to the necessary arrangements that will be made upon her release. Respondent has even agreed to Appellant’s request to go to a hotel and offered to pay for 3 nights to help Appellant. While this is not a long-term solution, Respondent has also provided Appellant with lists of shelters, rest homes, and other options in the immediate community, and can offer more assistance if Appellant agrees to expand her housing search beyond the immediate area.

Appellant’s representative did not dispute Appellant’s physical health improvement, but offered credible and reasonable testimony that Appellant may have a long-term cognitive issue and that another placement would be more ideal. While this is an understandable concern, Respondent has documented numerous efforts to assist Appellant in finding alternative housing options. It is imperative that Appellant and/or a representative on her behalf engage with this planning to find a suitable solution. However, Respondent has satisfied its statutory and regulatory requirements in providing notice of discharge to Appellant.

Accordingly, this appeal is denied.

Order for Respondent

Proceed with the discharge as set forth in the notice dated December 5, 2024, but not 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

[REDACTED]

cc: Respondent: Fitchburg Rehab & Nursing Center, Attn: Administrator, 94 Summer Street,
Fitchburg, MA 01420