

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2501620
<b>Decision Date:</b>	02/07/2025	<b>Hearing Date:</b>	01/31/2025
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearances for Appellant:**



**Appearances for Plymouth Rehabilitation and  
Health Center Skilled Nursing Facility:**

Donna Hamelin, LSW, Social Worker; Jodi Burns, RN, Director of Nursing; Carol Soldevilla, Social Services Director; and Tracy Ferreira, Director of Rehabilitation



*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>	Denied	<b>Issue:</b>	Expedited Nursing Home Discharge – Improved Health
<b>Decision Date:</b>	02/07/2025	<b>Hearing Date:</b>	01/31/2025
<b>Skilled Nursing Facility Reps.:</b>	Donna Hamelin, LSW, Social Worker; Jodi Burns, RN, Director of Nursing; Carol Soldevilla, Social Services Director; and Tracy Ferreira, Director of Rehabilitation	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center	<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 of Intent to Discharge Resident with Less than 30 Days' Notice ("discharge notice" or "notice") dated 01/24/2025, [REDACTED] ("the nursing facility" or "the facility") notified the appellant of its intent to discharge her to [REDACTED] on [REDACTED]. The nursing facility indicated that the discharge is necessary because the appellant's health has improved sufficiently so she no longer needs services provided by the facility (130 CMR 610.029; Exhibit 1). An appeal was filed in a timely manner on the appellant's behalf on 01/27/2025 (130 CMR 610.015(B); Exhibit 2). Notice of intent to transfer or discharge a nursing home resident is valid grounds for appeal (130 CMR 610.032).

## Action Taken by the Nursing Facility

The skilled nursing facility intends to discharge the appellant from the facility to [REDACTED].

## Issue

Has the nursing facility complied with relevant statutes and regulations in its planned discharge of the appellant?

## Summary of Evidence

The appellant, her adult daughter, and the representatives from the nursing facility participated in the fair hearing by telephone. The nursing facility was represented by Donna Hamelin, LSW, Social Worker; Jodi Burns, RN, Director of Nursing; Carol Soldevilla, Social Services Director; and Tracy Ferreira, Director of Rehabilitation.

The nursing facility submitted a packet of documents prior to the hearing (Exhibit 4). The record contains a copy of an expedited discharge notice dated [REDACTED] from the nursing facility to the appellant informing her of its intent to transfer her to [REDACTED] on [REDACTED]. The packet submitted by the nursing facility contains the appellant's clinical record (Exhibit 4).

The representatives from the nursing facility testified that the appellant was admitted to the facility in in early [REDACTED] with a primary diagnosis of cellulitis. On [REDACTED], the appellant went to the hospital and, according to the hospital report, the appellant's cellulitis had completely resolved. The appellant currently receives physical therapy three times per week; however, she will no longer need those services when she is discharged from the facility. The appellant ambulates with a walker and needs no assistance with activities of daily living. The facility cited to a letter from the appellant's physician that supports the discharge on the basis of her improved health (Exhibit 4).

The discharge plan is to a homeless shelter in [REDACTED]. Prior to the appellant's admission to the skilled nursing facility, she lived with her daughter, who also appeared at the fair hearing. The daughter's home is no longer an option for a discharge location. The facility has been searching for substance abuse recovery programs for the appellant; however, the facility representatives could not secure a discharge location for the appellant. According to the discharge plan in the skilled nursing facility's packet, the appellant is independent with her activities of daily living, and she has been provided with a list of her medical appointments. She can be safely discharged to the homeless shelter, since she has no need for skilled nursing services (Exhibit 4).

The appellant appeared at the fair hearing telephonically and testified with the assistance of her daughter. The daughter reported that the appellant is not able to return to the daughter's home because the apartment is small, and the daughter fears the appellant may fall.

The appellant testified that she is not able to walk without a walker and that she is unable to live alone because it is "unsafe." She reports she is "really weak," and that she her "legs go out," causing her to fall frequently. The appellant complained about the care she receives at the skilled nursing facility, but she stated she wants to stay there. She concluded that she expects to have knee replacement surgery on both knees in the beginning of March.

## Findings of Fact

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

1. The appellant was admitted to the nursing facility in early [REDACTED] with a primary diagnosis of cellulitis (Testimony; Exhibit 4).
2. Prior to her admission to the skilled nursing facility, the appellant lived with her adult daughter in an apartment (Testimony; Exhibit 4).
3. When she was admitted to the facility, the appellant received physical therapy. Those services will terminate upon her discharge because they are no longer necessary (Testimony; Exhibit 4).
4. The appellant is independent with her activities of daily living (ADLs). She can ambulate with the assistance of a walker (Testimony).
5. Through a Notice of Intent to Discharge Resident with Less than 30 Days' Notice ("discharge notice" or "notice") dated [REDACTED], the facility notified the appellant of its intent to discharge her to [REDACTED]. The nursing facility indicated that the discharge is necessary because the appellant's health has improved sufficiently so she no longer needs services provided by the facility (Testimony; Exhibit 4).
6. The intended discharge location is a homeless shelter (Testimony; Exhibit 4).
7. In support of the proposed discharge, the nursing facility representatives cited to a physician letter in the appellant's clinical record, dated 01/29/2025, signed by a physician, documenting that the appellant no longer has a clinical need for skilled nursing services and that her care can be managed in the community setting. The physician also states in the letter that the appellant is cleared for discharge to a shelter (Testimony; Exhibit 4, p. 1).

8. The appellant appealed the discharge notice on 01/27/2029 (Testimony; Exhibit 2).
9. On 01/31/2025, a fair hearing was held before the Board of Hearings (Testimony; Exhibit 3).

## 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 follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

The Fair Hearing Rules at 130 CMR 610.004 define a "transfer" as

Transfer – movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;
  - (2) a Medicaid-certified bed to a Medicare-certified bed;
  - (3) a Medicare-certified bed to a Medicaid-certified bed;
  - (4) one nursing facility to another nursing facility; or
  - (5) a nursing facility to a hospital, or any other institutional setting.
- Movement of a resident within the same facility from one certified bed to another bed with the same certification does not constitute a transfer.

The same regulation defines "discharge" as the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual. A "discharge" is defined in the same regulation as "the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual."

MassHealth regulations at 130 CMR 456.701 provide in relevant part:

Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility

(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.

(B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

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

(C) 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 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 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. § 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.

***(Emphasis added.)***

Further, MassHealth regulations at 130 CMR 456.702 and 130 CMR 610.029 provide as follows:

(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 the notice.

***(Emphasis added.)***

Finally, MassHealth regulation 130 CMR 456.704 provides:

(A) Appeals of discharges and transfers will be handled by the Division's Board of Hearings (BOH).

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

- (1) 30 days after a resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); or
- (2) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B); or
- (3) 14 days after a resident receives written notice 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.

Also relevant to this appeal, an amendment to G.L. c. 111, §70E, which went into effect in November of 2008, states 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.*

Through a notice dated [REDACTED] the nursing facility seeks to discharge the appellant to a homeless shelter on [REDACTED]. The basis of the notice is that the discharge is necessary because the appellant's health has improved sufficiently so she no longer needs services provided by the facility. The appellant's clinical record and a letter from the physician states that the appellant no longer requires skilled nursing level of care, that she no longer requires physical or occupational therapy, she is independent with ADLs, and she is able to ambulate independently with an assistive device. Therefore, the reason for the appellant's discharge is substantiated by the hearing record.

The Notice of Intent to Discharge the appellant meets the regulatory requirements set forth above. Additionally, the nursing facility has provided evidence that appellant's clinical record was appropriately documented.

The proposed discharge location is to a homeless shelter. The skilled nursing facility has provided the appellant with a list of all upcoming medical appointments. The expressed concerns about the discharge location because she feels she is not physically independent enough to live alone in the community.

Ideally, the appellant may find that another community setting may be more appropriate where her needs may be better met; however, the nursing facility has met its burden of providing the appellant with the appropriate notice and documenting her clinical record properly. Additionally, because the appellant is independent with ADLs and has no skilled nursing needs; the discharge



plan meets the above statutory requirements. Thus, the nursing facility may discharge the appellant pursuant to the [REDACTED] discharge notice. Accordingly, this appeal is denied.

## **Order for the Nursing Facility**

Proceed with discharging the appellant as planned pursuant to regulations.

## **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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc: Respondent: Plymouth Rehab & Health Cnt., Attn: Administrator, 123 South Street,  
Plymouth, MA 02360