

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2502590

**Decision Date:** 03/21/2025

**Hearing Date:** March 10, 2025

**Hearing Officer:** Stanley M. Kallianidis

**Appellant Representative:**

Pro se

**Facility Representative:**



***Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171***

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	NF Discharge Due to Improved Health
<b>Decision Date:</b>	03/21/2025	<b>Hearing Date:</b>	March 10, 2025
<b>Facility Rep.:</b>	Lacey Ackerman	<b>Appellant Rep.:</b>	Pro se

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

In a notice dated January 14, 2025, the respondent nursing home ("the facility") planned to discharge the appellant because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." The health and safety of individuals and residents was also cited as a reason for the discharge (Exhibit 1). The appellant filed this appeal in a timely manner on February 12, 2025 (see 130 CMR 610.015 and Exhibit 2). A nursing facility initiated discharge is grounds for appeal (see 130 CMR 610.032).

### Action Taken by the Facility

The facility planned on discharging the appellant because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."

## Issue

The appeal issue is whether “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility,” and if so, is discharge authorized pursuant to 130 CMR 610.028?

## Summary of Evidence

A representative from [REDACTED] testified that it is planning the appellant’s discharge because she no longer needs the services of a skilled nursing home. The appellant was admitted to the facility for treatment of a leg injury in the [REDACTED] with a medical history of COPD, anxiety, depression, fibromyalgia, and sarcoidosis. Her injury has since resolved, and she presently has no skilled care needs. The appellant is independent with all activities of daily living and ambulates independently. The representative also testified that the appellant comes and goes from the facility and has had several leaves of absences (Exhibit 3).

The facility further testified that the appellant has used cannabis in the facility and that this was another reason for discharge as she is a threat to the safety of others (Exhibit 3).

On January 17, 2025, her physician documented that she is medically approved for discharge because she has no skilled nursing needs (*Id.* at p. 53).

The place of discharge referenced in the discharge notice is a homeless shelter, the [REDACTED] (Exhibit 1). The facility has engaged in discharge planning to ensure a safe and orderly discharge to the homeless shelter. The facility also searched rest homes, sober houses, and rooming houses in the area, but the appellant has so far refused to cooperate in this search.

The facility representative testified that she would like the opportunity to work with the appellant in securing alternative housing in the community, but that she still would like to proceed with the discharge.

The appellant testified that she has left the facility on occasion to visit family members. She admitted to being a cannabis user, but she denied ever using cannabis in the facility.

The appellant did not dispute the testimony that she no longer needs the services of a skilled nursing facility. Indeed, she stated that she want to leave and go to the community. The basis of her appeal, which was reiterated by her ombudsman, was that she has applied for a MassHealth Community Living Waiver and did not want to jeopardize her application by being discharged to the community before being approved for the Waiver. Therefore, she wanted to secure housing in the community and be approved for the Waiver before being discharged from the facility.

## Findings of Fact

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

1. The appellant was admitted to [REDACTED] for treatment of a leg injury in the [REDACTED] (Exhibit 3).
2. The facility planned on discharging the appellant primarily because “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility” (Exhibit 1).
3. The appellant has a medical history of COPD, anxiety, depression, fibromyalgia, and sarcoidosis (Exhibit 3).
4. The appellant’s leg injury has resolved, and she is independent with all activities of daily living and ambulates independently (Exhibit 3).
5. On January 17, 2025, her physician documented that she is medically approved for discharge because she has no skilled nursing needs (Exhibit 3).
6. The place of discharge referenced in the discharge notice is a homeless shelter, [REDACTED] (Exhibit 1).
7. The facility has engaged in discharge planning to ensure a safe and orderly discharge to the homeless shelter (Exhibit 3 and testimony).

## Analysis and Conclusions of Law

With regard to discharges initiated by a nursing facility, a resident may be discharged because the resident’s health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility (130 CMR 610.028(A)(2)).

130 CMR 610.028((B): When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The documentation must be made by (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(4).

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;

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which states in pertinent part 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.

In the instant case, I have found that the appellant was admitted to her facility in the fall of 2023 with a leg injury that has since resolved. The appellant has a medical history of COPD, anxiety, depression, fibromyalgia, and sarcoidosis. The appellant's leg injury has since resolved, and she is now independent with all activities of daily living and ambulates independently. On January 17, 2025, her physician documented that she is medically approved for discharge because she has no skilled nursing needs.

The place of discharge referenced in the discharge notice is a homeless shelter, [REDACTED]. [REDACTED] The facility has engaged in discharge planning to ensure a safe and orderly discharge to the homeless shelter. In the meantime, the facility is searching for rest homes, sober houses, and rooming houses in the area that are appropriate for the appellant.

The appellant's basis for the appeal was that she has applied for a MassHealth Community Living Waiver and did not want to jeopardize her application by being discharged before being approved for the Waiver. However, a pending Waiver application is not grounds to approve her appeal when a nursing facility, as in this case, has met the requirements for discharge due to health improvement reasons.

The appeal is therefore denied.

## **Order for the Facility**

Discharge of the appellant as planned is authorized.

## 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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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc: Administrator

