

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2502748
Decision Date:	2/27/2025	Hearing Date:	02/25/2025
Hearing Officer:	Emily Sabo		

Appearances for Appellant:



Appearances for Nursing Facility:

Lynn Wilson, Director of Social Services, Worcester Rehab; Jennifer Nash, Social Worker, Worcester Rehab; Ernestina Nkrumah, After Care Coordinator, Worcester Rehab; Philip Johnson, Administrator, Worcester Rehab; Dorcas Awojulu, Director of Nursing, Worcester Rehab



*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 Facility Discharge
Decision Date:	2/27/2025	Hearing Date:	02/25/2025
Nursing Facility Reps.:	Director of Social Services, et al.	Appellant's Reps.:	Pro se with roommate
Hearing Location:	Taunton MassHealth Enrollment Center (Telephone)	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

On February 10, 2025, the nursing facility issued an expedited notice that the Appellant would be discharged to a homeless shelter on [REDACTED] because the Appellant's health had improved sufficiently so that she no longer needed the facility's services. 130 CMR 610.028, 130 CM 610.029, and Exhibit 1. The Appellant filed this appeal in a timely manner on February 14, 2025. See 130 CMR 610.015(B) and Exhibit 1. Notice of an expedited transfer or discharge from a nursing facility is valid grounds for appeal. 130 CMR 610.032.

Action Taken by Nursing Facility

The nursing facility issued an expedited notice of discharge to the Appellant.

Issue

Whether the nursing facility sufficiently proved, pursuant to 130 CMR 610.028, that the Appellant's health has improved sufficiently so that the Appellant no longer needs the facility's

services.

Summary of Evidence

Documentary and Testimonial Evidence

The hearing was held by telephone. The nursing facility was represented by its director of social services ("nursing facility representative"), and the facility's administrator, director of nursing, social worker, and after care coordinator participated. Based on testimony and documentary evidence submitted into the record, the following information was provided:

The Appellant was admitted to the nursing facility from a hospital for short-term rehabilitation on [REDACTED]. At the time of admission, the Appellant was non-weight bearing and had an infection to a surgical site. After completing physical and occupational therapy at the nursing facility, the Appellant is now weight-bearing and can ambulate independently.

The nursing facility representative testified that the Appellant has no skilled care needs. The nursing facility representative testified that the Appellant had been homeless before admission and was living at a hotel. The Appellant is an adult in her early [REDACTED] with a medical history of substance use disorders. The nursing facility representative testified that the facility had encouraged the Appellant to be discharged to a treatment program, but that this was complicated by the Appellant having used substances during her stay at the nursing facility. The nursing facility representative testified that the proposed discharge location, [REDACTED] is a medically-based shelter, that the Appellant would not need to go out each day, and that the Appellant could receive methadone there. The nursing facility representative testified that the facility would get PT-1 transportation to the shelter for the Appellant. The nursing facility representative testified that discharge planning was documented and that the Appellant is independent in activities of daily living. Exhibit 4 at 258-59. The nursing facility representative testified that the Appellant's insurance is Commonwealth Care Alliance, and that the Appellant's insurance has deemed that it is not medically necessary for the Appellant to be in the facility.

The Appellant verified her identity. The Appellant testified that she has only seen the facility's doctor twice, and that he has not examined her foot. The Appellant testified that she is concerned about two doctor's appointments that she has scheduled in March. The Appellant testified that she broke her ankle in two places and that it still hurts. The Appellant testified that the facility took her wheelchair away from her. The Appellant testified that her blood pressure was not examined on each shift and that she was lucky if she received physical therapy once a week. The Appellant testified that her foot is still sideways and that she is not walking correctly. The Appellant testified that the right side of her foot still has not healed completely. The Appellant testified that she performs her activities of daily living independently. The Appellant testified that she has been feeling better the past few weeks. The Appellant testified that she is still taking antibiotics.

Regarding discharge planning, the Appellant testified that she had spoken with her best friend on the phone, who wanted the Appellant to come and live with her, and that another resident of the facility had invited the Appellant to watch his apartment while he was in the facility. The Appellant testified that she wanted to remain in the facility until her March appointments. The Appellant's roommate at the facility testified on the Appellant's behalf that the Appellant is a good person and gets along with others, including the roommate. The Appellant's roommate testified that the Appellant's foot bothers her and that she cries about it.

The nursing facility's director of nursing testified that the Appellant is no longer taking antibiotics by IV but takes them orally. She testified that the Appellant takes the antibiotics prophylactically to treat a chronic condition and to prevent an acute infection. The director of nursing testified that the Appellant's March appointments are in the community, and that her physicians can request PT-1 transport from the [REDACTED]

Content of the Discharge Notice and Clinical Record

The discharge notice at issue in this matter contains a statement of the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the Appellant until 5 days after the hearing officer's decision is received), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibits 1 & 2.

Exhibit 4 contains the Appellant's medical record from the facility. The nursing facility's physician, [REDACTED] stated that the Appellant is medically cleared and wrote:

[The Appellant] completed her IV antibiotics on 10/22/24 per recommendation of ID. On admission, [the Appellant] was non-weight bearing. She participated in PT/OT services and has returned to prior level of functioning. She is independent in all aspects of care and is ambulating independently without an assistive device. Her rehab services within the facility have successfully concluded and [she] is medically cleared to return to the community.

Exhibit 4 at 4. The letter was dated January 23, 2025.

Findings of Fact

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

1. The Appellant is an adult in her early [REDACTED] Exhibit 4.
2. The Appellant is independent for activities of daily living. Testimony, Exhibit 4.
3. The Appellant was admitted to the nursing facility from a hospital for short-term rehabilitation on [REDACTED] Testimony, Exhibit 4.
4. The Appellant has a prior history of substance use disorders. Testimony, Exhibit 4.
5. The Appellant concluded her IV antibiotic treatment on October 22, 2024. Testimony, Exhibit 4.
6. At the time of admission, the Appellant was non-weight bearing. After completing physical and occupational therapy at the nursing facility, the Appellant is now weight-bearing and can ambulate independently. Testimony, Exhibit 4.
7. Prior to her admission, the Appellant was homeless and living in a hotel. Testimony.
8. The facility's physician documented in the medical record that the Appellant was medically cleared to be released and her rehab within the facility successfully concluded. Testimony, Exhibit 4.
9. On February 10, 2025, the facility issued the Appellant an expedited discharge notice, proposing to discharge her on [REDACTED] Exhibit 1.
10. The facility documented discharge planning, including finding a medical shelter and arranging for transportation. Testimony, Exhibit 4.
11. The discharge notice contains the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the Appellant until 5 days after the hearing officer's decision is received), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and

advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibits 1 & 2.

12. The Appellant filed a timely appeal of the expedited discharge notice with the Board of Hearings on February 14, 2025. Exhibit 2.

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.

Per 130 CMR 456.701(B) and 130 CMR 610.028(B),

(B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (4), 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 or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician or PCP when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

Per 130 CMR 456.701(C) and 130 CMR 610.028(C),

(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, if the

resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands:

- (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.

Pursuant to 130 CMR 610.029(B), the notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility as soon as practicable when 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. 130 CM 610.029(B)(2). *See also* 130 CMR 456.702(B)(2).

Massachusetts General Laws, c. 111, §70E states, in relevant part:

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.

MGL c. 111, §70E.

Federal regulations provide for “**Orientation for transfer or discharge**. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.” 42 CFR 483.15(c)(7). Federal regulations also provide that when

the facility anticipates discharge a resident must have a discharge summary that includes but is not limited to . . . A post-discharge plan of care that is developed with the participation of the resident and, with the resident’s consent, the resident representative(s), which will assist the resident to adjust to his or her new living environment. The post-discharge plan of care must indicate where the individual plans to reside, any arrangements that have been made for the resident’s follow up care and any post-discharge medical and non-medical services.

42 CFR 483.21(c)(2)(iv).

Here, the facility has alleged that the Appellant’s health has improved sufficiently so that she no longer needs the services provided by the nursing facility. Exhibit 1. The facility’s physician stated that the Appellant’s conditions had resolved and that she was medically cleared. 130 CMR 456.701(B)(1); 130 CMR 610.028(B)(1). The record supports this, with documented evidence that the Appellant’s ankle and foot have healed sufficiently that she is able to ambulate independently and that she does not have any other conditions that require her to remain at the nursing facility for skilled care services. Exhibit 4. I understand that the Appellant would prefer to remain at the nursing facility until the conclusion of her March appointments and I appreciate that she has built positive relationships with other individuals there, including her roommate. However, I find that the Appellant’s health has improved sufficiently such that she no longer needs the nursing facility’s services. I find that the facility has provided sufficient orientation and preparation to ensure a safe and orderly discharge. I also find that the discharge notice satisfied the regulatory requirements. 130 CMR 456.701(C) and 130 CMR 610.028(C).

Therefore, the appeal is denied.

Order for Respondent Nursing Facility

Proceed with the discharge as set forth in the notice dated February 10, 2025, after the 5-day stay (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

Emily Sabo
Hearing Officer
Board of Hearings

cc: Respondent: Worcester Rehab and Health Care Cntr., Attn: Administrator, 119 Providence Street, Worcester, MA 01604