

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2502902
Decision Date:	03/21/2025	Hearing Date:	3/10/2025
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearances for Respondent:
Sue O'Connor, business office
Michael Takesian, executive director
Lauren McNasby, social work consultant
Maureen Curley, 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:	Nursing facility discharge – failure to pay
Decision Date:	03/1/2025	Hearing Date:	3/10/2025
Respondent’s Reps.:	Business office, et al.	Appellant’s Rep.:	Pro se
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 January 29, 2025, [REDACTED] (“Respondent” or “the facility”) informed Appellant of its intent to discharge Appellant from the facility on February 28, 2025. Exhibit 1. Appellant filed a timely appeal on February 19, 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 telephonic hearing by its business office representative, executive director, director of nursing, and social worker. Respondent's representatives submitted documents in support, Exhibit 4. Appellant appeared by phone. A summary of testimony and documentary evidence follows.

By hand-delivered letter dated [REDACTED], Respondent informed Appellant of its intent to discharge Appellant from the facility to the [REDACTED], a medical shelter. Exhibit 1. The notice stated that Respondent sought to discharge Appellant on [REDACTED] for two reasons:

- 1) Resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
- 2) Resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

Id. The notice identified 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 on [REDACTED] for short-term rehabilitation after hospitalization. Appellant was approved for MassHealth coverage of his nursing facility stay and assessed a patient-paid amount (PPA). Records show that the PPA was \$1,937.20 for September 2024 and increased to \$2,731.20 beginning in October 2024. Exhibit 4 at 3. In January 2025, the PPA changed to \$2,616.20. *Id.* Appellant's outstanding balance is \$17,979.40. *Id.*

Respondent's social worker testified that she and the business office representative have met with Appellant on numerous occasions to educate him about the bill. *Id.* at 19-20. On February 27, 2025, Respondent gave Appellant a letter regarding the outstanding balance. *Id.* at 4. On March 4, 2025, Respondent's social worker documented a meeting with Appellant regarding the bill. *Id.* at 15. Appellant refused to pay his PPA.

Respondent's social worker testified that the social services team have been working with Appellant on disposition planning on a regular basis, as documented in the file. *Id.* at 15, 18, 21. Appellant was unhoused at the time of admission and the social worker asked Appellant for feedback about his preferred discharge location, area, or shelter. Appellant was not cooperative with these efforts. *Id.* at 19. The social worker testified that given previous conversations with Appellant about his perceived medical needs, she chose [REDACTED] as the discharge location because it is a medical shelter. Transportation would be provided to Appellant on the day of discharge.

Respondent's social worker testified that Appellant is independent with all ADLs and can walk short distances without an ambulatory device. Appellant does not have wounds or injectable medications needing skilled intervention. Appellant has no medical needs preventing discharge to the community. On February 10, 2025, Appellant purchased an exercise bike and brought it into the facility unassisted, which speaks to his independent functional status. *Id.* at 18. The medical record contains rehabilitation evaluations from physical therapy (PT) and occupational therapy (OT). *Id.* at 6-10. Respondent conceded that there was no written note from Appellant's physician in the provided file addressing Appellant's improved health as a basis for discharge.

Appellant testified that he has a severe heart condition, and has a history of having had four pacemaker/defibrillators placed before one was successful. Appellant was told by his cardiologist nurse it is medically necessary that Appellant see his PCP before he is discharged. Appellant has made appointments with his community PCP and cardiologist that the facility has cancelled. The doctor at the facility told Appellant that he cannot see his PCP in the community. Appellant was told that if he left the facility for these appointments, he would be leaving against medical advice (AMA). Appellant argued that this is illegal.

Appellant has a bad hip and difficulty walking. He bought the exercise bike because he needs exercise but cannot walk far. However, the facility took the bike away. Appellant recently injured his hip and was lying around all day, but needs exercise. Appellant testified that he paid for the exercise bike because exercise is more important than paying the facility. Appellant wants to walk out the door but does not understand his medications and needs to see his PCP first.

Regarding the bill, Appellant said he did not sign anything saying he would pay. Appellant was first informed about the bill in July or August 2024, and was told by the business office representative that he would have to pay it every month. Appellant testified that he just found out three weeks prior that he has to pay all of his Social Security check minus \$72 to the facility. Appellant refuses. Appellant was not told that he was on MassHealth. He was told that he had it for a while, but then lost it. Appellant wants to see his cardiologist, but the doctor may not be a MassHealth provider. Appellant testified that he understands that he will be evicted if he does not pay the bill, but reiterated that he needs to see his PCP first because the cardiologist nurse said it is medically necessary, and that they do not know what is prescribed.

Respondent's social worker testified that she explained to Appellant that he cannot see his community PCP while approved for a stay in the nursing facility because he cannot have two PCPs on record at the same time. The facility is his PCP while he is a resident. Respondent's social worker testified that she has explained to Appellant that the facility would set up an appointment with the community PCP following discharge and provide the medication list and discharge summary for continuity of care. Appellant will be given enough medications to last until the scheduled appointment. This education is documented in the record. *Id.* at 15.

When asked about discharging to the shelter, Appellant argued that he could rent a room

somewhere if he was able to get an identification card. A social worker had helped him secure his birth certificate and Social Security card in the past, but now he needs to go to the RMV to get the identification card. Appellant argued that the facility was not helping him make this happen. Respondent's representatives testified that Appellant is currently not allowed to have unaccompanied leaves of absence from the facility due to past behavior, which is not the subject of this hearing.

Findings of Fact

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

1. Appellant admitted to the facility on [REDACTED] for short-term rehabilitation after hospitalization.
2. Appellant was approved for MassHealth coverage of his nursing facility stay with a PPA of \$1,937.20 for September 2024; \$2,731.20 beginning October 2024; and \$2,616.20 beginning January 2025. Exhibit 4 at 3.
3. Appellant has not paid the PPA. Appellant has an outstanding balance of \$17,979.40. *Id.*
4. By hand-delivered letter dated January 29, 2025, Respondent informed Appellant of its intent to discharge Appellant from the facility to [REDACTED] a medical shelter. Exhibit 1.
5. The notice stated that Respondent sought to discharge Appellant on [REDACTED] for two reasons:
 - 1) Resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
 - 2) Resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.*Id.*
6. The notice identified 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.*
7. Appellant filed a timely appeal on February 19, 2025. Exhibit 2.
8. Respondent documented efforts to engage with Appellant regarding discharge. *Id.* at 15, 18, 21.

9. Respondent documented that Appellant was not cooperative when asked for feedback about his preferred discharge location, area, or shelter. *Id.* at 19.
10. Respondent will provide transportation for Appellant to the shelter upon discharge.

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 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) (emphasis added).

In this matter, Respondent seeks to discharge Appellant for two reasons. Respondent conceded that it has not met the requirements of 130 CMR 456.701(B)(1) to discharge Appellant based on improved health, as Appellant’s physician did not provide documentation to explain the discharge on that basis.

Respondent also seeks to discharge Appellant for failure to pay the PPA. Respondent provided evidence of the outstanding PPA balance. Appellant’s testimony regarding his knowledge of the bill was not credible, and Appellant acknowledged that he refuses to pay the bill. Accordingly, Respondent has provided evidence of a proper basis for discharge.

The records and testimony demonstrate that Respondent is engaging in appropriate discharge planning for Appellant. Respondent elected a medical shelter to assuage Appellant’s concerns about his health conditions after Appellant refused to engage in the process of selecting a discharge location. Respondent agreed to arrange transportation to the shelter on the day of discharge. Respondent has offered sufficient preparation, including making an appointment with the PCP and providing a medication list and discharge summary for the community physician. 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 January 29, 2025, 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

CC:

