

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503073
Decision Date:	4/7/2025	Hearing Date:	03/17/2025
Hearing Officer:	Marc Tonaszuck	Record Open to:	03/31/2025

Appearance for Appellant:

Pro se

Appearances for Skilled Nursing Facility:

Anne Neville, Administrator; Diane Kresslein,
Business Office Manager



*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:	4/7/2025	Hearing Date:	03/17/2025
Skilled Nursing Facility Reps.:	Anne Neville, Administrator; Diane Kresslein, Business Office Manager	Appellant's Rep.:	Pro se
Hearing Location:	Tewksbury MassHealth Enrollment Center	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

The appellant received a 30-Day Notice of Intent to Discharge Resident (Discharge Notice) dated 02/17/2025. The notice stated that [REDACTED] ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to [REDACTED] on [REDACTED] 2025. The notice indicates the reason for the discharge is that "you have failed, after reasonable and appropriate notice, to pay for ... your stay in the nursing facility" (Exhibit 1). The appellant filed this timely appeal on 02/24/2025 (130 CMR 610.015(B); and Exhibit 2). A patient's discharge from a skilled nursing facility is valid grounds for appeal (130 CMR 610.028; 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.028 and other relevant statutes and regulations?

Summary of Evidence

The facility representatives appeared telephonically at the fair hearing, as did the appellant. Exhibits 1-4 were admitted to the hearing record.

The nursing facility administrator testified that the appellant was admitted to the skilled nursing facility in summer 2022. During his stay, he improved his functional abilities with a goal towards discharge back to the community. He no longer has a need for physical or occupational therapy or skilled nursing needs. He uses a walker sometimes, but he does “everything for himself,” including using his walker to ambulate out of his room, to the elevator and to another location or floor. He no longer requires assistance with activities of daily living.

Since his admission to the facility, the appellant has unpaid skilled nursing facility bills. He is receiving MassHealth long term care benefits; however, he has not paid his monthly patient paid amount (PPA) of \$1,218.20 to the facility. The facility representatives cited to the appellant’s clinical record that shows that staff has discussed his debt and his discharge plans with him. The appellant has made no arrangement to pay for his stay, nor did he dispute the debt.

The intended discharge location is a homeless shelter, where the appellant will be able to obtain community-based care. The discharge plan is to prepare the appellant for his discharge by providing him a list of services available in the community, including making an appointment with the appellant’s primary care provider.

The appellant appeared at the fair hearing and he testified that he cannot walk without a walker and he has difficulty using stairs. He testified that he requires assistance putting on his socks and shoes. He also testified that he needs a “bariatric bed,” a commode with a high seat, and shower bars. Next he addressed the unpaid balance alleged by the skilled nursing facility. The appellant testified that he does not pay his monthly PPA because he uses those funds to pay for an off-site storage unit for when he is discharged from the facility.

Findings of Fact

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

1. Appellant was admitted to the skilled nursing facility in Summer 2022.

2. The appellant received skilled nursing care, and physical therapy and occupational therapy while a resident of the skilled nursing facility.
3. The appellant no longer requires or receives physical therapy, occupational therapy, or skilled nursing level of care.
4. The appellant is eligible for and receives MassHealth LTC benefits as a nursing home resident. MassHealth calculated a monthly PPA of \$1,218.20, the amount the appellant is responsible for paying to the facility from his monthly income.
5. As of the date of the fair hearing, the appellant owes the skilled nursing facility a balance for the care he has been provided.
6. The appellant has not paid the skilled nursing facility his PPA for his care, nor has he entered into a payment agreement or made other arrangements.
7. The appellant testified he uses his funds to pay for off-site storage for when he is discharged. He did not dispute that he has not paid the skilled nursing facility his PPA.
8. The appellant received a 30-Day Notice of Intent to Discharge Resident ("discharge notice") dated 02/17/2025.
9. The discharge notice states that the facility seeks to discharge the appellant to [REDACTED] or [REDACTED] 2025. The notice indicates the reason for the discharge is that "you have failed, after reasonable and appropriate notice, to pay for ... your stay in the nursing facility."
10. In support of its decision to discharge and not re-admit the appellant, the nursing facility submitted a copy of the appellant's clinical record that documents his failure to pay for the care he receives at the skilled nursing facility.
11. The skilled nursing facility's discharge plan is to provide community resources for the appellant's continued care. The facility will also arrange for the appellant to see his primary care provider once he is discharged.

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.

Regulations at 130 CMR 610.028 address notice requirements regarding actions initiated by a nursing facility, as follows:

- (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 MassHealth agency 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 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
- (2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(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 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.

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.

The clinical record in this case, as submitted by the facility representatives at the time of hearing, documents that the appellant has failed to pay his nursing facility bill for the care he receives. At hearing, the appellant did not dispute that he has an unpaid balance. He confirmed that he is aware of the balance and has not entered into a payment plan or made other arrangements with the skilled nursing facility. He testified that he uses the funds that would normally be used to pay his PPA to the skilled nursing facility for an off-site storage unit for when he is discharged to the community. Thus, the underlying reason for the proposed discharge is supported by the evidence in the hearing record.

The facility has identified a residential address in the community, which is a homeless shelter. Additionally, the discharge plan is to provide community resources for the appellant's continued care. Because the appellant has no skilled nursing needs, no occupational or physical therapy needs, the discharge location and discharge plan meet the above requirements as "safe and appropriate place." The nursing facility has provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge.

Although the appellant has expressed his dissatisfaction with the planned discharge to a

homeless shelter, he has identified no reason why [REDACTED] is not a safe and appropriate discharge location. The skilled nursing facility has shown that care can be provided to the appellant in the community. For the foregoing reasons, this appeal is denied. The facility may discharge the appellant pursuant to the 02/17/2025 discharge notice and the discharge plan, as submitted to the hearing record. The facility representative is encouraged to address any of the appellant's concerns prior to his discharge.

Order for the Nursing Facility

Proceed with discharge pursuant to 02/17/2025 discharge notice and the MassHealth regulations. Provide appellant with appropriate community care contacts.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

[REDACTED]