

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2503180
Decision Date:	03/21/2025	Hearing Date:	03/17/2025
Hearing Officer:	Sharon Dehmand		

Appearance for Appellant:

Pro se

Appearance for Nursing Facility:

Amber DuBois, Business Office Manager
Pascal Bourgeois, Attorney
Andrew Mbugua, Administrator
Lacey Ackerman, Director of Social Services



*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:	03/21/2025	Hearing Date:	03/17/2025
Nursing Facility's Rep.:	Amber Dubois; Pascal Bourgeois; Andrew Mbugua; Lacey Ackerman	Appellant's Rep.:	Pro se
Hearing Location:	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

Through a notice dated January 30, 2025, [REDACTED] (hereinafter "facility") notified the appellant of its plan to discharge her to [REDACTED] on [REDACTED]. See 130 CMR 610.028(A)(5); and Exhibit 1. The appellant filed this appeal in a timely manner on February 25, 2025. See 130 CMR 610.015(B)(3); and Exhibit 2. A notice of intent to transfer or discharge a resident from a nursing facility is valid grounds for appeal before the Board of Hearings. See 130 CMR 610.032(C).

Action Taken by Nursing Facility

The nursing facility notified the appellant of its intent to discharge her because she had failed, after reasonable and appropriate notice, to pay for her stay at the facility.

Issue

Whether the nursing facility satisfied its statutory and regulatory requirements when it issued a notice of intent to discharge the appellant from the nursing facility. See 130 CMR 610.028(A)(5).

Summary of Evidence

All parties participated telephonically. The nursing facility was represented by an attorney, Business Office Manager, Administrator, and Director of Social Services. The appellant appeared pro se and verified her identity. The following is a summary of the testimony and evidence provided at the hearing:

Documentary Evidence:

Prior to the hearing, the nursing facility submitted records containing the appellant's activity reports, progress notes, invoices, and available resources. See generally Exhibit 4. The following are the most relevant parts of the submitted records.

On November 1, 2024, [REDACTED] noted, "[d]iscussed with multiple care team members and patient is currently independent with all aspects of her care and does not have any medical necessity to be in a skilled nursing facility and previously the social worker is working on discharge planning options. The patient's cooperation with regards to discharge planning has been somewhat limited and patient also has a history of noncomplian[ce] with the facility discharge planning, paperwork, intermittently has accusatory and aggressive behavior towards the staff members which are documented by nursing notes during her skilled nursing facility stay. She also has long documented history of med noncompliance which is why patient is no longer on atorvastatin with extensive documented refusal." Exhibit 4, p. 63.

On December 2, 2024, nursing notes reflect, "[r]esident refused podiatry visit...stating 'I take care of everything myself, I do not need the toe doctor, I have told them before.'" See id. at 59.

On December 6, 2024, [REDACTED], an NP noted, resident "refused in house podiatry visit [stating] 'I could cut my nail myself.'" See id. at 57.

On January 3, 2025, [REDACTED], an OT noted that "evaluation [was] completed and Plan of Treatment developed on this date. Pt very resistive to evaluation and refused any treatment, reported and demonstrated independence with ADL and mobility." See id. at 71.

On January 23, 2025, [REDACTED], an NP noted, "resident reluctant to have a visit stating that she deserves to have PT and OT...she really does not meet the qualification for long-term care resident." See id. at 52.

On January 30, 2025, [REDACTED], a social worker noted that "[r]esident was issued 30 day

notice of discharge. SW explained the process for appeal and reminded resident to use the appeal form on the back page of the notice of discharge.” See id. at 50.

On February 7, 2025, [REDACTED], business manager noted that “MMIS check shows [resident’s] MH eligibility termed as of 1/17/25....SW and I went to speak with [resident] in her room to let her know of this change and hopefully she will agree to allow us to help her complete the app to reinstate benefits and LTC conv[ersion]...She said she doesn’t need our help and she will call MH herself.” See id. at 32.

On February 27, 2025, [REDACTED] noted that “[resident] refused to even consider having a call or allowing us to help her. I tried to explain that we would pay the expense for the legal team to assist her in competing the application to reinstate her benefit[s]....and she would be able to stay until she found her own acceptable living arrangements...She said absolutely not and that she had already filed the appeal....” See id. at 31.

March 3, 2025, [REDACTED] noted that “[she] asked her if she would consider having a call with the legal team to see if they can assist her with the MH app. She said ‘No, I don’t want or need any help from you people or your lawyers. I will do what I need to do. I wish you would just leave me alone.’” See id.

Testimony:

The facility’s business manager testified that the appellant was admitted to the facility on [REDACTED] after a hospital stay. In August 2024, the facility received a long-term care conversion information request form MassHealth for the appellant. The facility uses Medicaid Done Right to facilitate the conversion process, but the appellant refused to meet with them, asserting that she did not require long-term care. Despite explanations that a conversion application was necessary after an initial six-month stay—regardless of whether she intended to remain at the facility permanently—she declined to cooperate or provide the required information.

In September 2024, the facility issued an initial discharge notice. The appellant appealed and won in part due to the facility’s failure to provide her with private pay invoices. Following the hearing, the facility provided the appellant with private pay invoices beginning in December 2024 and continuing monthly through March 2025. As of March 31, 2025, the total amount due for services will be \$109,593.00. The appellant has not paid and has refused to cooperate with the facility in obtaining coverage from MassHealth.

On January 30, 2025, the facility issued a discharge notice notifying the appellant of its intent to discharge her because she had failed, after reasonable and appropriate notice, to pay for her stay at the facility.

In February 2025, the facility conducted a Medicaid eligibility check with MassHealth and

determined that the appellant had lost her MassHealth benefits as of January 17, 2025. From February 2025 to March 2025, the facility's business manager and social worker visited the appellant a number of times and offered assistance in reinstating her coverage utilizing the facility's legal counsel at no cost to her. She declined assistance from both the facility and its attorneys.

The facility's social worker testified that prior to the appellant's admission to the hospital, she was residing at the same hotel named in the facility's planned discharge. She said that the appellant's stated discharge plan at the time of her admission to the facility was to return to the hotel. Despite the social worker's numerous attempts to meet with the appellant and discuss her discharge plan, she has refused to engage. She said that after the last hearing, the facility arranged for an occupational therapy (OT) assessment to ensure that the appellant was at her baseline level of function. On January 3, 2025, an OT evaluated the appellant and determined she was independent in all activities of daily living (ADLs) and mobility, with no need for further OT services. The facility also provided her with community resources to assist with discharge planning and offered to review them with her, but she declined.

The appellant confirmed that she was residing at [REDACTED], where she is a Diamond Rewards member prior to her hospitalization. She said that she was transferred to this facility to receive physical therapy (PT) and OT. The appellant expressed concerns that she had not received PT or OT services since early June 2024, contrary to what she expected from the facility. She denied needing assistance with ADLs or mobility, stating she could manage limited stairs.

The appellant stated that she did not want to stay at the facility and that she would be happy to stay at [REDACTED] but contended that the purpose of her appeal was to receive PT and OT services, which she claims were not provided. She acknowledged that she had not paid the facility, asserting that billing her for services not rendered would constitute fraud. She stated that had she received the necessary rehabilitation, she would have left the facility much sooner.

In response, the facility's social worker stated that in order to facilitate the appellant's discharge she had offered to arrange for a primary care appointment on the appellant's behalf and offered to assist her in obtaining referrals for outpatient PT and OT if clinically indicated. The social worker noted that the appellant does not meet the criteria for homebound status and, therefore, does not qualify for visiting nurse services.

The appellant responded by listing the names of her many doctors and stated that she did not require assistance managing her medical care. She reiterated her independence and added that she is not in agreement with anything the social worker stated.

Findings of Fact

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

1. The appellant was admitted to the nursing facility on [REDACTED], after a hospital stay. (Testimony).
2. In August 2024, the facility received a long-term care conversion information request form from MassHealth for the appellant. (Testimony and Exhibit 4).
3. The appellant did not submit a long-term conversion form to MassHealth. (Testimony).
4. The appellant refuses to apply for MassHealth long-term care benefits. (Testimony).
5. The appellant no longer has MassHealth Standard coverage. (Testimony and Exhibit 4).
6. The appellant owes \$109,593.00 to the facility for services rendered through March 2025. (Testimony and Exhibit 4).
7. The appellant has not paid this amount. (Testimony).
8. The appellant is independent with her activities of daily living and mobility. (Testimony and Exhibit 4).
9. On January 30, 2025, the facility issued the appellant a 30-day notice of intent to discharge. (Exhibit 1).
10. The discharge notice states that the reason for the discharge is “[y]ou have failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.” (Exhibit 1).
11. The nursing facility plans to discharge the appellant to [REDACTED] on March 1, 2025. (Exhibit 1).
12. Prior to her hospital stay, the appellant was residing at this [REDACTED] Inn where she is a Diamond Rewards member. (Testimony).
13. The appellant filed this appeal in a timely manner on February 25, 2025. (Exhibit 2).
14. The appellant has continually refused to cooperate with the nursing facility to improvise a discharge plan. (Testimony and Exhibit 4).

15. The appellant has continually refused to accept assistance from the nursing facility in obtaining benefits from MassHealth. (Testimony).
16. The appellant has continually refused to accept assistance from the nursing facility in locating helpful resources to assist with improvising a discharge plan. (Testimony)

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 (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.

Pursuant to 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) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

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).

See 130 CMR 610.028(B).

In this case, the discharge is for nonpayment. Consequently, no documentation from a physician in the clinical record is required; however, the clinical record must be documented. The record provided by the facility does document appellant's failure to pay and the appellant's refusal to cooperate with the facility in order to facilitate possible payment from MassHealth. See generally Exhibit 4.

Additionally, the nursing facility is required to issue a notice of intent to discharge in compliance with 130 CMR 610.028(C), which states the following:

(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.

The nursing facility has met the notice requirements as outlined supra. The discharge notice at

issue in this matter 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 effect of requesting a hearing as provided for under 130 CMR 610.030 (that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is received), that the social service department 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. See Exhibit 4, pp. 7-9.

I note that two items are missing from the discharge notice. One, a fair hearing request form that lists the address, telephone number and fax number of the Board of Hearings, and the time frame for requesting a hearing. Two, the mailing of the discharge notice to a designated family member or legal representative. However, since the appellant explicitly stated that she did not designate a family member or legal representative for the nursing facility to notify upon discharge, asserting she deemed such designation unnecessary, I find that this unequivocal statement renders this issue moot. I also find the absence of a fair hearing form moot for two reasons. First, the appellant signed the discharge notice, acknowledging receipt of the form. Second, she successfully filed a timely hearing request with the Board of Hearings, which was properly faxed and received. Thus, based on a review of the record and testimony, the discharge notice meets the requirements listed at 130 CMR 610.028(C).

With respect to the issue of nonpayment, as outlined supra, a nursing facility resident may be transferred or discharged when 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. See 130 CMR 610.028(A)(5). The appellant does not dispute that she has failed to pay for her stay in the nursing facility. The statements provided to the appellant from December 2024 through March 2025 reflect a total of \$109,593.00 in outstanding nursing facility charges. See Exhibit 5, pp. 31-33; 39-42. Through its testimony and documentation, the facility has sufficiently demonstrated that the appellant has failed to pay for her stay at the facility. While I agree with the appellant that she is not required to work with the facility's preferred vendor in applying for MassHealth, it does not excuse her failure to pay for or have MassHealth or Medicare pay for her stay at the facility.

Notwithstanding the aforementioned, the nursing facility has an obligation to comply with all other applicable state laws, including M.G.L. c. 111, § 70E. The key paragraph of this statute reads 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.

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). According to the Federal Centers for Medicare & Medicaid, “sufficient preparation” within the meaning of 42 CFR 483.12(a)(7) means “the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation. The facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence. See Centennial Healthcare Inv. Corp. v. Commissioner of the Div. of Medical Assistance, 61 Mass. App. Ct. 1124, *1 n. 5 (20024) citing Protocol for Long Term Care Facilities: Guidance to Surveyors, Tag F204 at 38 (Rev. 274 June, 1995).

Additionally, Code of Massachusetts Regulations states in relevant parts the following:

It shall be an unfair or deceptive act or practice, in violation of MGL c. 93A, § 2 for a licensee or administrator...

(6) to fail to discuss the planned discharge or transfer from the facility with the resident and his/her legal representative or next of kin.

(7) to fail to consult the resident and his/her family or legal representative in choosing another facility, and to take all reasonable steps to implement the resident’s choice of such facility...

See 940 CMR 4.09(6); 940 CMR 4.09(7).

In this case, the facility has made extensive efforts to facilitate the appellant’s transition, provide resources, and ensure she has the necessary support for discharge. However, the appellant has rebuffed the facility’s efforts and has insisted that she can take care of her own needs. When the facility’s social worker offered to arrange for a primary care appointment on the appellant’s behalf and offered to assist her in obtaining referrals for outpatient PT and OT if clinically indicated, the appellant responded by listing the names of her many doctors and stated that she did not require assistance managing her medical care. She reiterated her independence and her ability to take care of her own affairs.

Accordingly, based on the totality of the record and the presentation of testimony, I find that the appellant has had a more than reasonable chance and opportunity to pay for her stay and has failed to do so. There is thus sufficient ground to discharge her under 130 CMR 456.701(A)(5) and the notice of discharge looks proper and compliant with the other regulatory

requirements. See 130 CMR 456.701(B); 130 CMR 456.701 (C). There is also evidence of sufficient discharge planning attempts by the facility with documentation about the appellant's refusal to cooperate with such efforts. See Exhibit 4, pp. 31-35. Further the testimony and record show no evidence indicating that it would be clinically inappropriate to discharge the appellant to the hotel where she is a Diamond Rewards member and had resided prior to her admission to the hospital. I thus find there is also compliance with M.G.L. c.111, §70E in this matter.

Based on the foregoing reasons, this appeal is DENIED.

Order for the Nursing facility

Proceed with the planned discharge no earlier than 30 days after the date of this decision.¹

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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

cc: Respondent: Watertown Rehab & Nursing, Attn: Administrator, 59 Coolidge Hill Road,
Watertown, MA 02472, 617-924-1130

¹ If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility. See 130 CMR 456.704(A).