

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2503373
Decision Date:	3/31/2025	Hearing Date:	03/19/2025
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:

Pro se

Appearances for Sherrill House Skilled Nursing Facility (SNF):

Kim Feeney, Director of Social Services; Alexandra Newton, Social Worker; Alessio Miniello, Chief Clinician; Joao Santos, Director of Finance; and Chris Moscatelli, Director of Rehabilitation



*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 Home Discharge – Failure to Pay
Decision Date:	3/31/2025	Hearing Date:	03/19/2025
Skilled Nursing Facility Reps.:	Kim Feeney, Director of Social Services; Alexandra Newton, Social Worker; Alessio Miniello, Chief Clinician; Joao Santos, Director of Finance; and Chris Moscatelli, Director of Rehabilitation	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 01/30/2025. 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 02/27/2025 (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 clinical director testified that the appellant was admitted to the skilled nursing facility on [REDACTED] 2024 for short-term rehabilitation services. During his stay, he improved his functional abilities, including his strength and mobility with a goal towards discharge back to the community. He no longer requires physical therapy, occupational therapy, skilled nursing services, or assistance with activities of daily living.

Since his admission to the facility, the appellant has unpaid skilled nursing facility bills totaling \$61,635.00. The facility representatives cited to the appellant's clinical record that shows that staff has discussed his debt and his discharge with him. The appellant has made no arrangement to pay for his stay. Also, he does not wish to apply for Medicaid benefits.

Prior to his admission to the facility, the appellant rented a room in an apartment. That location is no longer available. The intended discharge location is the appellant's fiancée's home, 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.

The appellant appeared at the fair hearing and he testified that he cannot live with his fiancée. He stated he was "planning to leave soon," but has not yet found a place to live. He did not dispute that he owes the balances, as testified to by the facility staff. Neither did he dispute that he no longer requires skilled nursing facility level of care.

Findings of Fact

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

1. Appellant was admitted to the skilled nursing facility on [REDACTED] 2024 for the purposes of short-term rehabilitation.
2. The appellant received skilled nursing care, and physical therapy while a resident of the skilled nursing facility.
3. The appellant no longer requires or receives physical therapy or skilled nursing level of care.
4. As of the date of the fair hearing, the appellant owes the skilled nursing facility \$61,635.00 for the care he has been provided.
5. The appellant has not paid the skilled nursing facility for his care, nor has he entered into a payment agreement or made other arrangements.
6. The appellant testified he will not apply for Medicaid benefits.
7. The appellant received a 30-Day Notice of Intent to Discharge Resident ("discharge notice") dated 01/30/2025.
8. The discharge notice states that 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."
9. 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.
10. The skilled nursing facility's discharge plan is to provide community resources for the appellant's continued care.

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 and owes \$61,635.00 to the facility for the care he receives. At hearing, the appellant did not dispute the 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 also does not want to apply for Medicaid benefits. 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 the home of the appellant's fiancée. 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 his fiancée's home, he has identified no reason why the home is not a safe and appropriate place. 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 01/30/2025 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 01/30/2025 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

