

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2503960
Decision Date:	03/28/2025	Hearing Date:	03/27/2025
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearances for Respondent:

Jessy Hayes, Social Services Director; Sarah Webber, Aftercare Coordinator *via* telephone



*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:	Approved	Issue:	Nursing Facility Discharge/Improved Health
Decision Date:	03/28/2025	Hearing Date:	03/27/2025
Respondent's Reps.:	Jessy Hayes; Sarah Weber	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South	Aid Pending:	N/A

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

On February 18, 2025, the Oxford Rehab and Health Care Center (the nursing facility) issued a "Notice of Intent to Discharge Resident with Less than 30 Days[]" Notice (Expedited Appeal)" informing the appellant that it sought to transfer/discharge her to [REDACTED] on March 18, 2025 explaining that "[y]our health has improved sufficiently so that you no longer require the services provided by the facility[.]" (See 130 CMR 610.028(A)(2); 610.029(B)(3); Exhibit (Ex.) 1; Ex. 3, pp. 2-5). The appellant submitted a timely appeal to the Board of Hearings on March 11, 2025. (See 130 CMR 610.015(B)(6), 610.029(C), and Ex. 1). A notice of intent to transfer or discharge a nursing facility resident and/or to not readmit resident following hospitalization or other medical leave of absence from the facility with less than 30 days' notice is valid grounds for appeal. (See 130 CMR 610.015(F); 610.032(C)).

Action Taken by Respondent

The nursing facility initiated the appellant's discharge from the facility with less than 30 days' notice.

Issue

The appeal issues are whether the nursing facility was correct, pursuant to 130 CMR 610.028 and 610.029, in determining that the appellant should be discharged from the facility with less than 30 days' notice and whether the facility has met all the requirements for discharge required by law.

Summary of Evidence

The nursing facility was represented by the Director of Social Services and an Aftercare Coordinator. The appellant spoke on her own behalf. All parties appeared by telephone.

According to the testimony of the Director of Social Services and the nursing facility's submitted documentation, the appellant is an individual under the age of 65 years old. (Testimony; Ex. 3, p. 20). Prior to her admission to the nursing facility, the appellant was hospitalized at [REDACTED] due to a chronic left femur infection following several procedures, as well as a left mid-thigh abscess and osteomyelitis. (Testimony; Ex. 3, p. 20). The appellant was discharged from the hospital to the nursing facility on [REDACTED] for short-term rehabilitation. (Testimony). According to a letter from the facility's medical director, the appellant had an amputation of the left leg above the knee while hospitalized. (Ex. 3, p. 20). The medical director's letter further stated that the appellant was receiving Occupational Therapy 2 times per week and Physical Therapy 3 times per week. (Ex. 3, pp. 20-21). It was the medical director's conclusion that the appellant was currently receiving outpatient level therapy and could receive outpatient therapy while she is in the community. (Id.).

The Director of Social Services continued by stating that the appellant had previously been residing in a transitional housing program in [REDACTED]. (Testimony). The Director of Social Services was confident that the facility could transition the appellant to another shelter where her needs would be met, with outpatient consultation as necessary. (Testimony). One option discussed was [REDACTED] (which is the location of discharge stated in the discharge notice), though other shelters, such as [REDACTED], a medical shelter offering additional resources, were also available. (Testimony). The Director of Social Services asserted that the appellant had undergone the amputation when she was still living in the community, prior to her most recent hospitalization. (Testimony). The Director of Social Services was confident that the appellant could return to living independently in the community. (Testimony). She further stated that they had been working with the appellant to secure a prosthetic, which would be in place upon her discharge. (Testimony). She reiterated that the appellant had been living in the community prior to the incident and expressed confidence that she was ready for the transition back into the community. (Testimony).

The appellant disputed the claim that she had previously lived in the community prior to her leg amputation. (Testimony). She testified that she had arrived at the nursing facility two weeks after her leg was amputated and clarified that she had never lived in the community without a

leg before this. (Testimony). She was scheduled to receive her prosthetic the day after the hearing and was actively working on relearning how to walk. (Testimony). Although she was optimistic about her future, she was not yet ready to leave, as she still needed to master walking with her prosthetic. (Testimony). The appellant expressed hope for approval, as remaining at the facility was crucial for her to continue receiving the necessary medical care. (Testimony). She explained that she had been to other facilities and, upon leaving the hospital, had faced a choice between a low-threshold program that allowed drug use or returning to the streets. (Testimony). She conveyed profound gratitude for being at the nursing facility, noting how much she had learned about managing her condition. (Testimony). She was thankful for the opportunity and had gained invaluable insights into how to live with her body for the rest of her life. (Testimony).

Findings of Fact

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

1. The appellant is an individual under the age of 65 years old. (Testimony; Ex. 3, p. 20).
2. Prior to her admission to the nursing facility, the appellant was hospitalized at [REDACTED] due to a chronic left femur infection, a left mid-thigh abscess and osteomyelitis, and amputation of the left leg above the knee. (Testimony; Ex. 3, p. 20).
3. The appellant was discharged from the hospital to the nursing facility on [REDACTED] for short-term rehabilitation. (Testimony).
4. The appellant received Occupational Therapy two times per week and Physical Therapy three times per week. (Ex. 3, pp. 20-21).
5. It was the nursing facility medical director's conclusion that the appellant was currently receiving outpatient level therapy and could receive outpatient therapy while she is in the community. (Ex. 3, pp. 20-21).
6. On February 18, 2025, the nursing facility issued a "Notice of Intent to Discharge Resident with Less than 30 Days['] Notice (Expedited Appeal)" informing the appellant that it sought to transfer/discharge her to [REDACTED] on [REDACTED] explaining that "[y]our health has improved sufficiently so that you no longer require the services provided by the facility[.]" (Ex. 1; Ex. 3, pp. 2-5).
7. The appellant had previously been residing in the community in a transitional housing program in [REDACTED] (Testimony).
8. The facility planned to transition the appellant to another such shelter, such as the one specified in the discharge notice, or other available options offering additional resources,

with outpatient consultation as necessary. (Testimony).

9. The appellant arrived at the nursing facility two weeks after her leg was amputated and has never lived in the community without a leg before this. (Testimony).
10. The appellant was scheduled to receive her prosthetic the day after the hearing and was actively working on relearning how to walk. (Testimony).

Analysis and Conclusions of Law

According to 130 CMR 456.701 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 Nursing Facility Agency or Medicare) a stay at the Nursing Facility; or
- (6) the Nursing Facility ceases to operate. (Emphasis added).

When the facility discharges a resident under any of the circumstance specified in (1)-(5), above, the resident's clinical record must be documented. (130 CMR 456.701(B); 610.028(B)).

Prior to discharge or transfer, 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 Nursing Facility 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 456.701(C); 610.028(C)).

Generally, a nursing facility must notify the resident of discharge at least 30 days before the date the resident is to be discharged or transferred, except under certain circumstances. (130 CMR 610.029(A)). In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer when “[t]he 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 CMR 456.702(B)(2); 610.029(B)(2)).

G.L. c. 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.” Federal regulations also require that a nursing facility provide sufficient preparation for a safe and orderly discharge. (See 42 CFR 483.12(a)(7)).

The record fails to demonstrate that the nursing facility adequately prepared or oriented the appellant to ensure a safe and orderly discharge to another appropriate and secure location. The appellant was admitted following her hospitalization and the amputation of her left leg above the knee. While the Director of Social Services testified that the amputation occurred prior to her hospitalization, both the records and the appellant’s testimony clearly contradict this claim. Although the appellant has received occupational and physical therapy, she has not yet been fitted with a prosthetic for her left leg, nor is there any evidence that she has received instruction or physical therapy on how to ambulate with a prosthetic, either in the community or elsewhere. The appellant's testimony strongly suggests that she is not ready for discharge for this reason. Given these circumstances, I determined that the appellant cannot be safely discharged to the community at this time. The appeal is APPROVED.

Order for the Respondent

Rescind the February 18, 2025, notice. Do not discharge the appellant under this notice.

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.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc: The Oxford Rehab and Health Care Center, Attention: Administrator, 689 Main Street,
Haverhill, MA 01830