

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2504194
Decision Date:	4/8/2025	Hearing Date:	03/18/2025
Hearing Officer:	Kimberly Scanlon	Record Open to:	04/04/2025

Appearances for Appellant:



Appearances for Nursing Facility:

Steven Buckley, Administrator;
Jermel Wright, Business Office Manager;
Calvin Bowen, Social Worker



*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:	Expedited Nursing Home Discharge
Decision Date:	4/8/2025	Hearing Date:	03/18/2025
Nursing Facility Reps.:	Steven Buckley; Jermel Wright; Calvin Bowen	Appellant's Reps.:	[REDACTED]
Hearing Location:	Quincy Harbor South 6 (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 March 7, 2025, [REDACTED] ("the facility") informed the appellant of its intent to discharge her with less than 30 days' notice to a group home on [REDACTED] 2025. (Exhibit 1). The appellant filed this appeal in a timely manner on March 13, 2025 (130 CMR 610.015(B); Exhibit 2). Notification of intent to discharge an individual is a valid basis for appeal. (130 CMR 610.032).

Action Taken by the Nursing Facility

The facility informed the appellant of its plan to discharge her on the basis that a discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.

Issue

The appeal issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The facility was represented at the hearing telephonically by its administrator, business office manager, and social worker. The record establishes that this appeal involves the facility's issuance of a notice of intent to discharge the appellant from the facility. Specifically, on March 7, 2025, the facility informed the appellant of its intent to discharge her with less than 30 days' notice to [REDACTED] a group home, on [REDACTED] 2025. (Exhibit 1). The facility's notice indicates that discharge is necessary for the appellant's welfare and the facility cannot meet her needs. (Exhibit 1).

The facility's social worker testified as follows: He has been employed with the facility since August 2024 and became acquainted with the appellant and her family at that time. He learned that prior to his hiring, there was an open case in Superior Court regarding the appellant's stay at the facility.¹ He stated that he has knowledge that the appellant's family underwent several appeals regarding this issue. In November 2024, the facility's social worker was contacted by the Department of Developmental Services (DDS) regarding the appellant's stay at the facility and was told that DDS anticipated that the appellant was being discharged to a group home. The facility's social worker stated that in February 2025, the facility was notified that the appellant's MassHealth coverage was being terminated on March 9th because MassHealth determined that she was not meeting a level of care to stay at the facility.² The facility's previous administration verbally contacted the appellant's family members to advise them that her MassHealth coverage was terminating with no payor source and of its intent to discharge. The facility attempted to contact the appellant's attorney, to no avail.

The appellant was represented at the hearing telephonically by her attorney and brother. Her attorney stated that she was just notified that this hearing was scheduled and therefore needed additional time to submit documentation on behalf of the appellant. She stated that the appellant is over the age of 65 and has been at the facility since 2019. The appellant has a past medical history of cerebral palsy, seizure disorder complicated by left-side paralysis and developmental delay, nephrolithiasis, neurogenic bladder, recurrent urinary tract infections, history of dislodged

¹ The record confirms that the facility's court reference is related to Appeal No. 2201982, a Board of Hearings fair hearing decision upholding a DDS determination that, pursuant to a PASRR evaluation, continued nursing facility placement is not appropriate for the appellant as her needs can be met in a community setting. This decision was upheld by the Massachusetts Superior Court, and, according to the appellant's attorney, has been further appealed. Notably, the community setting identified in Appeal No. 2201982 is not the same community setting identified as the discharge location in the facility's discharge notice at issue here.

² The issue of MassHealth's notice (if one has been issued) informing the appellant that her benefits are terminating is not before this hearing officer.

right percutaneous nephrostomy tube, esophagitis with bleeding, and stercoral colitis. (See, Exhibit 6, p. 3). The appellant requires a skilled nursing level of care, 24 hours per day, seven days per week. The appellant's attorney explained what has occurred over the past few years, as follows: There was a PASRR screening of the appellant conducted in 2022, and it was determined that her needs could be met in the community at that time. (See, Exhibit 7, pp. 7-9). The appellant appealed that determination to Superior Court, who agreed with the agency's determination. (See, Exhibit 7, pp. 26-33). However, that decision is currently under appeal. (See, Exhibit 7, p. 36). In the interim, the appellant's attorney stated that the appellant's medical condition declined.³ The appellant was hospitalized due to a bowel obstruction and became septic. She returned to the facility upon being discharged from the hospital, however, the appellant almost died due to medical complications. The appellant's brother visited the [REDACTED] during discussions with DDS, prior to the appellant's recent hospitalization. Upon doing so, the appellant's brother noted that there was not a physician on site to assess emergency situations that may occur, such as seizures, infections, or kidney complications. The appellant frequently has seizures, infections, and kidney complications. Additionally, there is only one registered nurse at the group home who works 2-3 days per week. The group home does not have post-surgical care, it does not keep emergency medication on hand, and there is no doctor present to prescribe any medication for the appellant. The appellant's brother was informed by the group home that none of its staff could travel with the appellant to the hospital if she required hospitalization. The appellant's representatives stated that the hospital recommended that the appellant receive palliative care following her recent hospitalization and stated that she should remain at the nursing facility because it provides the level of care that she needs.

The appellant's brother testified that his sister almost died during her recent hospitalization and requires a skilled level of care which the group home cannot provide for the reasoning set forth above. He stated that if the facility's physician was not on staff or if there was any further delay in getting the appellant to the hospital, the appellant would have died from the bowel obstruction, given her medical complications. He stated that the idea of having his sister transferred to a facility that does not have a doctor to diagnose her in an emergency terrifies him. He stated that if the appellant required surgery, as she frequently does due to kidney stone removal, she would not be able to receive post-operative care from the group home. Thus, the appellant would need to be discharged from the hospital to the facility to receive said care because the group home does not provide it. The appellant is not competent to make her own decisions, and it is essential that their mother, the appellant's health care proxy, live near the facility. If the appellant is transferred to a

³ In the appellant's post-hearing submission, the following hospitalizations were noted, as follows: On [REDACTED] 2024 the appellant had a catheter exchange at [REDACTED] on [REDACTED] 2024 the appellant had a catheter exchange procedure at [REDACTED] 2024. [REDACTED] 2024, the appellant was admitted to [REDACTED] for a severe bowel obstruction and sepsis, requiring extensive hospitalization. She was admitted to the Intensive Care Unit (ICU) of [REDACTED] during this hospitalization and did not return to the facility until [REDACTED] on [REDACTED] 2025 the appellant was treated at [REDACTED] emergency department because her Foley catheter dislodged; on [REDACTED] 2025 the appellant had a suprapubic catheter at [REDACTED] and from [REDACTED] 2025 through [REDACTED] 2025, the appellant was admitted to [REDACTED] because she was septic, had a urinary tract infection (UTI), Flu A, and pneumonia. (See, Exhibit 7, pp. 37-91).

group home, their mother will not be able to visit her as frequently. Additionally, there would be no one from the group home that would accompany the appellant in the ambulance when she has her monthly catheter change at the hospital. Further, the appellant has many interactions with the facility's staff, which she loves. The appellant's brother stated that she would not have this interaction at a group home, which is important for the appellant's mental health. He added that if the appellant cannot see her mother every day as she does now, it would severely impact her mental health.

The facility's social worker stated that the facility loves having the appellant there and does not oppose any testimony given by her representatives. He stated that the facility is simply trying to abide by the PASRR decision, policies, and regulations. He stated that with MassHealth canceling the appellant's coverage, the appellant will need to pay out-of-pocket (private pay) which may complicate her father's financial standing, as he is also a resident of the facility. The facility agreed that the appellant is fully dependent on its staff for all aspects of Activities of Daily Living (ADLs) and functional mobility. (See, Exhibit 6, p. 69). The facility's representatives stated that they did not submit a copy of the appellant's clinical record into evidence, as they were not aware that they needed to do so. Following the hearing, the record was left open for the appellant and for the facility to submit additional evidence. (Exhibit 5). The facility's post-hearing submission did not contain any evidence that her physician has endorsed the discharge. (See, Exhibit 6).

Findings of Fact

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

1. The appellant is over the age of 65 and she has been a resident of the nursing facility since 2019.
2. The appellant has a past medical history of cerebral palsy, seizure disorder complicated by left-side paralysis and developmental delay, nephrolithiasis, neurogenic bladder, recurrent urinary tract infections, history of dislodged right percutaneous nephrostomy tube, esophagitis with bleeding, and stercoral colitis.
3. On March 7, 2025, the facility issued notice of intent to discharge the appellant to a group home. The basis of the discharge notice is its determination that a discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.
4. The appellant is fully dependent on the facility's staff for ADLs and functional mobility.
5. There is no evidence that the appellant's physician has endorsed the discharge.
6. The nursing facility has not provided sufficient preparation and orientation to the appellant

to ensure that she is discharged to a safe and appropriate location.

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 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.⁴

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 Division's Board of Hearings 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 456.702; and
 - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 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

⁴ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

- Mentally Ill Individuals Act (42 U.S.C. s. 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)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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 Division or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

(See, 130 CMR 610.028(A); 130 CMR 456.701(A))

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B)).

In the present case, the facility moved to discharge the appellant on the basis that her discharge or transfer is necessary for her welfare and the facility cannot meet the resident's needs. Per 130 CMR 610.028(B), when discharge is initiated on this basis, the resident's clinical record must be

documented by her physician. Here, the facility's post-hearing submission does not include any documentation signed by the appellant's physician stating that discharge or transfer is necessary for the appellant's welfare and the facility cannot meet her needs.⁵ (Exhibit 6). Because the facility's submission does not contain any documentation that the appellant's physician endorsed the discharge, it has not met its burden here. Further, the facility did not present any evidence to demonstrate that it cannot meet her needs. The appellant has been a resident of the facility since 2019, and the record does not suggest in any way that her welfare is currently at risk or that her needs exceed the services available at the facility.

Additionally, the facility has not demonstrated that the discharge location – [REDACTED] - is appropriate for the appellant. Per G.L. c. 111, § 70E, "[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."⁶ Here, there is insufficient evidence that the discharge location would be a safe environment for her, given her medical complications. The appellant's brother testified credibly that the proposed discharge location, which he visited, cannot adequately care for the appellant given her present medical needs. The facility did not dispute this assertion. Accordingly, there is not an adequate basis to find that the proposed discharge location is "safe and appropriate."

For the reasons set forth above, the March 7th notice of intent to discharge must be rescinded. This appeal is approved.

Order for the Nursing Facility

Rescind the March 7, 2025, notice of intent to discharge the appellant.

⁵ Notably, the facility's submission indicates that as of February 15, 2025, there was no active planning made by the facility to discharge the appellant. (Exhibit 6, p. 145).

⁶ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

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 this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

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