

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2504575
<b>Decision Date:</b>	04/18/2025	<b>Hearing Date:</b>	04/09/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.		

**Appearance for Appellant:**  
Pro se

**Appearance for Nursing Facility:**  
Neil Broderick, Social Worker, [REDACTED]  
[REDACTED]



*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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Nursing Facility Discharge – Improved Health
<b>Decision Date:</b>	04/18/2025	<b>Hearing Date:</b>	04/09/2025
<b>Nursing Facility’s Rep.:</b>	Neil Broderick	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South 2 (Telephone)	<b>Aid Pending:</b>	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 (“discharge notice”) dated February 4, 2025. The notice states that [REDACTED] (“the skilled nursing facility” or “the facility”) seeks to discharge the appellant to “Home w/Husband” with an effective date of [REDACTED]. The notice indicates the reason for the discharge is that “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility” *See* Exhibit 1. The appellant filed this timely appeal on February 13, 2025. *See* 130 CMR 610.015(B); and Exhibit 2. Discharge of a Nursing Facility patient is valid grounds for appeal. *See* 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?

## Summary of Evidence

A social worker from the skilled nursing facility appeared at the hearing and testified telephonically. The appellant appeared at the fair hearing telephonically and verified her identity. Prior to the hearing, the facility submitted the appellant's clinical record from the facility into evidence. *See Exhibit 4.*

The discharge notice at issue in this matter contains: a specific statement of the reasons for the intended discharge, the location to which the appellant is to be discharged ("Home w/Husband"), the effective date of the intended discharge [REDACTED] the right of the appellant to request a fair hearing on the intended discharge, the address and fax number of the Board of Hearings, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (*to wit*, that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is received), the name and address of the local long-term care ombudsman office, and the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals, respectively. The discharge notice does not contain the name and address of the local legal-services office<sup>1</sup>. *See Exhibits 1 and 2.*

The facility representative testified that the appellant was admitted to the facility in [REDACTED] from a different long-term care facility. She has diagnoses that include metabolic encephalopathy, diabetes Type 1, fibromyalgia, mild cognitive impairment, hyperlipidemia, anxiety, depression, GERD, and migraine headaches. "Since her admission her cognition has improved and she is able to make her own Healthcare decisions." Exhibit 4 at 32. The representative from the skilled nursing facility testified that, since admission to the facility, the appellant's condition has improved to the point that she no longer needs skilled nursing level of care and she no longer requires assistance with activities of daily living (ADLs). The facility social worker testified that the appellant is independent with all mobility and transfers, she ambulates on her own, and she is independent with activities of daily living, including dressing. The clinical record also indicates the appellant no longer requires or receives physical therapy or occupational therapy.<sup>2</sup> After questioning by the hearing officer about the status of the appellant's bill with the facility, the social worker attempted to locate a representative from the facility's billing office mid-hearing but was unable to locate her.

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<sup>1</sup> One of the facility social workers, the facility representative at this hearing, is named as the facility employee who could answer any questions about the discharge notice and about the appellant's right to file an appeal. *See Exhibit 1.*

<sup>2</sup> The nursing facility submission documents the appellant's clinical record at the nursing facility since February 2023. The most recent encounter the appellant had with a medical provider at the nursing facility was on [REDACTED] when she underwent a "mandatory medical evaluation at current Nursing Rehabilitation Facility." This evaluation was performed by [REDACTED] and is documented at pages 27-31; the record indicates that the appellant's health has improved to the point where she has no acute or unmanaged medical conditions, and she may be safely discharged to the community with supportive services.

The facility social worker stated that to the best of his knowledge, the appellant is in good standing with the facility regarding her billing.

The facility social worker testified that the appellant's health care can be provided to her in the community setting. The facility has been working with the appellant and the local Elder Services organization to locate an appropriate discharge location, but they have been unable to locate a suitable place to discharge the appellant to. The appellant's husband is renting a room right now. The appellant has over \$7,000.00 in her personal needs account (PNA), and she can use that to pay for her first and last rent when she does locate her housing if her husband's current housing is unsuitable. The social worker testified that there is no discharge plan at the moment, but that he would coordinate care in the community once her discharge is ordered.

The appellant appeared at the fair hearing telephonically and she testified that she agrees that she does not currently need skilled nursing or assistance with her ADLS. The appellant has recently reconciled with her estranged spouse. The appellant's spouse is currently "renting a room," and she cannot join him there; her husband needs to leave his living accommodations soon too. Testimony. Per the nursing log submitted by the nursing facility, the appellant's spouse does visit the appellant regularly and he takes the appellant to medical appointments in the community. Exhibit 4. The written record also indicates that the appellant spends nights away from the nursing facility with her spouse. *Id.* at 61, 62. After being questioned by the hearing officer, the appellant agreed that she does not belong in a nursing facility, but she has nowhere to go right now. She needs assistance with finding suitable housing.

## Findings of Fact

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

1. Appellant was admitted to the facility in [REDACTED] from a different long term care facility. She has diagnoses that include metabolic encephalopathy, diabetes Type 1, fibromyalgia, mild cognitive impairment, hyperlipidemia, anxiety, depression, GERD, and migraine headaches.
2. The appellant received a 30-Day Notice of Intent to Discharge ("discharge notice") dated [REDACTED]. The notice states that the facility seeks to discharge the appellant to "Home w/Husband" on [REDACTED]. The notice indicates the reason for the discharge is that "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."
3. The nursing facility has not identified a location to which to discharge the appellant.
4. According to the appellant's clinical record, she no longer needs physical or occupational therapy, she is able to ambulate independently, and she is independent with her activities of daily living.

5. The appellant's primary care provider at the skilled nursing facility documented in her clinical record that she no longer requires nursing home level of care and that she can safely be discharged to the community.
6. There is no written discharge plan submitted by the facility.
7. The discharge notice at issue contains all the elements required by regulations, except it does not contain the address of the nearest legal services office. Exhibit 1.

## 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.

Regulations at 130 CMR 610.029, "Time Frames for Notices Issued by Nursing Facilities," state, in pertinent part:

- (A) **The notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C).**

(B) 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 in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.
- (2) The 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.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(Emphasis added)

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 facility's discharge notice is dated [REDACTED] and it informs the appellant that the facility seeks to discharge her to "Home w/Husband" [REDACTED]. The regulations above require that a discharge notice "must be made by the nursing facility at least 30 days before the date the resident is to be discharged," unless the notice is an expedited discharge notice. The [REDACTED] discharge notice was made on the same date as the planned discharge date of [REDACTED]. Accordingly, the discharge notice is defective, and the facility will not be permitted to discharge the appellant pursuant to the [REDACTED] notice.

Moreover, the facility has presented no evidence that there is a discharge plan in place that complies with the above statute. The discharge location is to "Home w/Husband."<sup>3</sup> This, in itself, is not necessarily an unsafe discharge location, especially for a resident who no longer requires nursing services, occupational therapy, physical therapy, or assistance with ADLs. However, when the appellant credibly testified that she cannot join her husband at his rented

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<sup>3</sup> The regulations require that the discharge notice include the facility include the location to which the appellant is to be discharged. The skilled nursing facility noted that the discharge location is "Home w/Husband"; however, the discharge notice does not include an address.

room, the facility representative acknowledged that there “is no discharge plan” in place.

The above statute prohibits a discharge “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.” There is no evidence, either documentary or testimonial, that shows the appellant was provided with community resources available to her at her ultimate discharge location. Without a discharge plan in place, the facility may not discharge the appellant pursuant to the February 4, 2025 notice.

This appeal is therefore APPROVED.

## **Order for the Nursing Facility**

Rescind the discharge notice dated February 4, 2025. Do not discharge the appellant pursuant to this notice.

## **Implementation of this Decision**

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings

cc: Respondent: [REDACTED]