

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2505037
Decision Date:	04/15/2025	Hearing Date:	04/04/2025
Hearing Officer:	Alexandra Shube	Record Open to:	04/08/2025

Appearance for Appellant:

Via telephone:

Pro se

Appearances for Skilled Nursing Facility:

Via telephone:

Lorie Kelley, Regional Social Work Manager
Susan Castaneda, Substance Use Disorder
Counselor
Kerlande Philipe, Social Services, Social Worker
Joe Fernandez, 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; Endangering Safety of Individuals
Decision Date:	04/15/2025	Hearing Date:	04/04/2025
Nursing Facility's Rep.:	Lorie Kelley, et al.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South, 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 of Intent to Discharge Resident With Less Than 30 Days notice (Expedited Appeal) dated March 17, 2025, [REDACTED] (hereinafter, "the facility") informed the appellant of its intent to discharge the appellant on [REDACTED] because the safety of individuals in the facility is endangered due to the clinical or behavior status of the resident (see 130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on March 28, 2025 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge or transfer an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge him because the safety of individuals in the facility is endangered due to the clinical or behavior status of the resident.

Issue

The 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 appellant and nursing facility representatives appeared at hearing via telephone. The facility was represented by its substance use disorder counselor, two social workers, and the regional social work manager.

The facility testified as follows: on March 17, 2025, the facility issued a Notice of Intent to Discharge Resident With Less Than 30 Days' Notice (Expedited Appeal) because the safety of the individuals in the facility is endangered due to the clinical or behavior status of the resident. The proposed discharge location is a homeless shelter in the community. The shelter is accessible and has a medical clinic next door that provides medical care. He can also access therapy, case management, and substance abuse counseling at the medical clinic. As background, the appellant was initially admitted to the facility on [REDACTED] for failure to thrive; however, at this point, the appellant has no skilled nursing needs and is independent with all activities of daily living (ADLs). He walks independently with a walker.

The facility has worked with the appellant on safety practices, but his behaviors have not changed and he remains a risk to him and other individuals in the facility. The facility has enacted two no harm agreements with the appellant to implement safety measures, one on February 27, 2025 and one on March 11, 2025, but he has been unable to comply and maintain safety practices. Doctor ordered searches of his room have revealed a knife, multiple vapes, a lighter, food, and loose, unidentified pills. Additionally, he exhibits hoarding-like tendencies which makes his room difficult to navigate safely. The facility found his room crowded with multiple boxes, which create safety hazards.

As to discharge planning, the facility has been working with him since his admission to connect him with community resources and housing. The facility has made referrals to at least four different community agencies to help the appellant with housing and his discharge. Very often, the appellant self-sabotages and does not follow through with the referrals and organizations. Prior to discharge, the facility would set the appellant up with an appointment with a new primary care physician at the shelter's medical clinic.

The appellant argued that he wanted to reschedule the hearing because he was only notified of the hearing that morning and did not have enough time to go through the facility's submission. This hearing officer explained that the hearing would go forward as scheduled but if there was additional information he could not provide at hearing, a record open period would be

considered. The appellant then explained why he had the contraband in his room. As to the vapes, he has those because when he gets depressed, he won't leave his room, even to go outside and smoke. So, he keeps the vapes for emergencies. As to the loose pills, they are prescription medications. One is a pill that the doctor told him he should not take after 4:00PM, but the nurse continued to provide them to him in the evening. The other is an anti-depressant that he no longer takes because the doctor put him on a new one. He has the knife in his room to make certain food on his own. He tried using a butter knife, but it wouldn't cut his vegetables, so he keeps a paring knife in his room. As to the boxes in his room, he is trying to get organized and pack up his room, so there is a lot of stuff everywhere. He did not feel that he was ready to be safely discharged to the community. He stated that he still has ongoing health needs, including occupational therapy and mental health care. He also testified that prior to his admission, he had his own apartment for about 15 years, but then he was hospitalized before being sent to the facility.

The facility responded that whether the pills are what he says they are is irrelevant because it goes against the facility's safety policy. The facility's policy is for a nurse to distribute all medication. It goes against the facility's safety policy to have loose, unidentified medications in a resident's room. Additionally, the vapes, knife, and condition of his room are safety hazards and go against the safety policies of the facility and no harm agreements the facility implemented with the appellant. In addition to the no harm agreements, the facility has had multiple conversations with the appellant regarding the hoarding and food in his room. But he continues to fail to comply with the safety policies, endangering the safety of individuals in the facility. The facility testified that it has a doctor's note from the facility's physician dated April 1, 2025 stating that the "patient is medically improved and can be discharged to the community with services. Social service input is noted and appreciated. Depression and anxiety are better. Muscle weakness and neuropathy are better. Hypotension and dyskinesias are well-controlled at this time."¹ The facility testified that the appellant is not receiving any occupational or physical therapy and his needs can be met in the community.

The appellant was given until April 8, 2025 to provide additional medical documentation to support his testimony; however, nothing additional was received.

¹ This doctor's note was not included in the initial packet submitted by the facility prior to hearing. This hearing officer gave the facility until the end of the day on April 4, 2025 to submit it to the Board of Hearings, as long as a copy was also provided to the appellant. The facility stated it would provide a copy to the appellant and timely submitted a copy to the Board of Hearings for consideration.

Findings of Fact

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

1. The appellant was admitted to the facility on [REDACTED] for failure to thrive (Testimony and Exhibit 4).
2. On March 17, 2025, the facility issued a Notice of Intent to Discharge Resident With Less Than 30 Days' Notice (Expedited Appeal) because the safety of the individuals in the facility is endangered due to the clinical or behavior status of the resident (Testimony and Exhibit 1).
3. The proposed discharge location is a homeless shelter in the community (Testimony and Exhibit 1).
4. On March 28, 2025, the appellant timely appealed the discharge notice (Exhibit 2).
5. The facility has had two no harm agreements with the appellant to implement safety measures, one on February 27, 2025 and one on March 11, 2025, but he has been unable to comply and maintain safety practices (Testimony and Exhibit 4).
6. Doctor ordered searches of his room have revealed a knife, multiple vapes, a lighter, food, and loose, unidentified pills. His room is crowded with boxes, making it difficult to navigate and creating a safety hazard. (Testimony and Exhibit 4).
7. The shelter is accessible and has medical clinic next door that provides medical care where the facility would set the appellant up with a new primary care physician. He can also access therapy, case management, and substance abuse counseling at the medical clinic. (Testimony).
8. The appellant has no skilled nursing needs and is independent with all ADLs (Testimony).
9. The facility has set the appellant up with at least four different community agencies to assist him in finding housing (Testimony and Exhibit 4).
10. The facility's physician has documented in the appellant's clinical record that he can be safely discharged to the community (Testimony and Exhibit 5).

Analysis and Conclusions of Law

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.

130 CMR 610.028(A); 456.701(A); (Emphasis added).

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).

130 CMR 610.028(B).

In this case, the nursing facility initiated the transfer proceedings because the safety of individuals in the facility is endangered by the appellant's behavior. The record supports the facility's position. The facility found a knife, multiple vapes, a lighter, food, and loose, unidentified pills in his room. Additionally, the appellant has hoarding-like tendencies and his room is extremely cluttered with boxes, preventing one from being able to safely navigate his room. While the appellant offered explanations for having such items (vape, loose pills, a knife, and boxes) in his room, it does not excuse the fact or make it any safer and it goes against the facility's safety policy. Medications are administered by nurses and the appellant cannot keep loose unidentified medication in his room. The facility had spoken with the appellant on more than one occasion about these issues and had twice put in place no harm agreements, but the appellant still failed to abide by these basic safety measures, endangering the safety of individuals in the nursing facility.

In addition to the MassHealth-related regulations discussed above, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute provides 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 has met its burden of providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The appellant is independent with his ADLs and has no skilled nursing needs. The facility intends to discharge the appellant to a homeless shelter. The shelter is accessible and has a medical clinic next door that provides medical care where the facility would set the appellant up with a new primary care physician. He can also access therapy, case management, and substance abuse counseling at the medical clinic. As part of its discharge planning, the facility has also connected the appellant to four different agencies for assistance with housing; however, he often does not follow up with this assistance. The facility has involved the appellant, to the extent possible, in discharge planning, but the fact that the appellant has chosen not to cooperate is out of the control of the nursing facility. The appellant testified that he has ongoing health needs, both physical and mental; however, there is nothing in the record to indicate that he cannot be safely discharged to the community and address those issues in the community, especially given that he does not have any skilled nursing needs.

Based on testimony and the appellant's clinical record, the facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer to a safe and appropriate place.

For these reasons, the appeal is denied

Order for Nursing Facility

None. Proceed with the discharge as set forth in the notice dated March 17, 2025 with the 5 day stay (from the date 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.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

CC:

[REDACTED]