

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	APPROVED	<b>Appeal Number:</b>	2506220
<b>Decision Date:</b>	5/5/2025	<b>Hearing Date:</b>	04/28/2025
<b>Hearing Officer:</b>	Kenneth Brodzinski	<b>Record Open to:</b>	05/06/2025

**Appearance for Appellant:**

**Appearances for**



Pro se

Jessie Hayes, Director of Social Services; Sarah Webber, After Care Coordinator; and Joseph Hannon, Substance Abuse Clinician



*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 SNF Discharge
Decision Date:	5/5/2025	Hearing Date:	04/28/2025
SNF's Rep.:	Jessie Hayes	Appellant's Rep.:	Pro se
Hearing Location:	Taunton MEC		

### Authority

This hearing was conducted pursuant to federal law and regulations at 42 U.S.C. §1396r and 42 CFR 483.10-483.206 and Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

The nursing facility, [REDACTED] (the facility) issued a notice dated April 7, 2025 of its intent to expedite a discharge of Appellant with less than 30-days' notice Appellant on the grounds that *"the safety of the individuals in the nursing facility is endangered due to [her] clinical or behavioral status"* (Exhibit A). Appellant filed this appeal in a timely manner on April 18, 2025 (see 130 CMR 610.015(B)(5) and Exhibit A). Expedited discharge of a nursing-facility patient constitutes valid grounds for appeal (see 130 CMR 610.029(B); 42 CFR Ch. IV, 483.200 et seq.).

Since the request for the hearing was received by the Board of Hearings during the notice period described in 130 CMR 610.015(B)(5), the nursing facility must stay the planned discharge or transfer until 5 days after a denial is rendered. While the stay is in effect, the resident shall not be transferred or discharged from the nursing facility (see 130 CMR 610.030(B)). If this appeal is approved, the facility may not discharge Appellant under the subject notice.

## Action Taken by the Nursing Facility

The facility issued a notice dated April 7, 2025 of its intent to expedite a discharge of Appellant with less than 30-days' notice Appellant on the grounds that *"the safety of the individuals in the nursing facility is endangered due to [her] clinical or behavioral status."*

## Issue

Whether or not the facility can proceed to discharge Appellant under notice of April 7, 2025.

## Summary of Evidence

The parties appeared by telephone. At the time of hearing, the nursing facility submitted a packet of documentation including copies of Appellant's clinical record (Exhibit B). Appellant also made a post-hearing submission during a short record-open period which also contained a written response from Appellant (Exhibit C).

The facility representatives testified that the Appellant was admitted to the facility on a short-term basis on [REDACTED] 2024 with a diagnosis of hypoxia. According to the facility representatives, Appellant has been non-compliant with occupational therapy throughout her stay.

The facility representatives testified in January and April 2025, Appellant was found to be diverting her medication and diverting medications to other residents in the facility. These incidents were reported to have occurred on [REDACTED] 2025; [REDACTED] 2025; [REDACTED] 2025; and [REDACTED] 2025. They also testified that Appellant has refused to engage in drug-use therapy.

The facility representatives testified that the decision was made to discharge Appellant after she was taken to a hospital emergency room on [REDACTED] 2025. Appellant was taken to the ER on the suspicion of a drug overdose. According to the facility's notes, urine analysis performed in the ER was positive for fentanyl and Appellant was given Narcan to reverse the overdose (Exhibit B, page 25).

Appellant appeared on her own behalf and testified that she was only found in possession of medications twice and both times it was her own prescribed medications. She denied being offered any kind of drug-use treatment by the facility.

Upon questioning by the hearing officer as to why she was in possession of her medications that she should have consumed upon being dispensed, Appellant explained that she would hang on to pain medication when she didn't need it in order to be able to take more medication when her pain was elevated because she found that the facility would not adjust her pain

medication as needed. When asked why she also had gabapentin on her person, Appellant explained that she was not prescribed the full amount that she usually took, so she would save a pill to combine with another to reach the dosage she was supposed to take. Appellant denied dispensing her medications to other residents.

Upon questioning by the hearing officer to the facility about the allegation that Appellant dispensed medications to others, the facility acknowledged that this was only reported once, and Appellant denied it at the time.

With regard to discharge planning, the facility representatives testified that formal planning could not really begin until they were notified by the shelter named in the notice that they were ready to accept Appellant. They also explained that Appellant came to them from a shelter, so she was accustomed to such an environment. They also explained that follow-up services would not be needed because Appellant's condition was stable, and she was independent with all her activities of daily living (ADLs). According to the facility representatives, they were really not providing Appellant with any services at the facility at this point.

The record was left open to allow the facility to submit an itemization of each of incident it was relying on to support its allegation that *the safety of the individuals in the nursing facility is endangered due to [Appellant's] clinical or behavioral status*" (Exhibit A). Instead of a written itemization, the facility filed a copy of selected pages of the clinical record it felt pertinent. Appellant was afforded the ability to write a response along with the facility's submission (collectively, Exhibit C).

According to the clinical records, a search of Appellant's room on [REDACTED] 2025 uncovered two 600mg gabapentin pills; one 50mg hydroxyzine pill; two Flexeril pills; one 60mg morphine sulfate pill; and one 20mg Baclofen pill; as well as two "half-smoked" cigarettes (Exhibit C, page 66). The following day, [REDACTED] 2025, a room search uncovered "numerous small pieces of folded paper containing white and brown powdered substances appearing to be fentanyl and cocaine" (id). A third search was conducted on [REDACTED] 2025 uncovered "two orange pills" (id). A fourth search conducted on [REDACTED] 2025 uncovered "no contraband" (id).

In response to the facility's post-hearing submission, Appellant wrote that she has been taking prescribed oxycontin and believes that is what was discovered in her room on [REDACTED] 2025, not morphine sulfate. Appellant also wrote that the powder found in the paper on [REDACTED] 2025 was her prescribed oxycontin crushed up, not fentanyl or cocaine. According to Appellant, the two cigarettes found in her room were not half smoked, but broken in half (Exhibit C, page 68).

The clinical record contains a note taken on [REDACTED] 2025, the day after Appellant's ER visit. The note describes an encounter between Appellant and the facility's substance use clinician.

According to the note, Appellant reported she was difficult to arouse that day due to her medication. Appellant confirmed she had been diverting her medication and taking them as she deemed appropriate. Appellant stated because she does not receive enough medication at the right times, she had "saved one or two" to take later. Appellant denied diverting medication to any other resident. Appellant denied using illicit opiates, denied receiving Narcan at the hospital, and denied being diagnosed with an opiate overdose in the ER. Appellant reported the hospital informed her that her medication caused her presentation. The facility suspected that Appellant did not inform the hospital of her history of medication diversion (Exhibit B, page25).

Lastly, the clinical record contains a letter dated April 21, 2025 drafted by the facility's medical director which lists some dates that medications were found in Appellant's room. These dates are not consistent with those reported in the clinical record or by the facility representatives at hearing and they describe somewhat different findings (Exhibit B, pages 20-21). The letter also states: "[Appellant] is independent with all of her Activities of Daily Living. [Appellant] ambulates around the facility without an assistive device" (id). The letter concludes: "It is my professional opinion that there is not a medical need for [Appellant] to remain a resident at [REDACTED] [Appellant] is capable and safe to discharge to a shelter" (id).

## Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant was admitted from a homeless shelter to the facility on a short-term basis on [REDACTED] 2024 with a diagnosis of hypoxia.
2. Appellant has been non-compliant with occupational therapy throughout her stay.
3. A search of Appellant's room on [REDACTED] 2025 uncovered two 600mg gabapentin pills; one 50mg hydroxyzine pill; two Flexeril pills; one 60mg morphine sulfate pill; and one 20mg Baclofen pill; as well as two cigarette halves.
4. The following day, [REDACTED] 2025, a room search uncovered small pieces of folded paper containing white and brown powdered substances.
5. The facility suspected the white and brown powdered substances to be fentanyl and cocaine.
6. A third search was conducted on [REDACTED] 2025 uncovered two orange pills.
7. A fourth search conducted on [REDACTED] 2025 uncovered no contraband.

8. The decision was made to discharge Appellant after she was taken to a hospital ER on [REDACTED] 2025.
9. Appellant was taken to the ER on the suspicion of a drug overdose.
10. According to the facility, urine analysis performed in the ER was positive for fentanyl and Appellant was given Narcan to reverse the overdose (Exhibit B, page 25).
11. As of the date of hearing, Appellant's condition is stable, and she is independent with all her activities of daily living (ADLs).
12. As of the date of hearing, the facility was not providing Appellant with any skilled services.
13. Appellant has been prescribed oxycontin while at the facility.
14. Appellant has crushed her oxycontin into powder while at the facility.
15. Appellant holds onto medications that she is supposed to take upon dispensing in order to take them according to when and in the amounts she deems appropriate.
16. A letter dated April 21, 2025 drafted by the facility's medical director states: *"[Appellant] is independent with all of her Activities of Daily Living. [Appellant] ambulates around the facility without an assistive device"* (Exhibit B, page 20). The letter concludes: *"It is my professional opinion that there is not a medical need for [Appellant] to remain a resident at [REDACTED] [Appellant] is capable and safe to discharge to a shelter"* (id, at 21).

## Analysis and Conclusions of Law

The issue on appeal is limited to whether the nursing facility is acting in compliance with federal and state law governing the discharge of nursing facility residents in its attempt to discharge Appellant on an expedited basis through the facility's notice of April 7, 2025. This record does not support a finding in the facility's favor.

Massachusetts's regulations at 130 CMR 610.028, which embody federal regulations at 42 CFR Ch. IV §483.12, require the following:

### Notice Requirements Regarding Actions Initiated by a Nursing Facility

*(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 Division 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 10.028(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 Division 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 610.029: Time Frames for Notices Issued by Nursing Facilities

*(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.*

Upon inspection and review, the subject notice meets the requirements of 130 CMR 610.028(A)-(C).

This record does not support a finding that Appellant is diverting medications to other residents. The clinical notes report no such findings. The record does support a finding that Appellant is diverting her prescribed medications so that she may take them as she deems appropriate. While this may pose a danger to Appellant herself, this record does not show how such behavior poses a danger to other facility residents. The basis of the discharge as stated in the subject notice is, “*the safety of the individuals in the nursing facility is endangered due to [her] clinical or behavioral status*” (Exhibit A). This is consistent with the allowable basis for discharge cited above at 130 CMR 610.028(A)(3) and 610.029(B)(1). The basis requires a finding that the resident is a threat to others, not herself.

Of the four searches conducted over four months, three turned up contraband that consisted of Appellant’s own medications and several substances about which the facility could only speculate (e.g., two orange pills, powdered substances). What these actually were was never established. The fourth search turned up nothing. The ER findings were reported by the facility, but the facility did not submit a copy of the hospital discharge report to support and

verify. Even if it had, the finding would again demonstrate that Appellant's behavior put her own safety at risk, but not the safety of others.

Lastly, it bears mentioning that the facility could probably make a better case for discharging Appellant on the grounds that her condition has improved and she no longer requires the services of the facility, but that is not the basis set forth in the subject notice. It would not be proper to allow the discharge to proceed on any basis not stated in the notice. Doing so would greatly impinge on Appellant's *due process* rights and would not satisfy 130 CMR 610.028 (C)(2).

For the foregoing reasons, the appeal is APPROVED.

## **Order for the Nursing Facility**

The facility may NOT proceed with discharge under notice of April 7, 2025.

## **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.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc: Respondent:

[REDACTED]