

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2507045
Decision Date:	6/16/2025	Hearing Date:	June 02, 2025
Hearing Officer:	Brook Padgett		

Appellant Representative:

Pro se

Nursing Facility Representatives:

Lacey Ackerman, Director of Social Services
Andrew Mbugua, Facility Administrator
Stacey Hegarty, Nursing Supervisor



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Nursing Facility Discharge 130 CMR 610.028
Decision Date:	6/16/2025	Hearing Date:	June 02, 2025
Nursing Facility Reps:	L. Ackerman A. Mbugua S. Hegarty	Appellant Rep:	Pro se
Hearing Location:	Nursing Facility		

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 Transfer Resident dated April 30, 2025, stating: The purpose of this letter is to inform you that [REDACTED] The reason for this discharge is your health has improved sufficiently so that you no longer need the services provided by the nursing home. (Exhibit 1). The appellant filed this appeal timely on May 05, 2025. (130 CMR 610.015(B); Exhibit 2). Discharge or transfer of a Nursing Facility patient is valid grounds for appeal. (130 CMR 610.028(A); 42 CFR Ch IV §483.200 et seq.).

Action Taken by the Nursing Facility

The nursing facility intends to discharge the appellant to [REDACTED]

Issue

Is the planned discharge correct pursuant to 130 CMR 610.028(A)?

Summary of Evidence

The Director of Social Services of [REDACTED] testified that the appellant was admitted to the facility on [REDACTED] for short-term rehabilitation after breaking her femur in a motorcycle accident. Current medical notes indicate the appellant has met all her goals for rehabilitation and is stable. The appellant requires no assistance with her activities of daily living and ambulates without assistance. The representative argued that the appellant has no medical needs, requires no skilled nursing services, and can come and go from the facility at will. The representative testified that the appellant was homeless prior to entering WR & NR and because the nursing summary notes indicate the appellant is independent and requires no assistance with any activities of daily living, the appellant is able to return to her prior living situation. The Director stated the facility has attempted to assist the appellant in finding an alternative to the transfer location but that the appellant has not been cooperative. The facility submitted into evidence physician notes, nursing summary, and the physician's discharge order. (Exhibit 4).

The appellant attended the fair hearing and stated her doctor has told her that her walking was between 50 and 100% recovered. The appellant acknowledged that she has been able to leave the facility on her own and as she wishes and that she required no assistance with her activities of daily living. The appellant stated she has not worked with the facility to find an alternative location as she felt they had been rude to her when they first approached her to talk about leaving.

The record was left open until June 16, 2025 for the appellant and the Director of Social Services to meet and try to find the appellant a more suitable discharge location. (Exhibit 5).

The representatives from the facility responded within the required time period and indicated that despite the additional time, the appellant has not been able to find a more suitable discharge location. The facility administrator indicated the appellant is aware that she must leave the facility and will be involved in the preparation prior to her move.

Findings of Fact

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

1. The appellant resides at [REDACTED] which is a licensed nursing facility.
2. The appellant was admitted to the nursing facility on [REDACTED] for a broken leg following a motor cycle accident. (Exhibit 4 and testimony).
3. The appellant has no medical needs and is able to ambulate and leave the nursing facility at will. (Exhibit 4 and testimony).

4. The appellant is alert and medically stable. (Testimony and Exhibit 4).
5. The facility physician indicates the appellant is clinically stable and is walking independently and requires no skilled nursing services at this time. (Exhibit 4).
6. Nursing summary notes indicate that the appellant receives no assistance with her activities of daily living at the facility. (Exhibit 4).

Analysis and Conclusions of Law

On April 30, 2025, a “30-day Notice of Intent to Discharge Resident” was provided to the appellant by [REDACTED]. The notice indicated the facility planned to discharge the appellant to [REDACTED] as her health had improved sufficiently that she no longer requires nursing facility services. The appellant timely appealed this notice and the discharge was stayed pending the outcome of this appeal.

The record indicates that the appellant is independent in all activities of daily living, can ambulate independently, and often leaves the facility for prolonged periods of time, without assistance. Although the appellant has some difficulty walking, she provided no credible evidence to counter the current position of the nursing facility that the appellant’s health is such that she does not require 24-hour skilled nursing facility services.

A nursing facility may transfer or discharge a resident when 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, as long as the nursing facility to provide reasonable and appropriate notice. (130 CMR 610.028(A)(5)).¹ The appellant received such notice on April 30, 2025.

The nursing facility must also meet the requirements of MGL Chapter 111, Section 70E and **42 CFR 483.12(a)(7)** by providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The Federal Centers for Medicare and Medicaid defines “sufficient preparation” within the meaning of 42 CFR 483.12(a)(7) to mean that the facility informs the resident where he or she is going and takes steps

¹ 130 CMR 610.028: 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 MassHealth agency or Medicare pay for) a stay at the nursing facility; ... (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... . (*Emphasis added*).

under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence. (See *Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance*, Appeals Court No. 03-P-879, 2004).²

The nursing facility notice lists a homeless shelter as the discharge location. The nursing facility physician maintains the appellant can be appropriately cared for at the shelter because she has no skilled nursing needs and she is clinically stable and the Director of Social Services has credibly testified the appellant will be involved in any transfer, and will be given preparation and information prior to her move. Since there is no credible evidence that the appellant requires any nursing services, the nursing facility has met its burden to ensure safe and orderly discharge.

The nursing facility's notice of discharge dated April 30, 2025 complies with the applicable state and federal notice requirements and their actions are appropriate and reasonable, this appeal is therefore DENIED.

Order for the Nursing Facility

Proceed with discharge.

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.

Brook Padgett
Hearing Officer
Board of Hearings

cc: Respondent: Watertown Rehab & Nursing Center, Attention: Administrator , 59 Coolidge Hill Road, Watertown, MA 02571

² The key paragraph of that statute, which is directly relevant to this appeal, reads 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."