

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2507091
Decision Date:	5/16/2025	Hearing Date:	5/12/2025
Hearing Officer:	Thomas Doyle	Record Open to:	N/A

Appearance for Appellant:

Pro se

Appearance for Facility:

Norma Mullings, Administrator, Isabella
Wakeen, Assistant Director of Nursing

Interpreter:

N/A



*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:	Nursing Facility Discharge, Non-payment
Decision Date:	5/16/2025	Hearing Date:	5/12/2025
Facility's Rep.:	Norma Mullings Isabella Wakeen	Appellant's Rep.:	Pro se
Hearing Location:	Remote (Tel)	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 May 7, 2025,¹ Parsons Hill Rehabilitation and Health Care Center (hereinafter "the nursing facility" or "facility") issued a Notice of Intent to Transfer Resident With Less than 30 Days' Notice to [REDACTED]² for the specific reason: "The resident has failed after reasonable and appropriate notice to pay for a stay at the facility."³ (130 CMR 456.701; 130 CMR 610.029(B); Ex. 1). Appellant filed this appeal in a timely manner on May 6, 2025.⁴ (130 CMR 610.015(F); Ex. 2). Notice of transfer or discharge from a nursing facility is valid grounds for appeal (130 CMR 456.703; 130 CMR 610.032(C)).

Action Taken by Respondent

¹ The facility also issued a Notice of Intent to Transfer Resident with Less than 30 Days' Notice on May 5, 2025. (Ex. 4). The facility rescinded this notice at hearing.

² The address of the discharge location is not written on the May 7, 2025 notice but the facility provided the address through testimony at hearing.

³ Pursuant to 130 CMR 456.720 (B), failure to pay is not sufficient reason to issue a notice of discharge with less than 30 days' notice.

⁴ Because the date of the request for hearing is dated before the actual notice of discharge, May 6, 2025, (Ex. 2), appellant affirmed via testimony he was appealing the May 7, 2025 notice.

The facility issued a Notice of Intent to Discharge Resident With Less than 30-Days' Notice for the specific reason: "The resident has failed after reasonable and appropriate notice to pay for a stay at the facility." (130 CMR 456.701; 130 CMR 610.029(B); Ex. 1)

Issue

The issue is whether the facility is justified in seeking to discharge appellant, and whether it followed proper procedures during the discharge process.

Summary of Evidence

The nursing facility was represented telephonically at the hearing by its Administrator, as well as the Assistant Director of Nursing. Appellant represented himself. The hearing was conducted via telephone.

At hearing, the Administrator rescinded the May 5, 2025 notice. (Testimony; Ex. 4). The reason for that notice was appellants' health had improved sufficiently so he no longer needed the services of the facility. Appellant is appealing the May 7, 2025 notice. (Testimony; Ex. 1). The reason the facility served appellant the May 7 notice is "the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility." (Id).

The Administrator stated appellant is in his late fifties and was admitted to the facility on [REDACTED] 2023. She stated that attempts were made to have appellant pay his monthly patient-paid amount, but the attempts have been unsuccessful. (Testimony). Records of conversations the facility has had with appellant are included within the facility's submission (Ex. 5).

In a Social Services Note, dated May 7, 2025, the writer recorded:

The SW and BOM met with [appellant] about his outstanding balance and asked if he was able to make payment. [Appellant] stated that he would not make payment. (Ex. 5, p. 1).

In an Administrator Note dated April 29, 2025, the writer recorded:

This writer went to make reasonable attempt to collect PPA from May from resident. Resident took the bill and looked at it and told this writer that he is not paying at all. This writer educated resident that paying his portion of his PPA is his responsibility and that he now owes the facility \$12,2801.30 from 5/31/24 to-day (sic), resident listened and then said "I will not pay." This writer educated

resident that the facility may have to issue a 30 days' notice for non payment. Resident wheeled off. (Ex. 5, p. 16).

In an Administrator Note dated April 3, 2025, the writer recorded:

This writer went to resident once again to make reasonable attempt to collect payment. Resident dismissed this writer and said once again "I am not paying." This writer educated resident that he will be receiving a 30 days' notice of discharge for non-payment.

In a Social Services Note, dated December 27, 2024, the writer recorded:

SW and Administrator met with David about his outstanding balance and asked if he was able to make payment. David stated that he was not able to make payment.

In an Administrator Note dated earlier on December 27, 2024, the writer recorded:

This writer and the Director of SS met with resident following a hearing withdrawal to see if resident would make a payment to resolve the 30 days' notice for nonpayment. Resident shared with us he does not have any money to pay and also spend (sic) December's social security. Both individuals explained that he owes payment from July to date and that he got money from his mother inheritance totaling approximately \$8000. Resident shared that he gave his family \$3500 for his mother's funeral expenses and spend (sic) the rest on drugs. Resident said he had absolutely no money to make a payment.

The Administrator testified that appellant uses his funds to purchase items for other residents and personal items for himself. (Testimony). In a note dated May 8, 2025, appellant received 4 packages from May 5 to May 8 and bought duplicate items as well as buying for other residents. (Ex. 5, p. 1). On May 1, 2025, it was noted appellant continues to get several packages weekly. (Ex. 5, p. 9). On April 16, 2025, appellant purchased a silver watch for one of the female residents and bought a gold one for himself. (Ex. 5, p. 25). It was noted on April 11, 2025, appellant received 5 packages this week and ordered groceries from Walmart. (Id). On April 4, 2025, appellant continued to receive packages and make requests for recreational staff to buy him snacks and cigarettes. (Ex. 5, p. 32). On April 3, 2025, appellant ordered from Walmart large amounts of groceries including ice cream, juices and donuts. (Id). In a Social Service Interim Progress Note, dated January 9, 2025, it was noted that the Appellant gave a social worker \$240.00 and a card to give to his nephew. (Ex. 5, p. 152).

The Administrator testified that after being discharged from Occupational Therapy on [REDACTED]

2025, appellant's level of assist for toileting transfer was modified/independent.⁵ The level of assist for bathing, dressing and toileting was the same. (Testimony). The Administrator referenced an April 21, 2025 doctors' note contained in the record. That note indicates that appellant requires minimum assistance with ADLs and IADLs. (Ex. 5, p. 21).

Other than the Administrator testifying to the name and address of the discharge location, there was no testimony offered regarding the appropriateness of the discharge location. The location listed on the Notice is a motel. (Ex. 1). Although there are voluminous medical records within the facility's submission (Ex. 5), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge appellant. Also lacking within the facility's submission is documentation regarding any preparation or orientation provided to the appellant (Ex. 5). The record shows a social worker informed appellant he would be discharged to the Red Roof Inn and appellant was given a copy of the notice. The social worker emailed a copy of the notice to the Ombudsman. (Ex. 5, p. 1). On April 21, 2025, a doctor wrote that appellant was seen to discuss possible discharge "soon to the community."⁶ (Ex. 5, p. 21).

Appellant testified he has surgery scheduled on June 20, 2025. He agreed he owed money, but he said he did not know how much money he owed. He stated he would like to stay and start paying the facility. (Testimony). No additional evidence was presented regarding the appropriateness of the discharge location, nor any preparation or orientation provided to appellant.

Findings of Fact

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

1. Appellant is in his late fifties and was admitted to the facility on [REDACTED] 2023. (Testimony).
2. On May 7, 2025, the facility issued appellant a Notice of Intent to Discharge Resident with Less Than 30-Days' Notice. (Ex. 1). Appellant timely appealed. (Ex. 2).
3. Attempts were made to have appellant pay, but the attempts were unsuccessful. (Testimony).
4. On May 7, 2025, a facility social worker and business office manager met with appellant about his outstanding balance and asked if he was able to make payment. Appellant stated that he would not make payment. (Ex. 5, p. 1).
5. On April 29, 2025, the Administrator went to make an attempt to collect PPA from

⁵ The Administrator was asked the meaning of "modified" and she stated, "he can perform these tasks himself."

⁶ The notice under appeal is dated May 7, 2025. (Ex. 1).

May from appellant. Appellant took the bill and looked at it and told the Administrator that he is not paying at all. The Administrator told appellant that he now owes the facility \$12,2801.30. Appellant listened and then said "I will not pay." (Ex. 5, p. 16).

6. On April 3, 2025, the Administrator went to appellant once again to make an attempt to collect payment. Appellant dismissed the Administrator and said "I am not paying." (Ex. 5, p. 30).
7. On December 27, 2024, a social worker and the Administrator met with appellant about his outstanding balance and asked if he was able to make payment. Appellant stated that he was not able to make payment. (Ex. 5, p. 166).
8. Also on December 27, 2024, the Administrator and the Director of Social Services met with appellant to see if appellant would make a payment. Appellant stated he does not have any money to pay and also spent December's social security. Both individuals explained that he owes payment from July to date and that he got money from his mother's inheritance totaling approximately \$8000. Appellant shared that he gave his family \$3500 for his mother's funeral expenses and spent the rest on drugs. Appellant said he had absolutely no money to make a payment. (Ex. 5, p. 166).
9. No testimony was offered regarding the appropriateness of the discharge location. The location listed on the Notice is a motel. (Ex. 1). Although there are voluminous medical records within the facility's submission (Exhibit 5), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge the appellant. Also lacking within the facility's submission is documentation regarding any preparation or orientation provided to appellant. (Ex. 5). The record shows a social worker informed appellant he would be discharged to the [REDACTED] and appellant was given a copy of the notice. The social worker emailed a copy of the notice to the Ombudsman. (Ex. 5, p. 1). On April 21, 2025, a doctor wrote that appellant was seen to discuss possible discharge "soon to the community."⁷ (Ex. 5, p. 21).

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.⁸

⁷ The notice under appeal is dated May 7, 2025. (Ex. 1).

⁸ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has

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, as codified within 130 CMR 456.701(C):

- (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 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.

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:

regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as 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.

- (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.

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (4), the resident's clinical record must contain documentation to explain the transfer or discharge. Pursuant to 130 CMR 456.701(B), 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 456.702: Time Frames for Notices Issued by Nursing Facilities:⁹

⁹ See also 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. (emphasis added)
- (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.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).

(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are 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 resided in the nursing facility for 30 days immediately prior to receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429, must comply with the requirements set forth in 130 CMR 456.701 and must be provided to the resident and an immediate family member or legal representative at the time the nursing facility determines that it will not readmit the resident.

130 CMR 456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in

following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: *Medical Leave of Absence: Failure to Readmit*, must comply with the requirements set forth in 130 CMR 456.701: *Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility*, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

(C) If the request for a hearing is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, if the request for a hearing is received within the applicable time period as described in 130 CMR 456.703(B)(3), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

The nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, 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.¹⁰

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

In this case, the facility initiated the discharge proceedings because it determined that appellant had failed, after reasonable and appropriate notice, to pay for (or failed to have MassHealth or Medicare pay for) a stay at the nursing facility (Ex. 1). The record adequately

¹⁰ 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.

supports the facility's position regarding nonpayment (Ex. 5). The facility has notified the appellant of the debt owed and these efforts constitute reasonable and appropriate notice of the debt owed to the facility. (Ex. 5).

Appellant does not dispute that he has failed to pay the facility. In fact, he testified "I owe money" but he stated he did not know how much he owed. (Testimony).

However, payment is not the sole consideration in this appeal. The facility has specific regulatory requirements that must be met before an appellant may be discharged. Specifically, the facility must also comply with G.L. c. 111, § 70E. Per this statutory provision, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. No testimony was offered regarding the appropriateness of the discharge location. The location lists a motel for discharge (Ex. 1). Although there are voluminous medical records within the facility's submission (Ex. 5), lacking is any information related to the appropriateness of the location to which the facility seeks to discharge appellant. Also lacking is documentation regarding any preparation or orientation provided to the appellant. (Ex. 5). These statutory requirements must be met prior to discharge of a resident. Within this record, based upon the testimony from the facility as well as the documentary evidence submitted, the requirements of G.L. c. 111, § 70E have not been met.

On this record, appellant has met his burden, by a preponderance of evidence, to show the invalidity of the administrative determination. Accordingly, this appeal is APPROVED.

Order for MassHealth

Rescind the May 7, 2025, Notice of Intent to Discharge Resident With Less than 30 Days' Notice.

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

Thomas Doyle
Hearing Officer
Board of Hearings

cc: Respondent: [REDACTED]
[REDACTED]