

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

[REDACTED]

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2507326
<b>Decision Date:</b>	6/17/2025	<b>Hearing Date:</b>	05/27/2025
<b>Hearing Officer:</b>	Emily Sabo		

**Appearances for Appellant:**

[REDACTED]

**Appearances for Nursing Facility:**

Tammy Gough, Director of Social Services; Anjali Bayliss, Facility's Administrator; Ally Gullo, Director of Rehabilitation; Banyan Dagonnoth, Business Office Manager; Dr. Ronald Gomes, Medical Director; Leila Beithar, Nursing Manager; Kate Celeste, Corporate Director of Clinical Operations; Kate Williams, Social Work Consultant

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Nursing Facility Discharge; Improved Health
<b>Decision Date:</b>	6/17/2025	<b>Hearing Date:</b>	05/27/2025
<b>Nursing Facility's Reps.:</b>	Director of Social Services, et al.	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Charlestown MassHealth Enrollment Center (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

On April 10, 2025, the nursing facility issued a notice that the Appellant would be discharged to [REDACTED] on [REDACTED] 2025, because the Appellant's health had improved sufficiently such that he no longer needed the services provided by the facility. See 130 CMR 610.028, 130 CMR 610.029, and Exhibit 1. The Appellant filed this appeal in a timely manner on May 9, 2025. See 130 CMR 610.015(B) and Exhibit 5. Notice of a transfer or discharge from a nursing facility is valid grounds for appeal. 130 CMR 610.032(C).

### Action Taken by Nursing Facility

The nursing facility issued a notice of discharge to the appellant.

## Issue

Whether the nursing facility established, pursuant to 130 CMR 610.028, that the Appellant's health has improved sufficiently so that he no longer needs the facility's services.

## Summary of Evidence

### Documentary and Testimonial Evidence

The hearing was held by telephone. The nursing facility was represented by its director of social services ("nursing facility representative"), and the facility's administrator, director of rehabilitation, director of social work, business office manager, medical director, nursing manager, corporate director of clinical operations, and social work consultant participated. The Appellant attended via telephone with a long-term care ombudsman who stated her role was to be present to ensure that the Appellant's rights were not violated. Based on testimony and documentary evidence submitted into the record, the following information was provided:

The Appellant was admitted to the nursing facility from a hospital for short-term rehabilitation on [REDACTED] 2024. The Appellant was admitted to Boston Medical Center on [REDACTED] 2023, because the Appellant called emergency services for assistance with his chronic diarrhea. At the time of admission to the nursing facility, the Appellant was diagnosed with obstructive kidney stones that created a blockage, necessitating a left nephrostomy tube which he received during his hospital stay at [REDACTED]

The nursing facility representative testified that, on February 8, 2024, the Appellant was deemed independent in all activities of daily living. The Appellant is an adult in his late [REDACTED] who requires a walker and a wheelchair for mobility. The nursing facility representative testified that the Appellant is "medically stable and cognitively intact" and did not require the level of care given by the nursing facility. *See also* Exhibit 5 at 33. The nursing facility representative testified that the Appellant refused care and assistance and often denied being a patient at the nursing facility. Exhibit 5 at 43. The nursing facility representative stated that the Appellant is approved for the Moving Forward Plan (MFP) community-based services waiver program, and she has tried to find housing for the Appellant, specifically at a rest home. However, she testified that the Appellant rejected the housing options brought to him by the social work director because he does not want to pay the patient-paid amount.<sup>1</sup>

The Appellant has been screened for therapy multiple times, but he has declined therapy services due to either claiming he does not need it or stating he would be ready to participate on a later date.

---

<sup>1</sup> "Patient-Paid Amount" pertains only to MassHealth members approved for long-term care in nursing facilities, not rest homes.

The subacute unit nursing manager testified that the Appellant is independent with changing and managing his nephrostomy bag, including purchasing supplies for the bag on Amazon. *See also* Exhibit 5 at 33. The subacute unit nursing manager testified that the Appellant refused to get labs and other tests done for internal radiology to get his nephrostomy bag looked at, and the last labs the Appellant completed were on February 8, 2025. The subacute unit nursing manager testified that the Appellant refused skin checks, nursing assessments, vitals, and blood sugar checks, and he did not utilize the nursing staff as one should in a nursing facility.

The facility's medical director testified that he began seeing the Appellant in February 2025 as the Appellant's primary care physician. Prior to February 2025, the Appellant saw another doctor at the facility. The Appellant "fired" this doctor in February 2025 and began seeing the medical director. The medical director testified that the nursing staff have exhausted themselves trying to get the Appellant to let them help him for the past seventeen months. The medical director stated that the Appellant is difficult to work with and is easily agitated and disrespectful towards the nursing staff if the staff disagree with him. He testified that the Appellant has diabetes, but it is stable because the Appellant uses oral medication that controls his diabetes. The Appellant has chronic diarrhea, which he self-treats with Imodium. The medical director confirmed that the Appellant is independent with activities of daily living and can walk downstairs in the facility to retrieve his Amazon packages. The medical director testified that the Appellant's health has improved sufficiently, and he should be discharged from the nursing facility because he no longer needs its services.

The Appellant verified his identity and testified that he has been unable to attend therapy due to his diarrhea. The Appellant testified that the medical director and other facility staff have done nothing to help him. The Appellant stated that he believes the kidney stones he was diagnosed with at [REDACTED] never existed and were "Medicaid fraud." The Appellant believes the reason they gave him a nephrostomy tube was to "give the nurses something to do" at the nursing facility. The Appellant testified that no one has explained why he has the bag and why it cannot be taken out.

The medical director responded that the obstructive kidney stones were real and necessitated a left nephrostomy tube, and he had the Appellant get X-rays done for his diarrhea. The medical director testified that the X-ray showed the kidney stones were no longer there, but it did not show a cause for the diarrhea. The nursing facility representative responded saying that the kidney stones are no longer acute, and the nephrostomy bag is no longer necessary, but the Appellant refuses to remove it. Exhibit 5 at 36. The Appellant stated that he does not object to the nephrostomy tube being removed but he does not want to receive care at [REDACTED]. The Appellant reiterated his belief that the kidney stones were not real and were merely an excuse to keep him at the hospital and to "keep the nurses [at the nursing facility] busy."

The Appellant testified that he needs to stay at the nursing facility because he requires therapy to help his balance when using the walker. The Appellant stated that, because he has stayed in bed for most of his stay at the nursing facility, his muscles are weaker, and his balance has gotten worse

since his admission. The Appellant testified he needs assistance going to bathroom, and that while he can manage it independently, he fears he will get stuck there eventually due to his balance issues. The director of rehabilitation responded that the staff have offered therapy to him on multiple occasions, most recently on May 20, 2025, but the Appellant has refused, stating he needs time for his body to adjust. Exhibit 5 at 36-38.

The Appellant testified that he is approved for the MFP community-based services waiver program (“waiver program”), which assists in moving individuals from a nursing facility back into the community. The Appellant stated that he was told if he left the nursing facility without finding a place to live beforehand, then he would lose his place and would have to start over. Prior to admission to the nursing facility, the Appellant resided in a group home which he refused to return to because he claimed the food was horrid and caused his diarrhea. The Appellant testified he has no family, friends, or relatives he can stay with, and the apartment he owned prior to the group home was destroyed by a storm. A community transition liaison from the MFP waiver program is working with the Appellant’s case manager. The Appellant testified that he does not have a valid I.D. and therefore cannot stay at a hotel. The Appellant agreed that it is not medically necessary for him to be at the facility, but that he cannot leave until he has a place to go to.

The nursing facility representative testified that the location they plan on discharging the Appellant to, [REDACTED] was the best option due to it being handicapped-accessible and because the Appellant refused to go to a rest home. The nursing representative testified that the MFP waiver program was notified of the Appellant’s discharge and discharge plan. The nursing facility representative testified that the Appellant would be able to receive physical and occupational therapy services through [REDACTED]. The nursing facility representative stated that it was unclear whether the Appellant would lose transitional assistance because the facility received conflicting information from different sources. The Appellant responded that he would be fine moving to [REDACTED] if he can keep his MFP waiver program services because he does not have enough money to stay without those services.<sup>2</sup>

### **Content of the Discharge Notice and Clinical Record**

The discharge notice at issue in this matter contains a statement of the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number 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 (that the facility cannot discharge the Appellant until 30 days after the hearing officer’s decision is rendered), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local

---

<sup>2</sup> The MFP waiver program does not provide cash assistance.

long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibits 1 & 2.

Exhibit 5 contains the Appellant's medical record from the facility. The nursing facility's medical director, [REDACTED] stated that the Appellant is medically cleared for discharge and wrote:

I agree with discharge plan to community as resident is no longer appropriate for long term nursing care. In addition, [the Appellant] does not have acute medical needs that require inpatient [skilled nursing facility] treatment. [The Appellant] is medically stable and cognitively intact and would benefit from a discharge plan in the community. Social [work] setting up home services.

Exhibit 5 at 33. The letter was dated May 23, 2025.

## Findings of Fact

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

1. The Appellant is an adult in his late [REDACTED] and requires a walker and wheelchair for mobility. Testimony; Exhibits 4 & 5.
2. The Appellant is independent for activities of daily living. Testimony; Exhibit 5.
3. The Appellant was admitted to the nursing facility from a hospital for short-term rehabilitation on January 9, 2024. Testimony; Exhibit 5.
4. The Appellant was diagnosed with kidney stones while at [REDACTED] prior to being transferred to the nursing facility, and he had a left nephrostomy tube placed while at the hospital. Testimony; Exhibit 5.
5. Prior to his admission to the facility, the Appellant lived in a group home but he does not want to return there. Testimony.
6. The facility's medical director, who is the Appellant's primary care doctor, testified that the Appellant is independent for his activities of daily living and wheelchair mobility, is "medically stable and cognitively intact," and does not require the level of care provided by the nursing facility and should be discharged. Testimony; Exhibit 5.
7. On April 10, 2025, the nursing facility issued the Appellant a discharge notice, proposing to discharge him on [REDACTED] 2025, to [REDACTED] Exhibit 1.

8. The facility documented discharge planning, including finding an [REDACTED] and arranging for transportation to the hotel. Testimony; Exhibits 1 & 5.
9. The discharge notice contains the action to be taken by the nursing facility, a specific statement of the reasons for the intended discharge, the location to which the Appellant is to be discharged, the effective date of the intended discharge, the right of the Appellant to request a fair hearing on the intended discharge, the address, telephone number 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 (that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is rendered), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman program, and the mailing addresses and telephone numbers of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals. Exhibit 1.
10. On May 9, 2025, the Appellant filed a timely appeal of the discharge notice with the Board of Hearings. Exhibit 2.

## **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 some of 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.

Per 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 pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

Per 130 CMR 456.701(B) and 130 CMR 610.028(B),

(B) 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. The documentation must be made by (1) the resident's physician or PCP when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and (2) a physician or PCP when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

Per 130 CMR 456.701(C) and 130 CMR 610.028(C),

(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, if the resident has made such a person known to the facility, a notice written in 12-point or larger type that contains the following, in a language the member understands:

- (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.

Pursuant to 130 CMR 610.029(B), the notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility as soon as practicable when 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. 130 CMR 610.029(B)(2). See also 130 CMR 456.702(B)(2).

Massachusetts General Laws, c. 111, §70E states, in relevant part:

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.

MGL c. 111, §70E.

Federal regulations provide for "**Orientation for transfer or discharge**. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand." 42 CFR 483.15(c)(7). Federal regulations also provide that when

the facility anticipates discharge a resident must have a discharge summary that includes but is not limited to . . . A post-discharge plan of care that is developed with the participation of the resident and, with the resident's consent, the resident representative(s), which will assist the resident to adjust to his or her new living environment. The post-discharge plan of care must indicate where the individual plans to reside, any arrangements that have been made for the resident's follow up care and any post-discharge medical and non-medical services.

42 CFR 483.21(c)(2)(iv).

Here, the facility has alleged that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the nursing facility. Exhibit 1. The facility's medical director stated that the Appellant's conditions are resolved and that he is medically cleared for discharge. 130 CMR 456.701(B)(1); 130 CMR 610.028(B)(1); Exhibit 5 at 33. The hearing record supports this, with documented evidence that the appellant's kidney stones are gone, and he is at a completely independent level with his activities of daily living and wheelchair mobility. Exhibit 5. The Appellant's concern is primarily with his housing and losing the MFP waiver services, and he did not dispute that he no longer requires nursing-facility level services. The proposed discharge location, [REDACTED] is handicapped-accessible and he can receive occupational and physical therapy services, if needed, through [REDACTED] there. I find that the facility has established that discharge is appropriate under 130 CMR 456.701(A)(2) and 130 CMR 610.028(A)(2). I find that the facility has provided sufficient orientation and preparation to ensure a safe and orderly discharge. I also find that the discharge notice satisfies the regulatory requirements. 130 CMR 456.701(C) and 130 CMR

610.028(C).

Accordingly, the appeal is denied.

## **Order for Nursing Facility**

Proceed with the discharge as set forth in the notice dated April 10, 2025, but not earlier than 30 days 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.

---

Emily Sabo  
Hearing Officer  
Board of Hearings

