

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2507901
<b>Decision Date:</b>	06/26/2025	<b>Hearing Date:</b>	6/16/2025
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearances for Appellant:**



**Appearances for Facility:**

Michelle Figucia, Administrator, Diane Melendez, Business Office Assistant, Lauren McNasby, Social Worker

**Interpreter:**



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Nursing Facility Discharge, Non-Payment
<b>Decision Date:</b>	06/26/2025	<b>Hearing Date:</b>	6/16/2025
<b>Facility's Reps.:</b>	Michelle Figucia, Administrator, Diane Melendez, Business Office Assistant, Lauren McNasby, Social Worker	<b>Appellant's Reps.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote (Tel)	<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

Through a Notice dated May 21, 2025, [REDACTED] (hereinafter "the nursing facility" or "facility") issued a 30-Day Notice of Intent to Discharge Resident to [REDACTED] 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); Exhibit 1). The Appellant filed this appeal in a timely manner on May 21, 2025 (130 CMR 610.015(F); Exhibit 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 MassHealth

The nursing facility issued a 30-Day Notice of Intent to Discharge Resident 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); Exhibit 1)

## Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701, in issuing to the Appellant a 30-Day Notice of Intent to Discharge Resident 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); Exhibit 1)

## Summary of Evidence

The Appellant is an individual under the age of 65 who is seeking appeal of a 30-Day Notice of Intent to Discharge Resident 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); Exhibit 1). Within the submission from the facility is a billing statement, dated April 30, 2025, indicating the amount due is \$19,252.52. (Exhibit 4, pg. 7). The Facility was represented by its Administrator, the Business Office Assistant, as well as a Social Worker. (Testimony). The Appellant represented herself, with her spouse appearing and testifying as well. (Testimony)

Within the submission from the facility is a Social Service Note, dated May 21, 2025, indicating that facility representatives met with the Appellant, the Appellant’s spouse as well as the Appellant’s daughter. (Exhibit 4, pg. 8) The note indicates that a copy of the 30-Day Notice of Intent to Discharge Resident to the Appellant’s home was served. The note confirms the amount due is the same as the April 30, 2025 Statement, \$19,252.52. The note contains a statement that the Appellant’s spouse admitted to paying the mortgage with the money that had been allocated to pay the Appellant’s Patient Paid Amount (PPA). (Exhibit 4, pg. 8)

Within the submission from the facility is a General Notes Report that spans many months. (Exhibit 4). On January 22, 2025, the Appellant’s spouse, along with an elder affairs attorney, met with representatives from the facility. (Exhibit 4, pg. 16) When the facility inquired about payment, the response received was that they would get back to the facility. (Exhibit 4, pg. 16) Follow up inquiry was posed on February 11, 2025, and there was no response. (Exhibit 4, pg.16) Follow up inquiry was posed on February 17, 2025 (Exhibit 4, pg. 15), and on February 18, 2025, the attorney responded that he would attempt to speak with the Appellant’s spouse that week. (Exhibit 4, pg. 15)

On February 26, 2025, that facility made another inquiry regarding payment. (Exhibit 4, pg.15). On March 11, 2025, the attorney responded that the Appellant would seek a retroactive adjustment to the Appellant’s PPA amount through MassHealth<sup>1</sup>. (Exhibit 4, pg. 14) On March

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<sup>1</sup> There is nothing in this administrative record regarding any action of the Appellant regarding a modification to

12, 2025 the Appellant's spouse tendered a \$13,000 payment. (Exhibit 4, pg. 14) On March 17, 2025, the attorney again reasserted the Appellant's position that she would seek an increase to the spousal allowance. (Exhibit 4, pg. 13) On April 4, 2025, the attorney indicated that information related to the request to increase the spousal allowance was submitted to MassHealth and they were awaiting a response. (Exhibit 4, pg. 12) Follow up inquiries were posed by the facility to the attorney on April 7, 2025, April 8, 2025, and April 21, 2025 with no response received. (Exhibit 4, pg. 11)

On April 24, 2025, another inquiry was posed to the attorney regarding payment, and on April 27, 2025, the attorney responded that MassHealth had responded and that there was nothing additional to be done regarding the Appellant's PPA amount. (Exhibit 4, pg. 10-11) The attorney indicated the Appellant's spouse's intent to make payments to the facility "to the extent he is able once his monthly mortgage is paid." (Exhibit 4, pgs. 10-11) The attorney indicated that the Appellant's spouse was preparing the house for sale and intended to pay the facility with proceeds from the sale of the house. (Exhibit 4, pgs. 10-11)

On April 28, 2025, the facility responded that they had been informed by the Appellant on October 10, 2024 that the house had been emptied, and a purchase and sale agreement had been executed<sup>2</sup>. (Exhibit 4, pg. 10) On May 12, 2025, the Appellant informed the facility that the house had a tentative sale date in July of 2025<sup>3</sup>. (Exhibit 4, pg. 9) On May 13, 2025, an additional \$1,000 was paid. On May 21, 2025, the facility met with the Appellant, the Appellant's spouse, as well as the Appellant's daughter. The facility served the 30-Day Notice of Intent to Discharge Resident in hand to the Appellant and the Appellant's spouse. (Exhibit 4, pg. 8, Exhibit 1)

Regarding the appropriateness of the discharge location, the location listed on the Notice is the Appellant's former home. (Exhibit 1) Within the submission from the facility, it is noted that during the meeting in which the Appellant was served the 30-Day Notice of Intent to Discharge Resident, the Appellant's care plans were reviewed and remain appropriate. (Exhibit 4, pg. 8) Additionally, it is noted that referrals for care within the home were made, and social workers remain available as needed. (Exhibit 4, pg. 8)

The Appellant, as well as the Appellant's spouse, testified on behalf of the Appellant. (Testimony). The Appellant stated that they were in the process of selling the house, and although the house had not sold as quickly as they wanted, once the house has sold, the Appellant can then pay the facility. (Testimony) The Appellant stated that the house was scheduled to be sold at the end of July<sup>4</sup>. (Testimony) The Appellant's spouse clarified some of the payments made and stated

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the Appellant's PPA amount. The issue of an adjustment of the Appellant's PPA is not included within this appeal.

<sup>2</sup> No documentation regarding the sale of the home has been submitted.

<sup>3</sup> In a note dated August 22, 2025, the Appellant's spouse indicated that the house was being sold. As of the date of Hearing, the house had yet to be sold.

<sup>4</sup> The Facility lists multiple times the Facility was informed that the Appellant's home would be sold. (Testimony,

that amount due as outstanding was “\$19,000 and change.” (Testimony) The facility stated that there was a concern about receiving the payment and indicated that they would reconsider the discharge if they had something in writing to guarantee payment upon sale of the house. (Testimony). The facility then stated the Appellant could sign over the retirement, so that the facility would be paid directly. (Testimony). The Appellant declined that offer, stating that then she would not be able to pay the mortgage, and the house would not be able to be sold. (Testimony)

## Findings of Fact

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

1. The Appellant is an individual under the age of 65 who is seeking appeal of a 30-Day Notice of Intent to Discharge Resident 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); Exhibit 1).
2. Within the submission from the facility is a billing statement, dated April 30, 2025, indicating the amount due is \$19,252.52. (Exhibit 4, pg. 7).
3. Within a Social Service Note, dated May 21, 2025, information related to a meeting with facility and the Appellant was highlighted. Facility representatives met with the Appellant, the Appellant’s spouse as well as the Appellant’s daughter. (Exhibit 4, pg. 8) The Appellant as well as the Appellant’s spouse was served a copy of the 30 Notice of Intent to Discharge Resident to the Appellant’s home. The Note confirms the amount due is the same as the April 30, 2025 Statement, \$19,252.52. The note contains a statement that the Appellant’s spouse admitted to paying the mortgage with the money that had been allocated to pay the Appellant’s Patient Paid Amount (PPA). (Exhibit 4, pg. 8)
4. On January 22, 2025, the Appellant’s spouse, along with an elder affairs attorney, met with representatives from the facility. (Exhibit 4, pg. 16) When the facility inquired about payment, the response received was that he would get back to the facility. (Exhibit 4, pg. 16) Follow up inquiry was posed on February 11, 2025, and there was no response. (Exhibit 4, pg.16) Follow up inquiry was posed on February 17, 2025 (Exhibit 4, pg. 15), and on February 18, 2025, the attorney responded that he would attempt to speak with the Appellant’s spouse that week. (Exhibit 4, pg. 15)
5. Follow up inquiry was posed on February 17, 2025 (Exhibit 4, pg. 15), and on February 18, 2025, the attorney responded that he would attempt to speak with the Appellant’s spouse that week. (Exhibit 4, pg. 15)

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Exhibit 4)

6. On February 26, 2025, that facility made another inquiry regarding payment. (Exhibit 4, pg.15). On March 11, 2025, the attorney responded that the Appellant would seek a retroactive adjustment to the Appellant's PPA amount through MassHealth. (Exhibit 4, pg. 14)
7. On March 12, 2025 the Appellant's spouse tendered a \$13,000 payment. (Exhibit 4, pg. 14)
8. On March 17, 2025, the attorney again reasserted the Appellant's position that she would seek an increase to the spousal allowance. (Exhibit 4, pg. 13) On April 4, 2025, the attorney indicated that information related to the request to increase the spousal allowance was submitted to MassHealth and they were awaiting a response. (Exhibit 4, pg. 12) Follow up inquiries were posed by the facility to the attorney on April 7, 2025, April 8, 2025, and April 21, 2025 with no response received. (Exhibit 4, pg. 11)
9. On April 24, 2025, another inquiry was posed to the attorney regarding payment, and on April 27, 2025, the attorney responded that MassHealth had responded and that there was nothing additional to be done regarding the Appellant's PPA amount. (Exhibit 4, pg. 10-11) The attorney indicated the Appellant's Representative spouse's intent to make payments to the facility "to the extent he is able once his monthly mortgage is paid." (Exhibit 4, pgs. 10-11) The attorney indicated that the Appeal spouse was preparing the house for sale and intended to pay the facility with proceeds from the sale of the house.(Exhibit 4, pgs. 10-11)
10. On April 28, 2025, the facility responded that they had been informed by the Appellant on October 10, 2024 that the house had been emptied, and a purchase and sale agreement had been executed. (Exhibit 4, pg. 10) On May 12, 2025, the Appellant informed the facility that the house had a tentative sale date in July of 2025. (Exhibit 4, pg. 9)
11. On May 13, 2025, an additional \$1,000 was paid. (Exhibit 4, pg. 9)
12. On May 21, 2025, the facility met with the Appellant, the Appellant's spouse, as well as the Appellant's daughter. The facility served the 30-Day Notice of Intent to Discharge Resident in hand to the Appellant and the Appellant's spouse. (Exhibit 4, pg. 8, Exhibit 1)
13. Regarding the appropriateness of the discharge location, the location listed on the Notice is the Appellant's former home. (Exhibit 1) Within the submission from the facility, it is noted that during the meeting in which the Appellant was served the 30-Day Notice of Intent to Discharge Resident, the Appellant's care plans were reviewed and remain appropriate. (Exhibit 4, pg. 8) Additionally, it is noted that referrals for care within the home were made, and social workers remain available as needed. (Exhibit 4, pg. 8)

## 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.<sup>5</sup>

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.);

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<sup>5</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has 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.

- (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:

- (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:<sup>6</sup>

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<sup>6</sup> 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

(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

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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 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).

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 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.<sup>7</sup>

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<sup>7</sup> 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.

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 the Appellant had failed, after reasonable and appropriate notice, to pay for a stay at the nursing facility (Exhibit 1). The Record adequately supports the facility's position regarding nonpayment (Exhibit 4). 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 (Exhibit 1, Exhibit 4, Exhibit 4, pg. 7, 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. Regarding the appropriateness of the discharge location, the location listed on the Notice is the Appellant's home prior to admission into the facility. (Exhibit 1) Though Appellant and her husband have maintained that they plan to sell the house, they have not offered any documentary evidence to support their claims (repeated over many months) that a sale is imminent. Further, the facility's records indicate that it has engaged in discharge planning to support Appellant's transition to her home in the community. Within the submission from the facility, it is noted that during the meeting in which the Appellant was served the 30-Day Notice of Intent to Discharge Resident, the Appellant's care plans were reviewed and remain appropriate. (Exhibit 4, pg. 8) Additionally, it is noted that referrals for care within the home were made, and social workers remain available as needed. (Exhibit 4, pg. 8)<sup>8</sup> Within this Record, based upon the testimony from the facility as well as the documentary evidence submitted, I find that the requirements of G.L. c. 111, § 70E have been met.

On this Record, the Appellant has not met the burden, by a preponderance of evidence, to show the invalidity of the administrative determination. Accordingly, this appeal is DENIED.

## **Order for Nursing Facility**

Proceed with the planned transfer, to be implemented no less than thirty (30) days after the date of this decision.

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<sup>8</sup> Notably, neither Appellant nor her husband argued that she cannot safely be served in the community with these supports in place.

## 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.

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Patrick Grogan  
Hearing Officer  
Board of Hearings

[REDACTED]