

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2508079
<b>Decision Date:</b>	6/9/2025	<b>Hearing Date:</b>	05/30/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.	<b>Record Open to:</b>	06/04/2025

**Appearance for Appellant:**  
Pro se

**Appearances for Nursing Facility:**  
Sasha-Kay Patrick, Administrator, Lanessa  
Extended Care; Lynn O'Toole, Social Worker,  
Lanessa Extended Care



*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>	Approved	<b>Issue:</b>	Expedited Nursing Facility Discharge
<b>Decision Date:</b>	6/9/2025	<b>Hearing Date:</b>	05/30/2025
<b>Nursing Facility's Reps.:</b>	Sasha-Kay Patrick; Lynn O'Toole	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Springfield Nursing Facility Enrollment Center Room 2 (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

Through a notice dated May 22, 2025, Lanessa Extended Care ("the nursing facility") informed the appellant that it would be seeking to discharge him from the nursing facility in less than 30 days. *See* Exhibit 1; 130 CMR 610.029(B). The appellant filed a timely appeal on May 27, 2025. *See* 130 CMR 610.015(B)(4); Exhibit 2. An attempt to discharge a nursing facility resident is valid grounds for appeal. *See* 130 CMR 610.032(C).

### Action Taken by Nursing Facility

The nursing facility sought to discharge the appellant in fewer than 30 days based on grounds that (1) his health has improved sufficiently so that he no longer needs the services provided by the facility; and (2) the safety of the individuals in the facility is endangered due to his clinical or behavioral status.

## Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

## Summary of Evidence

The skilled nursing facility was represented by its administrator and a social worker; they appeared at the hearing and testified telephonically. The appellant appeared at the fair hearing telephonically and verified his identity. Prior to the hearing, the facility submitted the appellant's clinical record from the facility into evidence<sup>1</sup>. See Exhibit 4.

The discharge notice at issue in this matter contains: a specific statement of the reasons for the intended discharge - (1) the appellant's health has improved sufficiently so that he no longer needs the services provided by the facility; and (2) the safety of the individuals in the facility is endangered due to his clinical or behavioral status; the location to which the appellant is to be discharged [REDACTED] the effective date of the intended discharge [REDACTED] the right of the appellant to request a fair hearing on the intended discharge, the address 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 (*to wit*, that the facility cannot discharge the appellant until 5 days after the hearing officer's decision is received); the name and address of the local long-term care ombudsman office; the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals; the name of the person at the facility supervising the discharge; the name and address of the local legal-services office; and the mailing address of office of the protection and advocacy for developmentally disabled individuals, respectively. See Exhibits 1 and 2.

The appellant was admitted to the nursing facility from a hospital for short-term rehabilitation on [REDACTED] 2024. At the time of admission, the appellant had a heart surgery scheduled in a few weeks, but was experiencing "weakness," and had been transferred from the hospital to his current nursing facility. The appellant was suffering from osteomyelitis of his right foot, type 2 diabetes mellitus with diabetic peripheral angiopathy, substance abuse disorder, COPD, and congestive heart failure, among his other ailments. Exhibit 4. The "Care Plan Report" submitted by the facility as part of the medical record indicates that upon admission, the appellant had an Activities of Daily Living (ADL) deficit related to his COPD and foot ulcer. *Id* at 2. This was the appellant's second admission to his current nursing facility, and on December 18, 2024, the appellant's behavioral problems at the nursing facility related to "Drug and ETOH Abuse History"

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<sup>1</sup> During the hearing, it was discovered that the facility's submission was not received at the Board of Hearings in its entirety and the facility submitted the remaining record during the post-hearing, record open period.

were documented in his medical record<sup>2</sup>. Since his admission, the appellant has participated in physical and occupational therapy at the nursing facility, and according to the submitted record and testimony, the appellant is weight-bearing and can ambulate independently. Testimony and Exhibit 6. The social worker testified that the appellant is under the care of the nursing facility's physician and "medically cleared for discharge." Testimony.<sup>3</sup>

The social worker testified that currently the appellant has no skilled care needs. He entered the facility on a "short-term" screening that expires on June 1, 2025. She stated that at this time, the appellant is functionally independent with ADLs, but she acknowledged that he does require some set-up assistance with bathing, dressing, ambulation, and transfers. The appellant ambulates independently and he leaves the facility for brief trips (shopping, etc.). The appellant has no diagnosed cognitive impairments and he manages own healthcare decisions. Testimony. The appellant was screened by [REDACTED] Aging Services Access Point (ASAP) the day before the hearing, and the nursing facility is awaiting an update from Tri-Valley ASAP regarding a potential extension of the appellant's short-term stay.

The social worker testified that before his admission to the skilled nursing facility, the appellant had been living at a hotel. The social worker stated that the facility had made efforts to help the appellant access both subsidized and independent housing, but that the appellant is not eligible for certain types of housing due to his "CORI issues." Testimony.<sup>4</sup> The appellant is on the list at his preferred discharge location – a long-term homeless shelter, which is [REDACTED] in [REDACTED] however, the social worker reported that the waitlist is over one year and there are no recent updates on availability. The social worker testified that the appellant is unable to return to the hotel that he resided in prior to being admitted to the skilled nursing facility, because of prior conflicts between the appellant and the management of the hotel, and a "health incident" that the appellant suffered while residing there<sup>5</sup>. Testimony.

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<sup>2</sup> The note goes on to state: "[Appellant] is known to make racist, sexual, homophobic and misogynistic comments." See Exhibit 4 at 7.

<sup>3</sup> There is no entry in the appellant's 220-page medical record that was made by the facility physician that states the appellant is medically cleared for discharge. Other than the testimony of the social worker at the hearing, the only reference to the impending discharge of the appellant in the submitted record is on the last page of the medical record, an entry dated [REDACTED] 2025 and marked as a "Late Entry," which states: "This writer has issued a discharge notice for the resident on May 22<sup>nd</sup>, which is effective [REDACTED] as the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility and the safety of individuals in the facility is endangered due to the behavioral status of the resident. The resident has been informed of the right to appeal the discharge decision, and the social worker has been made available to provide assistance with the process. MD notified. Sasha-Kay Patrick, Administrator." See Exhibit 6 at 30.

<sup>4</sup> CORI is an acronym for Criminal Offender Record Information.

<sup>5</sup> After questioning by the Hearing Officer regarding the status of a written discharge plan for the appellant, the Hearing Officer determined that the skilled nursing facility's entire pre-hearing submission had not been completely transmitted to the Board of Hearings. According to the nursing facility representatives, the missing pages included the most recent weeks in the appellant's medical record and the written discharge plan. All parties agreed that the record would be held open at the conclusion of testimony so that the entire pre-hearing submission could be sent to all parties.

In response to the testimony by the nursing facility representatives, the appellant stated that he is currently receiving skilled nursing at the nursing facility because he is undergoing ongoing treatment for a non-healing wound on his right foot. He testified that he has a frequent need for nursing wound care; he receives weekly off-site care at [REDACTED] for wound evaluation and dressing. The appellant stated that he cannot treat his wound himself due to the wound's location on the sole of his foot. He also disagreed with the nursing facility's testimony that he is able to ambulate independently. In reality, he said, he has had "multiple falls" at his current facility, having fallen in the shower and from his bed, and he injured his ankle due to a recent fall. The appellant testified that his physical health is quite poor; he has a history of heart failure and chronic chest pain. When he was admitted to the facility, he was awaiting scheduled heart surgery, but this surgery was postponed due to his foot wound remaining unhealed. He stated that during the recent [REDACTED] screening appointment, the screening nurse had said to him that he likely needs more skilled nursing due to the non-healing wound on his foot.

After questioning, the appellant confirmed that he lost his former apartment due to a kitchen fire that was caused by him fainting from a cardiac event while cooking; as a result, his apartment condemned, and he was unable to return there. After being discharged from the hospital after his apartment fire, he was living at a hotel, but he was evicted from that living situation after another health incident; he stated that his personal belongings were discarded while he was in the hospital. The appellant denied having the support of his numerous family members that live locally. Testimony. The appellant stated that the [REDACTED] shelter waitlist is unresponsive, but he has no realistic immediate alternative for a living situation because his [REDACTED] social worker provided him with unaffordable options. The appellant stated that his current monthly income is approximately \$2,800.00, which he does not believe will allow him to cover a monthly rent.

After concluding the discussion regarding the appellant's medical condition, the Hearing Officer then questioned the nursing facility representatives about the safety and behavioral concerns that are causing the facility to desire to discharge the appellant. The social worker stated that there are several behavioral incidents noted in the appellant's record at the nursing facility. She referenced a specific incident at a resident council meeting where the appellant engaged in loud behavior, used a raised voice, and brandished a walker at other residents. She stated that staff and residents reported that the appellant made threatening comments and gestures at them during the incident, including during a meeting with his [REDACTED] caseworker. Additionally, she referenced two incidents in a single week where staff members felt threatened enough by the appellant to consider calling 911. The social worker did confirm that 911 has never been called to the facility because of the behavior of the appellant. She stated that there is an "ongoing concern about facility safety for the other residents" due to the behavior of the appellant. Testimony.

In response to this testimony, the appellant acknowledged that he has frequently become frustrated while residing at the nursing facility. He stated that his frustration and loud behavior

is due to his lack of success in locating suitable housing. The appellant denied threatening his caseworker, but he did admit to shouting about his dissatisfaction with the nursing facility and the care he is receiving there. He described the resident council incident in great detail and he stated that the incident was a “misunderstanding.” The appellant stated he entered the meeting late, attempted to suggest a new seating arrangement, and then used a walker as measurement tool only, not as a weapon. The appellant claimed that he could provide witnesses from among other residents to refute the allegations, and asserted that the incidents as described by the nursing facility staff are exaggerated.

The appellant closed his testimony by stating that he strongly objects to discharge to a hotel or shelter; he would not feel safe in such a location and he would lack the medical care he needs to prevent his foot wound from worsening. The appellant asked for additional time and assistance to secure safe and appropriate housing; he stated that he can live independently once his medical needs are stabilized. Testimony.

At the conclusion of the hearing, the record was held open until June 4, 2025, so that the nursing facility could submit the rest of the appellant’s medical record, including a written discharge plan for the appellant, and so that the appellant could submit additional evidence that he said was located on his cell phone. On May 30, 2025, the nursing facility submitted 120 pages of records to the Hearing Officer and the appellant via email. Exhibit 6. On June 4, 2025, having received no submission from the appellant, the Hearing Officer closed the administrative record. Exhibit 7.

## Findings of Fact

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

1. The appellant was admitted to the facility in [REDACTED] 2024 for short-term rehabilitation from a hospital. He has diagnoses that include osteomyelitis of his right foot, type 2 diabetes mellitus with diabetic peripheral angiopathy, substance abuse disorder, COPD, and congestive heart failure.
2. The appellant received a Notice of Intent to Discharge Resident with Less Than 30 Days’ Notice (“discharge notice”) dated May 22, 2025. The notice states that the facility seeks to discharge the appellant to [REDACTED] on [REDACTED] 2025. The notice indicates the reasons for the discharge are that “the appellant’s health has improved sufficiently so that he no longer needs the services provided by the facility; and the safety of the individuals in the facility is endangered due to his clinical or behavioral status.”
3. The nursing facility identified a location to which to discharge the appellant, but this location is not accepting new residents for at least a year.

4. According to the appellant's clinical record, he no longer needs physical or occupational therapy, he is able to ambulate independently, and he is independent with his activities of daily living; however, the appellant still requires daily professional wound care for a non-healing wound on the sole of his right foot. A short-term screening of the appellant by [REDACTED] [REDACTED] ASAP is pending as of the date of this decision.
5. The appellant's primary care provider at the skilled nursing facility has not documented in his clinical record that the appellant no longer requires nursing home level of care and that he can safely be discharged to the community.
6. There is no written discharge plan submitted by the facility.
7. The discharge notice at issue contains all the elements required by state and federal regulations. Exhibit 1.

## Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987, now codified at 42 USC §§ 1396r(c), guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. *See* 42 U.S.C. § 1396r; 42 CFR § 483.204 § 483.206. Massachusetts has enacted statutory and regulatory requirements that mirror the federal resident rights protections, which are found in M.G.L. c. 111 § 70E, MassHealth regulations at 130 CMR 456.000 *et seq.*, and 130 CMR 610.00 *et seq.*

The applicable MassHealth regulations set forth the following notice requirements that a nursing facility must provide a resident to initiate a transfer or discharge:

- (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.

See 130 CMR 610.028(A); *see also* 130 CMR 456.701(A).

When a transfer or discharge is necessary under subsections (1) or (2) above, the resident's clinical record must be documented by the "*resident's physician*." See 130 CMR 610.028(B)(1); 130 CMR 456.701(B)(1) (emphasis added). When a discharge is necessary under subsections (3) or (4) above, the resident's clinical record must be documented by "*a physician*." See 130 CMR 610.028(B)(2) (emphasis added).

Typically, the facility must provide the resident with at least 30 days' notice before the date of the intended transfer or discharge. See 130 CMR 610.029(A). In lieu of the 30-day notice requirement, however, the facility may give notice "as soon as practicable," i.e., less than 30-days, in any one of the following circumstances, which would constitute an "emergency discharge:"

- (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.

See 130 CMR 610.029(B); *see also* 130 CMR 456.701(B).<sup>6</sup>

Based on the regulatory authority and in consideration of the evidence in the record, the appellant has demonstrated that the facility issued the 5/22/25 discharge notice in error. While the facility cited proper grounds for an emergency discharge under 130 CMR 610.028(A); specifically, that (1) it considers appellant's behavior to endanger the safety of other individuals in the nursing facility, and (2) that appellant no longer has a medical need to remain at the nursing facility, the evidence shows that, in reality, the appellant is still receiving skilled nursing care on a daily basis for his non-healing right foot wound. There is no certification by the nursing facility physician that the appellant's health has improved to the point that he does not need skilled nursing care. Furthermore, if the facility believes that the appellant no longer has a medical need to remain at the facility, it was unclear at the hearing and from the written record as to the reason why the

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<sup>6</sup> Fair Hearing Rules at 130 CMR 610.028(C) set forth requirements the facility must adhere to related to the format and content of the discharge notices it issues to a resident. A review of the 5/22/25 discharge letter indicates that the facility hand delivered the notice to Appellant; that the letter was presented in a readable format; it included a description of the intended action, the basis for the discharge, the effective date of discharge, and Appellant's right to appeal the discharge notice, among the other enumerated requirements. However, the proposed location for the appellant's proposed discharge is not confirmed and in fact, the appellant is not able to enter [REDACTED] upon discharge from the facility because he is still on the waitlist for [REDACTED]. See 130 CMR 610.028(C). The facility failed to identify a proper discharge location for the appellant.



appellant was screened for short-term eligibility to remain at the nursing facility the day before the hearing. I strongly credited the testimony of the facility representatives and the written record regarding the behavior of the appellant, but in light of the fact that the appellant is still receiving daily skilled nursing care for his non-healing wound, and that he was screened for continuing short-term skilled nursing eligibility the day before the hearing, the appellant's health has not improved sufficiently to allow an immediate discharge of the appellant.

Furthermore, before a nursing facility may discharge a resident, it must comply with the requirements set forth under M.G.L. c.111, §70E, which states the following:

**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.***

The facility proposes to discharge the appellant to a homeless shelter. No written discharge plan was provided by the nursing facility in the pre-hearing period or in the post-hearing, record open period. Testimony and the existing record evidence from both parties indicate that the appellant is on the waitlist for the proposed discharge location and has around a year's wait on that list. The appellant has numerous complex diagnoses and has complications due to his non-healing wound. While the appellant is independent in performing ADLs, he requires a discharge location that is a "safe and appropriate place" due to his ongoing medical issues. I acknowledge the difficulty that exists in securing appropriate housing for someone with the medical and behavioral needs of the appellant, and a homeless shelter may indeed become, by default, an appropriate discharge location.

However, as of the hearing date, the facility did not demonstrate it provided the appellant with sufficient "preparation and orientation" to ensure a safe and orderly discharge to the designated location. *See id.* The appellant is not currently able to enter the designated location. Moreover, there was no evidence presented as to whether the appellant could receive social services during the daytime when the shelter is not accessible to residents, and there was no information provided as to which agency or nursing service, if any, will be performing the daily wound care that the appellant requires. Given the appellant's ongoing medical needs, the lack of evidence that alternative housing options were investigated, and uncertainties about the proposed discharge plan, the facility has not satisfied the standards outlined in M.G.L. c. 111, § 70E, above. Accordingly, the facility's planned discharge is not appropriate at this time. However, if the appellant's behavior at the facility endangers the health or safety of individuals in the nursing facility in the future, the facility may issue a new discharge notice at any time.

The appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the May 22, 2025, Notice of Intent to Discharge Resident with Less Than 30 Days' Notice. The facility may issue a new discharge notice with appropriate discharge planning at any time if the appellant's behavior at the facility endangers the health or safety of individuals in the nursing facility in the future.

## **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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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings

cc: Respondent: Lanessa Extended Care, Attn: Administrator, 751 School Street, Webster, MA 01570