

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2509473
Decision Date:	07/10/2025	Hearing Date:	6/30/2025
Hearing Officer:	Cynthia Kopka	Record Open to:	7/7/2025

Appearance for Appellant:



Appearances for Respondent:



Administrator
, DSS
ADNF
regional social worker



*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:	Denied	Issue:	Expedited nursing facility discharge
Decision Date:	07/10/2025	Hearing Date:	6/30/2025
Respondent's Reps.:	Administrator et al.	Appellant's Rep.:	Pro se
Hearing Location:	Springfield (remote)	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

By notice dated June 20, 2025, South Shore Rehabilitation ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on [REDACTED]. Exhibit 1. Appellant filed a timely appeal on June 24, 2025. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued the notice of intent to discharge Appellant.

Summary of Evidence

Respondent, a skilled nursing facility, was represented by telephone by the administrator, director of social services, regional social worker, and assistant director of nursing services. Appellant

appeared by phone. The hearing record was held open through July 7, 2025 for submission of additional information. Documents were submitted after hearing, Exhibits 4-8. A summary of testimony and documents follows.

By letter dated June 20, 2025, Respondent informed Appellant of its intent to discharge him from the facility to a shelter on June 25, 2025. Exhibit 1. The notice stated that Respondent sought to discharge Appellant for two reasons:

- The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
- The safety of the individuals in the facility is endangered due to the clinical and behavioral status of the resident.

Id. The notice explained Appellant's appeal rights and identified an employee responsible for supervising the discharge. *Id.* The notice included a sheet that provided contact information for the long term care ombudsman, the disability law center, center for public representation, and a local legal assistance office. *Id.* A copy of the notice was not provided to another party. Though the notice is dated June 20, 2025, hand delivery was made on June 24, 2025. *Id.* Respondent's representatives testified that, on June 20, 2025, Appellant had left the facility without signing out and could not be located, causing the delay in delivering the notice of discharge. Appellant denied being out of the facility for more than a few hours. Respondent documented that Appellant left the facility without signing out on June 20, 2025, and was seen leaving as a passenger in a car. Exhibit 4 at 23. A nurse reached Appellant on his phone and eventually learned that he was eating dinner with a friend from out of town. *Id.* Upon his return later that night, Appellant was apologetic and stated he did not know the policy. *Id.* at 22.

Appellant was admitted to the facility on [REDACTED] from an acute care hospital after a motor vehicle accident where Appellant broke his left arm. Exhibit 4 at 2, 55. Appellant was hospitalized and received multiple interventions on his left arm including irrigation and debridement (I&D), open reduction and internal fixation (ORIF) of ulna and olecranon, skin graft, and multiple wound vac changes. *Id.* at 47. Appellant's hospital course was complicated by recurrent acute kidney injury and gastrointestinal bleeding. *Id.* Appellant also had a history of opioid abuse. At the hospital, Appellant received physical therapy (PT) and occupational therapy (OT) with recommendation for continued rehabilitation and therapy. *Id.* When Appellant stabilized, he was discharged to the facility. *Id.* Prior to the accident, Appellant was fully independent with activities of daily living (ADLs) and ambulating with a cane. *Id.* at 48. When seen by psychiatry on June 3, 2025, Appellant required moderate assistance with bathing, toileting, and dressing. He was also experiencing insomnia. *Id.*

Respondent's representatives testified that Appellant's doctor at the facility, [REDACTED], cleared Appellant for discharge on June 20, 2025. Appellant disputed this, arguing that the facility doctor never examined him. Appellant testified later that, the only time Appellant saw the doctor at the

facility, the doctor was not paying attention to Appellant and was not communicating effectively. Appellant felt dismissed by this doctor, who never examined Appellant's arm. Records show numerous examinations made by [REDACTED] Exhibit 4 at 24-26, 28-30, 36-38, 40-42, 44-46, 52-54. Records also show that Appellant was followed by the orthopedic surgery team at [REDACTED] and had appointments at [REDACTED] during his facility stay. *Id.* at 25, 29, 41, 43.

In medical notes, [REDACTED] noted Appellant's disruptive and verbally aggressive behavior towards staff and other residents. *Id.* at 24, 28, 36. Notes from June 6 and June 11, 2025, showed that Appellant was participating in rehab. *Id.* at 36, 40. However, notes from June 18 and June 20, 2025, indicated that Appellant was refusing rehab. *Id.* at 24, 26, 28, 30. The OT notes indicated that Appellant was discharged from OT on June 15, 2025 due to noncompliance. *Id.* at 63.

Appellant argued that his physician at [REDACTED] ordered that Appellant attend PT for six additional weeks. Appellant had believed that the order meant that he would remain in the facility. Appellant testified that he had been receiving PT at the facility, but it stopped. After hearing, Appellant submitted the prescription for therapy from the orthopedic surgeon, which ordered PT/OT 2-3 times per week for 8 weeks as well as wound care. Exhibit 5. On the form is written "in-house therapy." *Id.*

After hearing, the facility provided additional documentation alleging that Exhibit 5 looked as though someone wrote extra information on them. Exhibit 8. The facility obtained and provided copies of the prescription for PT/OT and instructions for wound care from BMC. Exhibit 6-7. The BMC note states

Had a detailed discussion with patient regarding the natural history of his injury. Reiterated smoking cessation, as it can affect his healing potential and increase his risk of infection and other associated complications. Patient states he is interested in continuing PT/OT to work on his hand functionality (ROM, strengthening, etc), but needs a new note with instructions so he may do so. Also discussed the wound care plan per [REDACTED] but needs a new note with instructions so he may do so. Also discussed the wound care plan per [REDACTED], which he should continue to adhere to, included below. Provided patient with a new PT/OT script for home PT/OT, as well as a new note for his facility stating he is in continued need of wound care and PT/OT. Discussed seeing [REDACTED] in 2 weeks, with plans to fu in fracture clinic with [REDACTED] in 6 weeks with repeat xrays. All questions answered to the best of our ability. Patient was understanding and in agreement with plan.

Exhibit 7 at 5. The note indicates that Appellant had been doing the daily dressing changes himself. *Id.* at 4. The wound care instructions were washing with soap and water, applying bacitracin, and dry dressing for protection. *Id.* at 5.

Respondent's representatives testified that Appellant was also being discharged for safety concerns. Respondent's representatives alleged that Appellant cursed and threatened staff, threw glasses, pounded on the administrator's door, and used slurs. *Id.* at 20-23. Appellant denied each of these allegations and argued that the facility representatives were lying. Appellant testified that he has never threatened anyone and is not violent. Appellant testified that if anything, he threw his newspaper down but never threw a glass. Appellant argued that he was writing down the names of facility staff who he observed sleeping when people needed to get medication. Appellant was writing down the names to provide to the administrator. Appellant believed that this is the reason the facility wants him gone. Appellant argued that he has been upset because he has a bad roommate that does not shower, which increased Appellant's anxiety. A nursing note dated June 25, 2025 indicates that Appellant complained about his roommate's odor to staff, swearing and stating that his roommate smelled "like Iraq." *Id.* at 18. The records provided by Respondent are replete with references to Appellant yelling and cursing at staff and residents, using prejudiced language, refusing to follow rules and orders, and being difficult to redirect. These examples are documented by many different authors. Exhibit 4 at 8, 11, 13, 14, 15, 18, 19, 20, 23, 26, 27, 30, 31, 35, 39, 51. Records also indicate that Appellant is able to take frequent leaves of absence from the facility for hours. *Id.* at 5, 11, 12, 22-23.

Regarding discharge planning, Respondent's director of social services testified that she met with Appellant on June 4, 2025 for a 72 hour meeting and offered a referral to the community transition program. Exhibit 4 at 43. Respondent's representatives testified that Appellant has a case worker through his insurance with whom he can consult with for housing. A social services note dated June 17, 2025 indicated that Appellant's insurance case manager called and asked to be included in the discharge plan meeting. *Id.* at 31. On June 23, 2025, the director of social services spoke with the case manager, who agreed to help Appellant get a primary care physician, psychiatrist, and therapist in the community. *Id.* at 22. Notes indicate that the case worker found a PCP for Appellant on June 26, 2025. *Id.* at 14. Respondent's representatives testified that for discharge planning, Respondent would assist Appellant in setting up an appointment with the PCP and arrange transportation to the shelter from the facility. Notes in Respondent's submission include references to the DSS's attempts to secure a PCP appointment for Appellant. *Id.* at 20-21.

Respondent's representatives testified that they set up a meeting with Appellant to discuss discharge on June 24, 2025, but Appellant refused to participate and became angry and hostile. Appellant denied these assertions, arguing that Respondent's representatives were lying. Appellant argued that he has not had a meeting but conceded that he may have refused to participate in such a meeting. Respondent's records show that staff scheduled a discharge meeting with Appellant and his case manager on June 24, 2025. Notes indicated that Appellant was irate and yelling at the meeting and left early. *Id.* at 21. The administrator wrote that Appellant angrily kicked her door and yelled racially charged comments. *Id.* at 20-21. The administrator wrote that she has witnessed Appellant display threatening and intimidating behavior towards staff, creating an unsafe and uncomfortable environment. *Id.* at 20.

Appellant testified that he cannot be discharged to a shelter because he is in his [REDACTED] with a bad arm and cannot defend himself. Appellant is not ready to leave so soon. Appellant has had a skin graft on his left arm and has lost feeling in his hand. Appellant argued that he is on new medication and was not ready to participate in the hearing. Appellant does not have family or friends with whom he can stay. Prior to his admission, he was living in his car. Appellant had lived with his girlfriend of 13 years, but she was being evicted from her residence on [REDACTED]. *Id.* at 14. [REDACTED]'s note from June 20, 2025, indicated that Appellant was scheduled for discharge the next week and Appellant was not happy about it because he has no place to go. *Id.* at 24.

Findings of Fact

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

1. By letter dated June 20, 2025, Respondent informed Appellant of its intent to discharge him from the facility to a shelter on June 25, 2025. Exhibit 1.
2. The notice stated that Respondent sought to discharge Appellant for two reasons:
 - The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
 - The safety of the individuals in the facility is endangered due to the clinical and behavioral status of the resident.

Id.
3. The notice explained Appellant's appeal rights and identified an employee as the person responsible for supervising the discharge. The notice included a sheet that provided contact information for the state long term care ombudsman, the disability law center, and legal assistance offices. *Id.*
4. Appellant filed a timely request for hearing on June 24, 2025. Exhibit 2.
5. Appellant was [REDACTED] from an acute care hospital after a motor vehicle accident where Appellant broke his left arm. Exhibit 4 at 2, 55.
6. Appellant was hospitalized and received multiple interventions on his left arm including I&D, ORIF of ulna and olecranon, skin graft, and multiple wound vac changes. Appellant's hospital course was complicated by recurrent acute kidney injury and gastrointestinal bleeding. Appellant also had a history of opioid abuse. *Id.* at 47.
7. The facility physician, [REDACTED] cleared Appellant for discharge on June 20, 2025. *Id.* at 24-

26.

8. Appellant was discharged from OT on June 15, 2025 for noncompliance. *Id.* at 63.
9. Records indicate that Appellant is able to take frequent leaves of absence from the facility for hours. *Id.* at 5, 11, 12, 22-23.
10. On July 3, 2025, Appellant's orthopedic physicians at [REDACTED] ordered PT/OT 2-3 times per week for 8 weeks, as well as wound care. Exhibit 5.
11. The medical record from the July 3, 2025 visit indicated that the prescription was for home PT/OT. Exhibit 7 at 5.
12. For wound care, the July 3, 2025 record indicated that Appellant had been doing his own dressing changes. The wound care instructions were washing with soap and water, applying bacitracin, and dry dressing for protection. *Id.* at 4, 5.
13. The records provided by Respondent included multiple references from different authors regarding Appellant yelling and cursing at staff and residents, using prejudiced language, refusing to follow rules and orders, and being difficult to redirect. Exhibit 4 at 8, 11, 13, 14, 15, 18, 19, 20, 23, 26, 27, 30, 31, 35, 39, 51.
14. Regarding discharge planning, Respondent's records include references to meetings, referrals, and appointments relating to discharge. *Id.* at 14, 20-21, 22, 31, 43.

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.

When the facility transfers or discharges a resident, the resident's clinical record must contain documentation to explain the transfer or discharge. 130 CMR 456.701(B); 130 CMR 610.028(B). If the discharge is necessary because the resident's health has improved, the documentation explaining the discharge must be made by **the resident's physician or PCP**. 130 CMR 456.701(B)(1), 130 CMR 610.028(B)(1). If the discharge is necessary because the safety of individuals in the nursing facility is endangered, the documentation explaining the discharge must be made by a physician or PCP. 130 CMR 456.701(B)(2), 130 CMR 610.028(B)(2)

Prior to discharge or transfer, 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, in a language the member understands, the following:

- (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

III 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.

130 CMR 610.028(C).

The notice of discharge or transfer must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred except in certain circumstances identified in 130 CMR 610.029 (*see also* 130 CMR 456.702(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.

(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).

Per 130 CMR 610.032(C), a nursing facility resident has the right to request an appeal of any nursing-facility initiated transfer or discharge. A nursing facility resident must appeal a written notice of an emergency discharge pursuant to 130 CMR 610.029(B) within 14 days. 130 CMR 610.015(B)(5).

Further, Mass. Gen. Laws ch. 111, §70E provides that “[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.” Finally, federal regulations require that a nursing facility “**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) (emphasis added).

In this matter, Respondent initiated an emergency discharge. The notice at issue is sufficient and cites permissible reasons for the discharge pursuant to 130 CMR 456.701(A)(2) & (3) and 130 CMR 610.028(A)(2) & (3), and permissible reasons for an emergency discharge pursuant to 130 CMR 610.029(B)(1) & (2) and 130 CMR 456.702(B)(1) & (2). Appellant’s physician documented the discharge on both of the cited grounds. Respondent’s testimony and records show attempts to engage Appellant in discharge planning.

Regarding health improvement, Appellant argued that he continues to require PT and wound care. Appellant provided a note from BMC with this order. However, though the order has written on it “in-house therapy,” the accompanying medical records indicate that the PT/OT prescription is for home therapy. Additionally, while Appellant requires daily wound care, the records indicate that Appellant had been doing his own wound care. The ordered care involves washing, applying bacitracin, and wrapping when needed. The orders from BMC do not indicate that this wound care must be done in a facility as opposed to in the community or by a visiting nurse. Appellant’s documentation is not sufficient to show that he continues to need skilled facility services.

Regarding safety, Respondent has adequately documented numerous incidents of Appellant’s abusive and intimidating behavior. Appellant denied this, arguing that he is not violent. Respondent’s records include ample support that Appellant’s behavior creates a threatening and hostile environment to residents and staff.

In all, Respondent’s testimony was more credible than Appellant’s and was supported by records. Appellant has not presented evidence showing that Respondent violated its obligations when issuing the discharge notice. Accordingly, this appeal is denied. Respondent may go forward with

the discharge after the stay as set forth in 130 CMR 456.704(B).¹

Order for Respondent

Proceed with the discharge as set forth in the notice dated June 20, 2025 after a five-day stay 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: Respondent: [REDACTED]

¹ Earlier versions of 130 CMR 456.704(B) and 130 CMR 610.030(B) allowed for a five-day stay after a hearing decision for discharges issued on an emergency basis. The current revisions of 130 CMR 456.704(B) and 130 CMR 610.030(B) do not appear to contain the correct reference to the regulation for an emergency discharge, presumably due to a drafting error.