

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

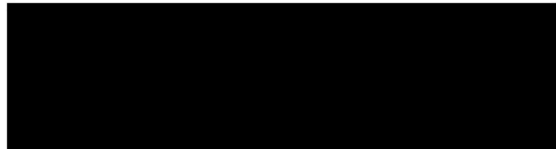


<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2511266
<b>Decision Date:</b>	09/11/2025	<b>Hearing Date:</b>	08/20/2025
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**



**Appearance for Nursing Facility:**



*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>	SNF Discharge
<b>Decision Date:</b>	09/11/2025	<b>Hearing Date:</b>	08/20/2025
<b>SNF's Rep.:</b>	Stephen Calvin	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Springfield MEC		

## Authority

This hearing was conducted pursuant to federal law and regulations at 42 U.S.C. §1396r and 42 CFR 483.10-483.206 and Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

The nursing facility served Appellant with notice dated July 18, 2025 of its intent to discharge Appellant on the grounds that the transfer is necessary for the resident's welfare and the resident's needs cannot be met by the (Exhibit A).<sup>1</sup> Appellant filed this appeal in a timely manner on March 4, 2003 (see 130 CMR 610.015 and Exhibit A1). Discharge of a nursing-facility patient constitutes valid grounds for appeal (see 130 CMR 610.028(A); 42 CFR Ch. IV, 483.200 et seq.).

Since the request for the hearing was received by the Board of Hearings during the notice period described in 130 CMR 610.015(B), the nursing facility must stay the planned discharge or transfer until 30 days after this decision is rendered. While the stay is in effect, the resident shall not be transferred or discharged from the nursing facility [see 130 CMR 610. 030(A)].

---

<sup>1</sup> The subject notice came in the form of an expedited appeal (less than 30-day's notice) which was not recognized by BOH because the grounds for discharge as stated in the notice do not constitute a proper basis for an expedited appeal (130 CMR 610.029(B)). Further into the subject notice, however, the SNF also indicated (by circling form a list of grounds) that the grounds for the discharge were, "[t]he resident's health has improved sufficiently so the resident no longer needs the services provided by the facility (Exhibit A). The ambiguity on the asserted grounds was not accepted by BOH in the SNF's favor. Accordingly, the notice was treated as a standard Intent to Discharge with 30-Day's Notice.

## **Action Taken by the Nursing Facility**

The nursing facility notified Appellant that it seeks to discharge him from the nursing facility.

## **Issue**

Whether or not the nursing facility can proceed to discharge Appellant under notice of July 18, 2025.

## **Summary of Evidence**

The facility representatives testified that Elder Services recently reviewed Appellant's clinical case and determined that he no longer qualifies for Long Term Care as he no longer requires any skilled nursing services.

The facility representatives referred to their packet of documentation citing a physician's note that Appellant is appropriate for discharge to the community (Exhibit B, page 15); nursing notes indicating Appellant is independent with all of his activities of daily living (ADL's) and is not receiving any nursing services of any kind (Exhibit B, page 39); and a BIM score of 15/15 indicating that Appellant's cognition is fully intact (Exhibit B, page 48).

As stated in the notice, the plan is to discharge Appellant to a local shelter. Appellant has been and will continue to be followed by his medical providers in the community and his next medical appointments have already been scheduled for him by the facility. Insofar as Appellant does not require any skilled services at this time, there is no plan to send him to the shelter with services such as VNA.

Upon questioning by the hearing officer, Appellant stated he had nothing to say. When prodded further, Appellant stated that he thought his placement at the facility was permanent.

## **Findings of Fact**

Based on a preponderance of the evidence, this record supports the following findings;

1. Appellant is a resident of a nursing facility.
2. Elder Services recently reviewed Appellant's clinical case and determined that he no longer qualifies for Long Term Care as he no longer requires any skilled nursing services.
3. Appellant's clinical record contains a physician's note stating that Appellant is

appropriate for discharge to the community (Exhibit B, page 15); nursing notes indicating Appellant is independent with all of his activities of daily living (ADL's) and is not receiving any nursing services of any kind (Exhibit B, page 39); and a BIM score of 15/15 indicating that Appellant's cognition is fully intact (Exhibit B, page 48).

4. As stated in the subject notice, the plan is to discharge Appellant to a local shelter.
5. Appellant has been and will continue to be followed by his medical providers in the community and his next medical appointments have already been scheduled for him by the facility.
6. Insofar as Appellant does not require any skilled services at this time, there is no plan to send him to the shelter with services such as VNA.

## Analysis and Conclusions of Law

The issue on appeal is limited to whether the nursing facility is acting in compliance with federal and state law governing the discharge of nursing facility residents in its attempt to discharge Appellant.

Massachusetts's regulations at 130 CMR 610.028, which embody federal regulations at 42 CFR Ch. IV §483.12, require the following:

### Notice Requirements Regarding Actions Initiated by a Nursing Facility

*(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.*

*(B) When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The documentation must be made by:*

*(1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and*

*(2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(4).*

*(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 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 Division 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.*

*(D) As provided in 130 CMR 456.429, a nursing facility's failure to readmit a resident following a medical leave of absence will be deemed a transfer or discharge (depending on the resident's circumstances). Upon determining that it will not readmit the resident, the nursing facility must issue notice to the resident and an immediate family member or legal representative in accordance with 130 CMR 456.701(A) through (C), 456.702, and 610.028 through 610.030.*

The nursing facility has set forth proper and adequate grounds to discharge Appellant.

This record supports a finding that grounds for discharge have been properly supported and all of the requirements on 130 CMR 610.028 have been met. The nursing notes indicate Appellant is independent with all ADLs and is not receiving any skilled nursing service(s). Elder Services has reviewed Appellant's clinical case and determined that he does not require any skilled nursing services. A letter from Appellant's physician indicates that Appellant is appropriate for discharge to the community. Appellant did not dispute these determinations in any way.

Given that Appellant is independent with all ADL's and does not require skilled nursing services and his physician has signed off on the appropriateness of his discharge to the community, it is reasonable to conclude that Appellant's discharge would be safe and orderly (M.G.L. c.111, §70E).

## **Order for the Nursing Facility**

Proceed with intent to discharge pursuant to notice of July 18, 2025; however, Appellant may not be transferred prior to thirty days from the date of this decision unless he consents to do so.

## 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.

---

Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

Respondent: 