

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2512027
Decision Date:	9/24/2025	Hearing Date:	09/05/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearances for Nursing Facility:
Andrew Mbugua – Administrator
Rose Juko, RN – Dir. Of Nursing
Louis Joseph, RN – Unit Manager
Renee Smith – Regional BOM



*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:	Nursing Facility Discharge; Payment
Decision Date:	9/24/2025	Hearing Date:	09/05/2025
Nursing Facility's Reps.:	Andrew Mbugua; Rose Juko, RN; Louis Joseph, RN; Renee Smith	Appellant's Rep.:	Pro se
Hearing Location:	Telephonic	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

Through a 30 Day Notice of Intent to Discharge Resident dated July 18, 2025, the respondent nursing facility informed the appellant that it would discharge him to a specific homeless shelter on [REDACTED] 2025. (Exhibit 1.) The appellant filed this timely appeal on August 16, 2025. (Exhibit 1; 130 CMR 610.015(B).) Nursing facility-initiated discharges are valid grounds for appeal. (130 CMR 610.032(C).)

Action Taken by Nursing Facility

The nursing facility seeks to discharge the appellant to a homeless shelter because he has "failed, after reasonable and appropriate notice, to pay for (or to have failed to have Medicare or Medicaid pay for) your stay at the nursing facility." (Exhibit 1.)

Issue

The appeal issues are whether: (1) the facility has valid grounds to discharge the appellant; (2) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028, .029, .062; and (3) the facility has provided sufficient preparation and

orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place pursuant to MGL Ch. 111, § 70E.

Summary of Evidence

The appellant has resided in the nursing facility since the spring of 2024. The appellant was covered by MassHealth in the community, but the nursing facility had some difficulty getting the appellant to complete a conversion application after his short-term eligibility expired. The appellant was expected to start paying a patient-paid amount (PPA) that equates to his gross monthly income, less certain allowable deductions. When the nursing facility informed the appellant that he would need to start paying a PPA, he stopped cooperating with the MassHealth conversion application for coverage.

In January 2025, the Vice President of Finance for the nursing facility came to an agreement with the appellant. If the appellant completed the MassHealth application for coverage, the nursing facility would waive the appellant's PPA from November 2024 through April 2025. The appellant planned to use this time to save funds to help secure housing in the community, and he agreed to start paying a PPA as of May 1, 2025. The appellant was approved for long-term care benefits, and his PPA was set at \$1,421.20 per month. The appellant has never paid his PPA. As of July 1, 2025, the appellant owed the nursing facility \$4,263.60, not including the 6 months of PPA the nursing facility had already waived. (Exhibit 3, pp. 3, 9.)

Prior to hospitalization, the appellant had been living in a homeless shelter. The appellant's medical history includes: pain in left foot; type 2 diabetes mellitus complicated by diabetic neuropathy; chronic right lower extremity infections, including a right knee septic arthritis and right calf abscess; coronary artery disease status; hypertension; hyperlipidemia; heart failure; and muscle weakness, amongst other conditions. (See Exhibit 3, pp. 23, 29.)

The Director of Nursing at the facility testified that the appellant is able to manage his own blood sugar, and the appellant generally manages his own wound care. The appellant generally refuses to allow staff to assist him. The appellant uses a wheelchair, but he independently transfers himself into and out of it, and he uses the bathroom independently. The nursing facility's representative felt that the appellant would have discharged himself if he had housing available in the community. The director of nursing testified that the appellant uses a wheelchair to get around, but he can self-transfer in and out of the chair. In her medical opinion, the appellant could reside in a homeless shelter given his limitations. The Director of Nursing testified that the physician at the nursing facility was aware of the discharge and agrees with it, but there is nothing explicitly documenting a physician's opinion one way or the other regarding the decision to discharge the appellant to a shelter.

The appellant agreed that he is capable of self-administering his medications and that he likes to take care of himself. The appellant testified that he has been searching for housing, but that he has not been provided with a social worker to help him in his housing search. The appellant argued

that the nursing facility's social worker should not be called a social worker because she does not do anything. The appellant testified that the social worker had told him that she does not find housing for residents, and she only provided him with a list of shelters. The appellant has had an appointment with a social worker from an outside organization but has been unable to find housing himself.¹

The appellant testified that he cannot pay the entire PPA because he has a storage unit for which he must pay \$400 per month, and it includes his entire life. The appellant testified that he offered to pay half of the PPA, but the facility rejected him after they had already agreed to waive the initial first 6 months of PPA. The appellant testified that he has nothing saved because he spends the remainder of his income on food because the facility's food is inedible. The appellant testified that he does not want to reside in a shelter because he has had bad experiences at shelters before. The appellant testified that he has been attacked and robbed in shelters. The appellant testified that shelters are not fit for anyone to live in. When asked directly, the appellant confirmed that his objection to a shelter was not based on his medical conditions, but rather on the conditions of the shelters themselves.

Findings of Fact

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

- 1) The appellant is currently covered by MassHealth long-term care benefits. (Testimony by nursing facility representatives.)
- 2) The appellant owes the facility a PPA of \$1,421.20 per month per month, which he refuses to pay. (Exhibit 3, pp. 10-11; testimony by the nursing facility's representatives and the appellant.)
- 3) The nursing facility waived 6 months of PPA in order to secure the appellant's cooperation in applying for long-term care coverage, and to give the appellant the opportunity to save some money to secure community housing. (Testimony by the nursing facility's representatives; Exhibit 3, p. 3.)
- 4) As of July 1, 2025, the appellant owed the nursing facility \$4,263.60. (Exhibit 3, pp. 3, 7.)
- 5) The appellant does not intend to pay the entirety of his PPA. (Testimony by the appellant.)

¹ The appellant listed the local long-term care ombudsman organization as his appeal representative. No one was available at that number to participate in the hearing, and the appellant confirmed that he had not heard from anyone there that they would be representing him during this appeal.

- 6) The appellant is wheelchair bound, but he is independent with his mobility, toileting, medication management, and wound care. (Testimony by the appellant.)
- 7) The appellant does not object to being discharged to a shelter for medical reasons, but he does not believe anyone should be forced to live at a homeless shelter. (Testimony by the appellant.)

Analysis and Conclusions of Law

A nursing facility may only discharge or transfer a resident for one of six reasons:

- (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.

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

When the transfer or discharge is for one of the first five reasons, the nursing facility must also document the basis for the transfer or discharge in the resident's clinical record. (130 CMR 610.028(B); 130 CMR 456.701(B).) Further, the documentation must be made by either the resident's physician for the first two reasons, or a physician for the third or fourth reason. (130 CMR 610.028(B).) Non-payment does not need to be documented by a physician.

The discharge notice must be hand delivered to the resident and mailed to a designated family member, and it must state 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'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.);

(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 456.701(C).)

A nursing-facility resident who requests a hearing to dispute their discharge "pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility ... 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."² (M.G.L. ch. 111, § 70E.) The nursing facility is responsible for ensuring "that the relevant portions of an appellant's resident record are present at the hearing and that the appellant has adequate opportunity to examine such records before and during the hearing upon reasonable request." (130 CMR 610.062(E).)

² The term "referee" in the statute refers to a Board of Hearings hearing officer.

The nursing facility has already waived 6 months of PPA in an effort to secure the appellant's cooperation and to give the appellant the opportunity to save some money to facilitate his return to the community. The appellant agrees that he has not paid his full obligation to the nursing facility, and he expressed no intention of doing so going forward. Therefore, the nursing facility has legitimate grounds to pursue a discharge of the appellant.

The appellant identified no deficiencies in the facility's discharge notice. The notice provides all of the required information for a discharge notice. Further, the appellant contacted the local long-term care ombudsman to seek assistance, though the organization was unable to participate in the hearing. The nursing facility has submitted the relevant portions of the appellant's clinical record, including documentation of his nonpayment of his PPA.

Finally, a financial discharge does not require specific documentation by a physician, though the facility must establish that the discharge is to a safe and appropriate location. The appellant argues that a homeless shelter is not safe and appropriate for anyone, but he offered no reason based on his medical conditions why he cannot be discharged to the identified shelter. The Director of Nursing from the nursing facility testified that it was medically appropriate for the appellant to be discharged to a shelter. In the absence of any evidence or argument to the contrary, this appeal is DENIED.

The nursing facility may proceed to discharge the appellant no sooner than 30 days after the date of this decision, pursuant to 130 CMR 610.030(A).

Order for the Nursing Facility

Proceed with discharge no sooner 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

