

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2512821
<b>Decision Date:</b>	10/16/2025	<b>Hearing Date:</b>	10/08/2025
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.	<b>Record Open to:</b>	10/09/2025

**Appearance for Appellant:**

*Pro se*

**Appearances 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>	Approved	<b>Issue:</b>	Nursing Facility Discharge
<b>Decision Date:</b>	10/16/2025	<b>Hearing Date:</b>	10/08/2025
<b>Nursing Facility Reps.:</b>	Shawn Everly, <i>et al.</i>	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Quincy Harbor South 5 (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 August 28, 2025, [REDACTED] (“the nursing facility”) informed the appellant that it sought to discharge her from the facility because she failed, after reasonable and appropriate notice, to pay for services rendered at the facility. *See* 130 CMR 610.028 and Exhibit 2. On September 3, 2025, the appellant filed a timely appeal of the discharge notice. *See* 130 CMR 610.015(B) and 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 because it determined that after reasonable and appropriate notice, she failed to pay, and/or failed to have Medicare or Medicaid pay for, her nursing facility care.

## Issue

Is the planned discharge correct pursuant to 130 CMR 610.028?

## Summary of Evidence

The nursing facility was represented by its facility administrator, its director of social services, and a business office associate; they testified telephonically. The appellant appeared at the fair hearing telephonically and her identity was verified. Prior to the hearing, the facility submitted the appellant's clinical record from the facility and the facility's financial ledger of the appellant's account at the facility into evidence. See Exhibit 4.

The discharge notice at issue in this matter contains: a specific statement of the reasons for the intended discharge, the location to which the appellant is to be discharged ("Home"), 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 30 days after the hearing officer's decision is received), the name of the nursing facility employee responsible for supervising the appellant's discharge, and the name and phone number of the facility social worker. The discharge notice does not contain the name and address of the local legal-services office, the name and address of the local long-term care ombudsman office, and the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals, respectively. See Exhibits 1<sup>1</sup> and 2.

Based on testimony and documentary submissions, the nursing facility presented the following evidence: The nursing facility asserts that "The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility." Exhibit 1. The appellant is over the age of [REDACTED] and was admitted to the nursing facility in early [REDACTED] following complications with severe lymphedema. Exhibit 4 at 143. Her medical diagnoses include major depressive disorder, morbid obesity, hypertension, severe osteoarthritis in both knees, fibromyalgia, hypothyroidism, chronic wounds on her lower extremities, and fibrosis of the skin. *Id.* at 57.

The appellant has a limited ability to ambulate and uses a wheelchair primarily when she does move around, but she spends most of her time in bed. Testimony; *Id.* at 62. The appellant requires a Hoyer lift for transfers and is a "two-person assist" to turn in her bed. *Id.* at 109. The appellant is frequently incontinent as to her bladder due to her physical limitations and is "dependent" as to toileting. *Id.* at 111. The appellant "cannot bear weight on either leg," and she has a history of falls. The appellant experiences shortness of breath when lying flat, and she

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<sup>1</sup> Exhibit 1 consists of two pages; the bottom right corner of each page is numbered Page 1 of 3 and Page 2 of 3, respectively, and the missing Page 3 may contain this information but it was not submitted to the Board of Hearings, and this Hearing Officer cannot speculate as to the contents of Page 3 of 3; therefore the Discharge Notice as submitted to the Board of Hearings is lacking in several of the required criteria.

has edema with pitting on both of her lower legs. *Id.* at 120, 125. As a result of her limited mobility, the appellant is dependent on caregivers to perform activities of daily living (ADLs) for her. Testimony.

The facility administrator testified that the nursing facility is seeking to discharge the appellant because she has accumulated an unpaid balance at the facility. As of the date of the hearing, the appellant owes \$6,341.80 to the nursing facility. The appellant is a Long-Term Care (LTC) MassHealth recipient and each month, the appellant owes \$1,960.20 to the nursing facility; this amount constitutes the appellant's Patient-Paid Amount (PPA)<sup>2</sup>. The facility submitted several billing statements in support of their position. *See* Exhibit 4.

The August 2025 statement shows all charges by the nursing facility and all payments made by the appellant since August 2024<sup>3</sup>. *See* Exhibit 4 at 6. This statement indicates that beginning in August 2024, the appellant was charged \$1,910.20 for her PPA on the first of each month; a payment for that amount was made by the appellant on the first of each month August 2024-October 2024. The appellant was charged for her PPA on November 1, 2024; the appellant did not make a payment to the facility in November 2024. On December 18, 2024, the appellant made a payment in the amount of \$1,822.40; this amount was applied to her balance for November 2024. On December 1, 2025, the appellant had a balance of \$2,000.00. The appellant made a payment of \$2,000.00 to the nursing facility on 12/9/2025. On January 1, 2025, the appellant was again charged \$1,910.20 for her January 2025 PPA; the appellant's payment for her January 2025 PPA was made on 1/24/2025. *Id.* The appellant was charged \$1,910.20 for her PPA on February 1, 2025, March 1, 2025, and April 1, 2025. *Id.* The appellant did not make payment to the facility from January 24, 2025, until May 22, 2025. *Id.*

The facility administrator confirmed that since May 2025, the appellant had been paying her PPA to the nursing facility without issue, but that she refuses to pay her outstanding PPA balance. The facility staff believes that the appellant is having trouble with her finances because the appellant's sister, with whom she resided in the community, is also a resident of the nursing facility and a LTC MassHealth recipient; the appellant manages her sister's finances and the finances of their shared home in the community, and there is no longer enough money between the sisters to pay their respective PPAs, and the bills at their home in the community. Testimony.

The appellant then offered testimony. She acknowledged that she and her sister are both residents of the nursing facility; they were both informed by facility staff of their PPA obligations, and they both agreed to "auto-payment" arrangements<sup>4</sup>. She stated that at first,

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<sup>2</sup> All of a MassHealth-recipient nursing home resident's income, less certain deductions, must be paid to the nursing facility, as the so-called Patient-Paid Amount (PPA); MassHealth then pays the balance of the monthly nursing facility cost. *See* 130 CMR 520.026.

<sup>3</sup> The appellant's PPA was adjusted by MassHealth via notice dated January 9, 2025; and again via notice dated March 11, 2025. *See* Exhibit 4 at 7; 10.

<sup>4</sup> *See* Exhibit 4 at 20. This is the Auto-Payment agreement the appellant signed a "Recurring Payment Authorization

“things went along very, very, very well.” Testimony. The appellant stated she was first informed of a billing issue in May 2025; she stated that initially, she thought that this issue related to her sister’s account, not the appellant’s. The appellant claims that she was told “later” that her payments for January-April 2025 were not made. The appellant feels that this is due to an error with the nursing facility’s billing system; she always pays her bills. The appellant then testified in detail about how she transfers funds between her sister’s bank account and her own bank account to pay their bills each month. The appellant stated that she is concerned that her sister’s bank account shows no payments being made to the facility, and the appellant believes that the nursing facility has withdrawn \$13,000.00 from her own account for her sister’s charges, and she now has overdrafts and she cannot pay her outstanding balance.

The facility administrator responded that the appellant manages her finances and her sister’s finances; the facility believes that the appellant had been using both of their incomes to pay their bills in the community, including the mortgage on their condominium; the appellant’s sister did not become a LTC MassHealth recipient until August 2025, and since then, the appellant’s sister’s PPA has been paid directly to the facility. The facility administrator acknowledged that deductions by the facility that were not timely against the appellant’s account (*i.e.*, later in the month rather than on the first of the month), may have led to confusion and financial issues for the appellant, but the appellant signed an auto-draft payment agreement with the nursing facility, and she is expected to maintain appropriate funds in her account to pay her PPA.

The appellant responded by stating that she is not refusing to pay her bills; she cannot pay her outstanding balance to the facility because there are accounting issues with the facility’s management of her account that need to be resolved. She stopped her payments in February 2025 because of this confusion. The appellant asserted that she is owed \$13,000.00 by the facility. If the facility provides a “full accounting” of her account with the facility, she can pay her outstanding bill to the nursing facility. She will make payment once her money that was “improperly withdrawn” by the facility is returned to her. Testimony.

The Hearing Officer then questioned the facility staff regarding the appellant’s status at the facility. The director of social work stated that the appellant is a “short-term” patient in that she expresses a desire to return to the community, but she is not currently independent in her activities of daily living except for eating.<sup>5</sup> The appellant is receiving ongoing, skilled nursing for a recurrent fungal infection of the skin, and cellulitis. The facility social worker confirmed that the appellant was receiving physical therapy. The facility social worker responded to the Hearing Officer’s question

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Form” on January 8, 2025, to allow her PPA to be automatically deducted from her account by the nursing facility each month.

<sup>5</sup> The appellant is a LTC MassHealth recipient; she received a Long-Term-Care Conversion Information Request from MassHealth on 7/2/2024; it states, “The Short-Term Stay period of eligibility for this individual has been exhausted and the payment segment to the facility has been closed effective 7/31/2024.” The nursing facility engaged a Medicaid consultant to qualify the appellant for LTC MassHealth. Testimony and Exhibit 4 at 21.

about the feasibility of the proposed discharge. She acknowledged that the appellant cannot safely return home at present without 24-hour services in place. The appellant had received PCA services in the community before entering the nursing facility; her PCM agency is still “following” her while she is at the facility, but there is no written plan for the appellant’s discharge at this time. She believes the appellant’s home is equipped with a “lift chair” and a commode but not a Hoyer lift. Testimony. The facility social worker acknowledged that the appellant has a documented history of missing and neglecting her care when she is at home; this history has led to the appellant experiencing significant health complications. The appellant responded to this testimony by stating that she cannot safely return home until she has made significant progress with physical therapy and skin care management. She also recently began taking Ozempic, with great success, and she is eager to see her progress over the coming months as she recovers from her illnesses and continues to lose weight while at the nursing facility. Testimony.

At the conclusion of the hearing, the Hearing Officer suggested that the record be held open until October 9, 2025, so that the appellant could submit her bank statements from August 2024 to present day that she said would document the alleged \$13,000.00 in overbilling by the nursing facility; the nursing facility was also allowed to submit any supplemental financial documentation that would help to explain their position. All parties agreed to this proposal. Exhibit 5. On October 9, 2025, the nursing facility administrator emailed the Hearing Officer the appellant’s bank statements and her sister’s bank statements, and the nursing facility’s financial ledger for the appellant’s sister and a statement in support of their position. Exhibits 6, 7.

The Hearing Officer reviewed the bank statements submitted by the appellant in support of her allegation that the nursing facility had overbilled her account by \$13,000.00 since August 2024. See Exhibit 6. The appellant is a co-owner of this account with her sister. The statements show the following thirteen (13) debits were attempted by the nursing facility from the appellant’s bank account from August 2024-August 2025: (i) 8/6/2024, \$1,911.20; (ii) 12/9/2024, \$2000.00; (iii) 12/12/2024, \$1,961.20; (iv) 1/17/2025, \$1961.20<sup>6</sup>; (v) 5/21/2025, \$3,820.40; (vi) 5/27/2025, \$1,960.20; (vii) 6/13/2025, \$2,500.00; (viii) 6/23/2025, two debits in the amount of \$1,960.20 (one is marked as “rejected”); (ix) 7/15/2025, \$1,960.20; (x) two debits on 7/29/2025, one for \$1,000.00 and the other for \$5.00; and (xi) 8/12/2025, \$1,960.20 (marked as “rejected”).

These transactions total \$24,960.00 in debits by the nursing facility from the appellant’s bank account; two payments of \$1,960.20 were not completed per the appellant’s bank statements. Therefore, the total amount debited by the nursing facility from the appellant’s bank account from August 2024-October 2025 is \$21,039.60<sup>7</sup>.

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<sup>6</sup> The appellant’s bank statements show that the amount debited by the nursing facility changed from \$1,911.20 to \$1,960.20 in December 2024.

<sup>7</sup> The appellant’s total owed PPA for August 2024-October 2025 is \$31,167.20, as follows: \$1,911.20x4 (August 2024-November 2024) plus \$1,960.20x12 (December 2024-October 2025).

The nursing facility's administrator provided a copy of the facility's ledger for the appellant's sister's account and an emailed statement of rebuttal:

As a rebuttal (*sic*) to evidence [Appellant] submitted:

1. [Appellant] had a joint account with [Sister]
2. [Appellant] would transfer funds to the joint account from [Sister]'s
3. [Appellant] paid expenses including townhouse from account which led to falling behind on both accounts. [Sister] as well has a balance still (see ledger)
4. [Appellant] used all accounts
5. After facility got [Sister]'s income direct for payment [Appellant] and [Sister] fell really behind due to [Appellant] still paying for Condo instead of paying balance.

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]. She has diagnoses that include severe lymphedema, major depressive disorder, morbid obesity, hypertension, severe osteoarthritis in both knees, fibromyalgia, hypothyroidism, chronic wounds on her lower extremities, and fibrosis of the skin. Exhibit 4.
2. The appellant received a 30-Day Notice of Intent to Discharge ("discharge notice") dated August 28, 2025. The notice states that the facility seeks to discharge the appellant to "Home" on [REDACTED]. The notice indicates the reason for the discharge is that the "resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility." Exhibits 1, 2.
3. At hearing, the appellant had an unpaid balance of \$6,341.80. Testimony; Exhibit 4.
4. From August 2024 through August 2025, the appellant made payments to the nursing facility totaling \$21,039.60. Exhibit 6.
5. According to the appellant's clinical record, she is participating in physical therapy, occupational therapy, and behavioral therapy; she is unable to ambulate independently and is primarily bedbound; she requires a Hoyer lift for all transfers; and she is dependent with most activities of daily living. Exhibit 4.
6. The appellant's primary care provider at the skilled nursing facility did not document in her

clinical record that she no longer requires nursing home level of care, nor that she can safely be discharged to the community. Exhibit 4.

7. There is no written discharge plan submitted by the facility.
8. The discharge notice at issue does not contain all the elements required by regulations. Exhibit 1.

## 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 initiated by a nursing facility. MassHealth has enacted regulations that mirror the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility regulations at 130 CMR 456.000 *et seq.* and in the Fair Hearing Rules at 130 CMR 610.000 *et seq.*

MassHealth regulations at 130 CMR 610.028 *et seq.* set forth the requirements that a nursing facility must meet to initiate a transfer or discharge, and provides in part as follows:

(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) (emphasis added); see also 130 CMR 456.701(A).

When the transfer or discharge is sought due to the circumstances specified in subsections (1) through (5), above, as it is here, the resident's clinical record must be documented.<sup>8</sup> See 130 CMR

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<sup>8</sup> When the basis for the discharge is due to reasons stated under subsections (1) through (4), above, the documentation must be made by a physician. However, in this case, where the basis for the discharge is due to the

610.028(B)(2).

In this case, the facility demonstrated that appellant failed to pay for her nursing home care despite being given reasonable and appropriate notice of her payment obligations. After the appellant had issues with timely making her PPA payments in November and December 2024, the evidence shows that the appellant signed an Auto-Payment agreement with the nursing facility on January 8, 2025, to allow her PPA to be automatically deducted from her account by the nursing facility each month. However, it was the sworn testimony of the appellant that in February 2025, she stopped her PPA payments to the nursing facility because she believed that the nursing facility was overbilling her in error; at the hearing, she stated that it was her belief that the nursing facility stole over \$13,000.00 from her bank account in the last year. This is a serious allegation, so I reviewed the appellant's bank statements from August 2024-August 2025 that were submitted during the record open period. While the bank statements reveal the monthly attempts that the nursing facility made to obtain the appellant's PPA payments, they do not reveal any extra or unexplained charges. Therefore, the appellant's belief that the nursing facility overbilled her or stole money from her is not supported by the record evidence.

It was the appellant's sworn testimony that when she was informed of her billing issue (her non-payment of her PPAs for the months of February, March, and April 2025) by the nursing facility staff in May 2025, she sought to correct the billing issue immediately; the appellant's bank statements confirm that the completed payments in May 2025 were the first ones made by the appellant to her nursing facility since February 2025. The statements further reveal that the nursing facility attempted to bill the appellant's bank account each month from August 2024 through August 2025. There is evidence in the bank statements and nursing facility's financial ledgers that the facility made more than one attempt in a month to collect her PPA from the appellant, but over the entire year, the nursing facility failed to collect an amount that equals or exceeds the appellant's owed PPA. There is no evidence in the bank statements that the appellant was overbilled by the nursing facility in the amount of \$13,000.00 in the last year. After reviewing all the record evidence, I conclude that if the appellant would like to remain in a long-term-care setting and continue to improve her health until she can safely return to the community, as was her stated desire at hearing, then the appellant should make arrangements to pay her outstanding PPA balance to the nursing facility *as soon as possible*.

As a result of her refusal to pay her PPA to the facility for the months of February, March, and April 2025, the appellant has accrued a substantial nursing home bill totaling \$6,341.80. The facility has established proper grounds to discharge appellant from the nursing facility under 130 CMR 610.028(A)(5), above.

While the facility has established proper grounds to discharge appellant, it must also comply with all other applicable state laws before it can proceed with the discharge. In addition to the fair

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appellant's failure to pay under subsection (5), above, the regulation simply requires that the clinical record contain documentation of the basis for the discharge.

hearing regulations cited above, nursing facilities are subject to the requirements set forth in M.G.L. c. 111, § 70E, which state 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.

(emphasis added).

The facility proposes to discharge the appellant to her home. The appellant is primarily bedbound and requires a Hoyer lift to accomplish all transfers; she is a two-person assist to perform mobility in her bed. While the appellant is independent in performing her eating ADLs, she is presently completely reliant on her caregivers to accomplish toileting, bathing, dressing, mobility, and transfers; if she ambulates, it is solely by wheelchair. The facility has not documented that they have made substantial efforts to secure the appellant 24-hour, home-based care options and equipment that would meet her current needs. There was no testimony or documentation from either party regarding the accessibility of the appellant's home. No written discharge plan was submitted in support of the facility's position, and there was no information provided as to which agency or nursing service, if any, will be performing the daily skilled nursing care that the appellant requires. Finally, no physician has certified in the appellant's medical record that the appellant's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility.

Given the appellant's physical limitations 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 currently authorized. However, if the appellant's balance to the facility remains unpaid, the facility may issue a new discharge notice, with appropriate notice to the appellant, at any time.

For these reasons, this appeal is APPROVED.

## **Order for Nursing Facility**

Rescind the August 28, 2025 30-Day Notice of Intent to Discharge/Transfer Resident, and do not discharge the appellant under that notice. The facility may issue a new discharge notice with appropriate discharge planning at any time if appellant's nursing home bill remains unpaid.

## **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.

## **Implementation of this Decision**

If this nursing facility fails to comply with the above order, 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

