

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2514491
<b>Decision Date:</b>	10/15/2025	<b>Hearing Date:</b>	10/09/2025
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**  
Pro se

**Appearances for Nursing Facility:**  
Krystal Washburn-Baroutas, Director of Social Services;  
Karen Bergstrom, RN, Nursing Director



*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>	Expedited Nursing Home Discharge
<b>Decision Date:</b>	10/15/2025	<b>Hearing Date:</b>	10/09/2025
<b>Nursing Facility Reps.:</b>	Krystal Washburn-Baroutas; Karen Bergstrom	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center Room 2 (Remote)	<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 September 26, 2025, [REDACTED] ("the facility") informed the appellant of its intent to discharge him with less than 30-days' notice to [REDACTED] (Exhibit 1). The appellant filed this appeal in a timely manner on October 3, 2025 (130 CMR 610.015(B); Exhibit 2). Notification of intent to discharge an individual is a valid basis for appeal. (130 CMR 610.032).

### Action Taken by the Nursing Facility

The facility informed the appellant of its intent to discharge him because his health has improved sufficiently so that he no longer needs the services provided by the facility.

## Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

## Summary of Evidence

The appellant appeared telephonically at the hearing. The nursing facility was represented telephonically by its directors of nursing and social services. The facility's social services director testified that the appellant is under the age of [REDACTED] and he has been a resident of the nursing facility since [REDACTED] (Exhibit 4, p. 31). He was admitted for 6 weeks of intravenous (IV) antibiotics, following a hospitalization for a diabetic ulcer located on his right foot, which resulted in the amputation of his right (3<sup>rd</sup>) toe. (Exhibit 4, p. 32).<sup>1</sup> The appellant's wounds resulting from his amputation were fully healed as of July 31, 2025. His coverage for skilled nursing services ended on August 22, 2025. (Exhibit 4, p. 9). The appellant was notified that he could appeal this determination and signed his acknowledgement thereof on August 20, 2025. (Exhibit 4, p. 11). Because his coverage ended on August 22, 2025, the appellant was notified that he would owe the facility \$27,391.00 as of October 10, 2025, to cover the costs of his stay at the facility. (Exhibit 4, p. 15).<sup>2</sup>

In its submission, which included the appellant's clinical records, the facility provided a letter from [REDACTED] the facility's nurse practitioner dated September 23, 2025.<sup>3</sup> The letter stated, in pertinent part, that "the resident was seen today for evaluation of discharge readiness back in the community. He has demonstrated great progress throughout his stay with [his] course of treatment and participated greatly in therapy, which has also led to his notable improvements in functional mobility. There has not been any cause of concern during his rehabilitation stay and at the time of this evaluation, his health has improved sufficiently and therefore, no longer requires the services provided by the facility. He has been deemed medically stable and cleared for safe discharge back in the community. He will continue to work with social work to finalize discharge disposition and ensure appropriate follow-up care." (Exhibit 4, p. 81).

The facility's social services director confirmed that the appellant is independent with all activities

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<sup>1</sup> Following the appellant's hospitalization, 6 weeks of skilled care was recommended in consideration of his unstable housing situation. (Exhibit 4, pp. 81-82).

<sup>2</sup> The facility calculated this amount as follows: Room and Board from August 23<sup>rd</sup> through August 31, 2025 (for a total of 9 days) at \$559 per day = \$5,031, September 1<sup>st</sup> through September 30, 2025 (for a total of 30 days) at \$559 per day = \$16,770, and October 1<sup>st</sup> through October 10, 2025 (for a total of 10 days) at \$559 per day = \$5,590, totaling \$27,391 (5,031 + 16,770 + 5,590 = 27,391). *Id.*

<sup>3</sup> The appellant was provided with a copy of the facility's submission.

of daily living (ADLs), and noted that on October 1, 2025, he left the facility for an appointment. Upon his return to the facility (approximately 6 ½ hours later) the appellant stated that he was shopping around, in response to inquiry about where he has been. (Exhibit 4, p. 35). The facility's social services director testified that by notice dated September 22, 2025, MassHealth determined that the appellant is not clinically eligible for nursing facility services because they are not medically necessary, as required by MassHealth regulations at 130 CMR 456.408(A)(2) and 130 CMR 456.409. (Exhibit 4, p. 5).

The facility made several attempts to assist the appellant with identifying potential discharge locations. Specifically, the facility noted that on September 8, 2025, social services staff spoke to the appellant about starting a discharge plan and gave him an application for an apartment complex. (Exhibit 4, p. 73). At that time, the appellant was asked if he still had the other housing application that was previously provided to him. *Id.* The appellant stated that he hasn't filled it out yet and asked if social services could look for sober living programs. *Id.* On September 9, 2025, the facility's social services staff provided the appellant with an application to a sobriety and recovery facility. (Exhibit 4, p. 67). On September 11, 2025, the facility's social services staff followed up with the appellant on the applications that were given to him; the appellant said that he was almost finished with them so that social services staff could fax them out. (Exhibit 4, p. 61). On September 12, 2025, the appellant was provided with a list of substance use disorder resources and housing opportunities and was informed that staff would follow up with him to see where he would like them to send referrals. (Exhibit 4, p. 60). On September 15, 2025, the facility's social services staff spoke with the appellant about the sober home packet that was previously given to him. The appellant stated that he could not find it due to moving rooms and that he would look for it. (Exhibit 4, p. 59). On September 16, 2025, the facility's staff spoke with the appellant about working on a discharge plan and asked about the applications. The appellant said that he would need to find them and start working on them. (Exhibit 4, p. 54). On September 17, 2025, a facility staff member and the appellant went to the administrator's office. All parties discussed discharge planning. The appellant stated that he understood and that he will start filling out the applications and go over the list of sober homes. *Id.*

On September 26, 2025, the facility's staff met with the appellant and provided him with a notice of intent to discharge on [REDACTED] (Exhibit 1). The appellant was also provided with a letter from his insurance company, stating that his coverage ended. (Exhibit 4, p. 9). The appellant was also provided with a statement to show what out of pocket costs would be like if he were to remain at the facility. (Exhibit 4, p. 15). The facility's social worker asked the appellant if he had completed any of the applications that were given to him; he stated that he did not have the time to do so yet. (Exhibit 4, p. 43). The appellant was asked about the [REDACTED] he said that he did not want to go there. The appellant was further asked if he had a place that he could discharge to and he stated "no." He was informed that at this time, the proposed discharge location is a shelter, however, if he would like to return to the facility's social services department, staff could assist him with filling out the applications and see if there are any other housing applications that he would be interested in completing; the appellant agreed to do so. *Id.* On September 27, 2025,

the facility's social worker asked the appellant if he wanted to meet for assistance with referral paperwork; the appellant declined. (Exhibit 4, p. 42).

On September 30, 2025, the facility's social worker e-mailed the [REDACTED] to see if there was a bed available. The [REDACTED] indicated that there was availability and that the appellant should complete an application and e-mail it so that a telephone call could be scheduled with him. (Exhibit 4, p.38). On October 3, 2025, the facility's social services staff spoke with the appellant about obtaining applications and reminded him about the open bed at the [REDACTED]. The appellant stated that he would get to it later; he was told that he could not put it off much longer or he would lose the bed. (Exhibit 4, p. 34).

The appellant appeared at the hearing telephonically and testified that he has a constitutional right to face his accuser, which is a right allowed by law. He explained that his roommates will testify that the accusations made against him, which are now included in his medical record, are [REDACTED]. The appellant stated that he wants to know who made those accusations against him. He explained that hearing those untruthful statements negatively affects his mental health status and that said statements should be struck from his medical records. The appellant testified that he contacted a friend so that someone could visit the facility and talk to the other residents about what goes on at the facility. He explained that on one occasion, an electrical box was hanging from the ceiling of his room at the facility, which took maintenance approximately 3 weeks to repair. Upon repair, the appellant stated that maintenance used caulking to seal the light back into the electrical outlet, as opposed to drilling it back in. The appellant stated that he is addressing his concerns with the facility not only for himself but for other residents as well. He stated that he has photographs of the rats and mice around the facility, and he takes exception to the facility's staff. He stated that the facility's staff are constantly on their phones and ignore the facility's residents who need help. The appellant stated that his health insurance is paying for the facility's staff to help him and the other residents, only to be ignored by said staff.

Additionally, the appellant took exception to the facility's billing his health insurance company. As an example, he stated that the facility's nurse practitioner fraudulently charged his health insurance for 17 consultations when he only met with her approximately 3 times. He stated that the facility should take responsibility for the staff they hire. He suggested that the facility's nurse practitioner either return to school and receive better training, or she should be reprimanded. The appellant testified that while his mental health has rapidly decreased following his admission to the facility, he feels safe around certain people at the facility. However, he does not agree with the facility's staff searching the residents' rooms and personal belongings.

With respect to his physical health status, the appellant acknowledged that his amputation wounds have healed. He stated that he is still waiting for a blood or urine test to be performed by

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<sup>4</sup> The facility's representatives noted other instances that occurred during the appellant's stay; none apply to the reason set forth in the notice of intent to discharge.

his physician to have his kidney levels checked. He stated that he has been waiting for the last 1-2 weeks to see his physician because the facility initially messed up his transportation request (PT-1). Further, the appellant feels that the facility should offer additional mental health meetings. He feels safe around one mental health counselor; however, he feels that the other counselor does not hold enough meetings. The appellant stated that his mental health needs must be met, and the facility has failed to meet them. Therefore, he feels that the facility cannot transfer him until his mental health needs are met. He stated that he does not trust the facility's nurse practitioner due to the alleged fraudulent charges billed to his health insurance and that he feels that the facility is trying to bully him out because he spoke up for himself and for the other residents. He stated that the facility should be shut down.

As to the proposed discharge location (shelter), the appellant stated that it is not safe. He testified that he has been around that shelter before, and it is filled with drug users. Additionally, a great deal of fighting occurs at that shelter. He stated that it is not a place where the facility should ditch him (or anyone else) just because staff wants to get rid of him. The appellant stated that it takes a long time to find suitable housing where he feels safe and he still needs help from the facility to do so. He testified that one person told him that he should become an ombudsman because he advocates for others on issues that matter.

## **Findings of Fact**

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

1. The appellant is a resident of a nursing facility.
2. On September 26, 2025 the facility notified the appellant of its less than 30-day intent to transfer him to a homeless shelter on [REDACTED] because his health has improved sufficiently so that he no longer requires the services provided by the facility.
3. The appellant filed a timely appeal on October 3, 2025.
4. The appellant's health has improved in the nursing facility – he is independent with his ADLs, his amputation wounds have fully healed, he ambulates without assistive devices, he has left the facility on one occasion to shop, and he does not require any nursing services.
5. The facility's nurse practitioner has medically cleared the appellant for discharge.
6. The facility's social services staff have been continuously working with the appellant to secure alternative housing.
7. The appellant has not followed up on the numerous housing applications and options that

the facility has presented to him.

## 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 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.<sup>5</sup>

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'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

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<sup>5</sup> The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless otherwise noted and required for clarification.

- 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)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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.

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

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B)).<sup>6</sup>

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<sup>6</sup> A "PCP" is defined as "a physician, a physician assistant, or a *nurse practitioner* operating within the scope of their licensure and supervision requirements, as applicable." (130 CMR 456.402). (emphasis added).

In the present case, the appeal issues are as follows: whether the nursing facility has valid grounds to discharge the appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

In addition to the MassHealth-related regulations discussed above, the nursing facility must also comply with all other applicable state laws, including G.L. c. 111, § 70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads as follows:

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.<sup>7</sup>

Here, the facility proposes to discharge the appellant to a shelter. While it may not be an ideal situation for the appellant, as noted by the facility, several attempts were made to assist him with securing alternative housing locations. The record includes documentation supporting the argument that the appellant's health has improved sufficiently so that he no longer needs the services provided by the facility. Through its testimony and documentation, the facility has demonstrated that the appellant is independent with his ADLs, ambulates independently without assistive devices, does not require any skilled nursing care, and can safely live in the community. The appellant does not dispute that his physical wounds healed; he disputes that his mental health has improved. The appellant may have unresolved mental health issues. Even if true, however, the appellant has not demonstrated that these needs can only be addressed by a continued stay at the facility. Further, the appellant disputes the discharge location (a shelter), arguing that it will not be safe for him. The appellant stated that he is familiar with this shelter and is aware of past flighting and drug use. These statements, without corroboration, are insufficient to demonstrate that the shelter is not currently safe nor appropriate. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, this appeal is denied.<sup>8</sup> The facility may go forward with the discharge after the stay as set forth in 130 CMR 456.704(B).<sup>9</sup>

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<sup>7</sup> See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

<sup>8</sup> This denial does not preclude the facility from continuing to assist the appellant with securing alternative housing.

<sup>9</sup> 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,

## Order for the Nursing Facility

Proceed with the discharge as set forth in the notice dated September 26, 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.

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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

CC:

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presumably due to a drafting error.