

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2516542
Decision Date:	12/10/2025	Hearing Date:	11/26/2025
Hearing Officer:	Amy B. Kullar, Esq.		

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

Appeal Decision:	Approved	Issue:	Nursing Facility Discharge; Failure to pay
Decision Date:	12/10/2025	Hearing Date:	11/26/2025
Nursing Facility's Reps.:	Steven Cook, <i>et al.</i>	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 1 (Telephone)	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 notice dated November 7, 2025, [REDACTED] (the "nursing facility") informed the appellant that it sought to discharge him from the facility because he failed, after reasonable and appropriate notice, to pay for services rendered at the facility. See 130 CMR 610.028 and Exhibit 2. On November 24, 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, he failed to pay, and/or failed to have Medicare or Medicaid pay for, his 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 regional director of social services, and its business office manager; they testified telephonically. The appellant appeared at the fair hearing telephonically and his identity was verified. Prior to the hearing, the facility submitted the appellant's clinical record from the facility and the facility's documentation of the appellant's financial account into evidence. *See* Exhibit 4.

The discharge notice at issue in this matter contains: a specific statement of the reasons for the intended discharge – “[his] failure, after reasonable and appropriate notice, to either pay for, (or to have paid by Medicare, Medicaid or private insurance) [his] stay at our facility. This discharge is being made at a time when there are no charges in dispute, and no appeals of a denial of benefits or Medicaid, pending”; the location to which the appellant is to be discharged [REDACTED] 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 5 days after the hearing officer's decision is received); the name and address of the local long-term care ombudsman office; the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals; the name of the person at the facility supervising the discharge; the name and address of the local legal-services office; and the mailing address of office of the protection and advocacy for developmentally disabled individuals, respectively. *See* Exhibit 1.

Based on testimony and documentary submissions, the nursing facility presented the following evidence: The nursing facility asserts that “[t]he 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 an adult who is under the age of 65 and was admitted to the nursing facility in [REDACTED] 2025 from a local hospital. Testimony. His medical diagnoses include persistent atrial fibrillation, cellulitis of lower left limb, chronic kidney disease stage 3B, systolic (congestive) heart failure, drug-induced obesity, fatty liver, cerebral infarction, morbid obesity, abnormalities of gait and mobility, dysphagia, and venous insufficiency. Exhibit 4 at 39.

The medical records submitted by the facility indicate that the appellant has “an ADL and physical mobility deficit related to coronary artery disease, atrial fibrillation, and obesity.” *Id.* at 21. The appellant requires supervision and set-up assistance to accomplish the bathing ADL. The appellant is “independent once standing” to “walk at least ten feet in a room or corridor.”

He can also walk 50 feet and make two turns. *Id.* at 23. He ambulates with a walker or crutches. *Id.* at 42. The appellant has a history of substance abuse disorder and is taking methadone. *Id.* at 26. The appellant is “non-compliant” with applying compression garments to his bi-lateral extremities, and he has been non-compliant with medications and treatments at the facility. *Id.* at 28. The appellant is at risk for falls due to his deconditioning, bilateral extremity edema, cellulitis, and obesity. *Id.* at 31. He suffers from chronic pain in his left knee and hip due to osteoarthritis. *Id.* at 34. The appellant is taking anticoagulant therapy due to his atrial fibrillation. *Id.* at 33. The appellant is receiving weekly treatment for an “actual venous wound” to his lower right leg, right shin, and left leg, and is followed by a wound specialist. *Id.* at 36; 42. He has impairment to the integrity of his skin on his lower bilateral extremities due to cellulitis, venous stasis, and edema. *Id.* at 39.

The facility administrator testified that the nursing facility is seeking to discharge the appellant because he has accumulated an unpaid balance at the facility that dates back to when he entered the facility earlier in 2025. As of the date of the hearing, the appellant owes \$5,965.36 to the nursing facility. Testimony; Exhibit 4 at 19. The appellant is a Long-Term Care (LTC) MassHealth recipient and each month, the appellant owes \$1,218.20 to the nursing facility; this amount constitutes the appellant’s Patient-Paid Amount (PPA)¹. The facility submitted a LTC MassHealth approval notice and the most recent billing statement for the appellant’s account in support of their position². Exhibit 4 at 4-19. The appellant has only made one PPA payment since he entered the facility. The billing office manager testified that when the appellant was admitted to his current nursing facility, it was under the condition that the facility would become the representative payee for the appellant at the Social Security Administration; the appellant was previously discharged from another nursing facility earlier in 2025 due to non-payment. The nursing facility became the appellant’s representative payee in August 2025, and received his PPA payment for that month, but the representative payee arrangement was then terminated by appellant in September 2025. Testimony; *see also* Exhibit 4 at 10-15.

The appellant responded by confirming that he does understand his monthly payment obligations, and that he understands that he must pay his PPA to the nursing facility each month. He stated that he cancelled the representative payee arrangement because he was actively trying to acquire housing in the community, and he needed to have access to his income so that he could pay his first month’s rent at his new housing situation. Testimony. After being questioned further by the Hearing Officer, the appellant confirmed that he is eager to return to the community; he is looking for housing every day. He does understand his monthly PPA obligations to the nursing facility, and he agreed that he would pay the facility a

¹ 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.

² The approval notice indicates an application for LTC MassHealth was submitted to MassHealth on the appellant’s behalf on 2/23/2023 and that he was approved for coverage beginning on [REDACTED] 2025. The notice also states that the appellant owes \$1,218.20 every month to the nursing facility beginning on [REDACTED] 2025. Exhibit 4 at 4-10.

full month's PPA when he receives his December 2025 income payment from Social Security. The appellant was urged to establish a payment plan with the nursing facility to pay down his past due balance, in addition to making his December 2025 payment as soon as possible.

The Hearing Officer then questioned the facility representatives about the feasibility of the proposed discharge location. The appellant does not yet have a confirmed discharge location, but everyone agrees that he is actively searching for an apartment. Testimony. The location listed in the discharge notice is a homeless shelter at the [REDACTED] the appellant has not been confirmed as a resident there as of the date of hearing. The director of social work stated that the appellant would be able to receive visiting nurses association (VNA) services in the community; a referral for these services will be made for the appellant once he has a confirmed address in the community. Testimony. As of the date of the hearing, no referral for VNA services has been made on behalf of the appellant. In response, the appellant stated that he would be comfortable receiving the medical care he needs through the VNA once he returns to the community. However, he does not yet have a place to return to the community. This is a huge source of concern for the appellant, and he is continuing to seek appropriate housing. Testimony.

Findings of Fact

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

1. The appellant was admitted to the facility in [REDACTED] 2025. He has diagnoses that include persistent atrial fibrillation, cellulitis of lower left limb, chronic kidney disease stage 3B, systolic (congestive) heart failure, drug-induced obesity, fatty liver, cerebral infarction, morbid obesity, abnormalities of gait and mobility, dysphagia, and venous insufficiency. Exhibit 4.
2. The appellant received a 30-Day Notice of Intent to Discharge ("discharge notice") dated November 7, 2025. The notice states that the facility seeks to discharge the appellant to [REDACTED] on [REDACTED] 2025. The notice indicates the reason for the discharge is due to the appellant's "failure after reasonable and appropriate notice, to either pay for, (or to have paid by Medicare, Medicaid or private insurance) [his] stay at our facility." Exhibit 1.
3. At hearing, the appellant had an unpaid balance of \$5,965.36. Testimony; Exhibit 4.
4. According to the appellant's clinical record, he is participating in physical therapy; he ambulates with a walker or crutches, and he is independent with most activities of daily living. Exhibit 4.
5. The appellant's primary care provider at the skilled nursing facility did not document in his

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

6. There is no documentation submitted by the facility that indicates there has been sufficient preparation for the appellant to have a safe and orderly discharge from the facility. The discharge would involve working with a VNA agency if the appellant is discharged. As of the date of the hearing, no referral has been made to a VNA agency on behalf of the appellant.
7. As of the date of the hearing, the appellant has not been approved as a resident at the proposed discharge location.
8. The discharge notice at issue contains 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.³ See 130 CMR 610.028(B)(2).

In this case, the facility demonstrated that appellant failed to pay for his nursing home care despite being given reasonable and appropriate notice of his payment obligations. The record shows that since entering his current nursing facility in 2025, the appellant has only made one PPA payment. At hearing, the appellant confirmed that he had not made any additional PPA payments and that he had canceled the representative payee arrangement that would allow the nursing facility to receive his monthly income payments directly from Social Security because he needs his income to obtain new housing. After reviewing all the record evidence, I conclude that if the appellant would like to remain at the nursing facility until he can safely return to the community, as was his stated desire at hearing, then the appellant should make arrangements to pay his outstanding PPA balance to the nursing facility *as soon as possible*.

As a result of his refusal to pay his PPA to the facility for the months of July, September, October, and November 2025, the appellant has accrued a substantial nursing home bill totaling \$5,965.36. 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 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 did not demonstrate that they have provided sufficient preparation and orientation to the appellant to ensure a safe and orderly transfer from the facility to another safe and appropriate place. Pursuant to M.G.L. ch. 111, § 70E, 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

³ 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 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.

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. The representatives from the facility clearly want to find a safe and appropriate location for the appellant, and it is obvious that they intend to have an appropriate plan of care for the appellant once he returns to the community. However, as of the date of the hearing, they have not yet done so.

The facility proposes to discharge the appellant to a homeless shelter. As of the date of the hearing, the appellant had not been accepted as a resident at this location or any other location in the community. It was the undisputed testimony of all parties at the hearing that the appellant is actively seeking housing in the community. The record shows that the appellant is a good candidate to return to the community with supportive services; while he is still participating in PT and receiving treatment for wounds on his legs, he is independent with nearly every ADL except for bathing. However, the facility has not documented that they have made substantial efforts to secure the appellant suitable housing to ensure a safe and orderly transfer or discharge from the facility to another safe and appropriate place. No referral has been made to a VNA agency to support the appellant in the community, and while the appellant is a candidate to receive nursing services in the community, as of the date of hearing, there is no suitable location for the appellant to return to the community. 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 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 time⁴.

Order for Nursing Facility

Rescind the November 7, 2025 Notice of Intent to Discharge Resident. Do not discharge the appellant under this notice. The facility may issue a new discharge notice with appropriate discharge planning at any time if the appellant's balance to the facility remains unpaid.

⁴ The appellant should be aware that the facility appears to have adequate grounds for discharge, as he has failed to make payment. Simply making discharge planning errors does not make the reason for discharge incorrect, especially those that are not challenged by the appellant, such as a failure to pay. While this appeal is approved, this approval does not guarantee that the appellant can continue to refuse to pay the patient paid amount determined by MassHealth. The appellant is urged to make his December 2025 PPA payment to the nursing facility, as he attested under oath that he would do at hearing, and he is urged to arrange a payment plan with the nursing facility for his past-due balance.

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 you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

