

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	APPROVED	Appeal Number:	1409486
Decision Date:	9/24/14	Hearing Date:	09/12/2014
Hearing Officer:	Christopher S. Taffe		

Appearances for Appellant:

Nursing Facility Representatives:



*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 – Improved Health Notice – Documentation
Decision Date:	9/24/14	Hearing Date:	09/12/2014
Nursing Facility Reps.:	G. LeMarier & K. Kennedy	Appellant Rep.:	
Hearing Location:	HarborSouth Tower, Quincy		

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 of Transfer/Discharge*” dated and delivered to Appellant on August 5, 2014, the nursing facility (Kindred Transitional Care and Rehabilitation – Avery, hereafter “Avery”) notified Appellant of its intent to discharge her to a community setting at the Barbara McInnis house as of September 3, 2014 because “*You are not clinically eligible for MassHealth nursing facility payment and you do not meet the medical requirement for nursing facility services by MassHealth regulations at 130 CMR 456.409.*” See Exhibit 1. A request for a Fair Hearing was timely filed on Appellant’s behalf with the Board of Hearings on August 25, 2014, staying the discharge. See 130 CMR 610.015(B); 130 CMR 456.703; 130 CMR 456.704; and Exhibit 1. Challenging a notice of transfer or discharge initiated by a nursing facility is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032(C).

Action Taken by Nursing Facility

The nursing facility notified Appellant that it sought to discharge Appellant to a community setting.

Issue

The appeal issues are whether, pursuant to the governing state and federal regulations (including but not limited to 130 CMR 610.028 and 130 CMR 456.701), there is sufficient evidence in the record to conclude the following: (1) that there is/are permissible reason(s) to support the facility's discharge action; (2) that the nursing facility has given Appellant reasonable and appropriate notice, and (3) that the nursing facility can appropriately discharge Appellant to the location on the notice in question.

Summary of Evidence

Appellant appeared at hearing and was represented by her mother, both of whom appeared and testified via separate telephone lines. Avery was represented at hearing by Ms. LeMarier, a Social Worker at the nursing facility and Ms. Kennedy, the Director of Nursing at the facility, both of whom also appeared by phone with Appellant at the facility.

Avery is a skilled nursing facility currently licensed by the Commonwealth of Massachusetts with 142 beds, all of which are Medicare-certified and Medicaid-certified. Prior to the hearing date, on September 11, 2014, Avery submitted to the Board of Hearings a packet of 80 pages which was marked as Exhibit 3. A copy of this documentation was not provided to Appellant and/or her representative before hearing, but it appears that neither Appellant nor her Appeal Representative requested a copy. The nursing facility agreed to mail a copy to the Appeal Representative at the conclusion of the hearing.

The discharge notice at issue, dated and served by hand delivery to Appellant on August 5, 2014, lists the following as the reason for the discharge is "*You are not clinically eligible for MassHealth nursing facility payment and you do not meet the medical requirement for nursing facility services by MassHealth regulations at 130 CMR 456.409.*" At hearing, the nursing facility clarified and confirmed that the basis for discharge would be for a related basis, namely that the health of the Appellant has improved sufficiently so that the resident no longer needs the services provided by the nursing facility.

Appellant is a 33-year old female who has been medically institutionalized in this skilled nursing facility since June 21, 2013 and her stay has not been interrupted by any significant (multiple day) absences or leaves. She was admitted primarily for an issue related to a wound or injury to a heel. Her medical diagnoses include a pressure ulcer heel, difficulty in walking and gait instability, degenerative disc disease in the back and/or spinal cord issues, spina bifida with hydrocephalus lumbar region, neurogenic bladder, obesity and depressive disorder.

The effective date listed on the discharge notice is September 3, 2014, which is 29 days after the signature date which appears on page 3 of the notice.¹ Prior to her nursing facility admission, the

¹ There is no date on page 1 of the notice, nor is there any mention of the words "expedited" or "emergency discharge" on the notice. As discussed below, the appeal right section of the discharge notice is the only other thing

Appellant did not have a community residence of her own. The notice also lists a planned discharge location to the Barbara McInnis House in Boston.

The discharge notice also had a blank, indicating that that no additional person (e.g., a family member or relative of the resident) was named as also receiving a copy of the notice.² The discharge notice also indicated that Appellant only had 14 days to appeal the decision to the Board of Hearings, and indicated that the resident could not be discharged any earlier than five days after a hearing decision was made in favor of the nursing facility. The discharge notice from this Needham-based nursing facility also lists the “nearest legal services office” as being located in Leominster, Mass.

Testimony and the record indicates that the nursing facility has been working with trying to encourage Appellant to return to the community setting; there are multiple notes indicating efforts to try to get Appellant to complete applications for public housing and obtaining supporting documentation (e.g. birth certificates, social security records) needed for such applications. Appellant and her representative indicated some willingness and desire to return to a community setting, but they wanted to make sure that the proper services were in place and Appellant’s representative expressed concern as to whether Appellant would be able to independently function. Appellant’s mother indicated that she would try to provide whatever assistance she could do to her daughter, but that she was somewhat limited in her ability to aid and assist. Appellant and her mother indicated at the close of hearing that they may have been willing to reach a settlement where the discharge date was stayed until 60 days after the hearing date, but the facility’s representatives indicated that neither of them had the authority to agree to such a result.

The parties indicated at hearing that Appellant had two previous Fair Hearings, both of which occurred on the same date earlier this year in June.³

When asked to demonstrate its case at hearing, the nursing facility indicated that it was basing the improved health rationale and justification for discharge on the clinical denial that occurred prior to the June 27, 2014 hearing. Although the facility indicated that they had received a copy of the

that may suggest that the nursing facility possibly wanted to do a more expedited (less than 30 days) discharge, although this was not raised by either of the nursing facility representatives at hearing. As the notice and submission of the nursing facility has deficiencies in other aspects and as the Appellant has not been discharged as of the date of hearing, the Board of Hearings will retain jurisdiction over the appeal. The facility’s own notes suggest that the facility tried to do a “30-day notice” for discharge, see e.g., page 11 of Exhibit 3, and not an expedited discharge. All parties have appeal rights on this decision.

² It is unclear whether the Appeal Representative ever met the definition of a “designated family member or legal representative” discussed in 130 CMR 456.701(C) but there are indications of communication attempts (made with the Appellant’s consent) by the nursing facility with the mother during the month of August 2014 in Exhibit 3. There is no indication or suggestion in the record that Appellant has a legal guardian.

³ Appellant indicated that she had an appeal over a clinical screening for nursing facility services prior to a previous nursing facility discharge appeal. The latter was appeal # 1406645, heard on June 27, 2014. Appellant verified that her clinical screening appeal was denied and the parties informed the current Hearing Officer that the Appellant’s appeal in the prior nursing facility discharge was approved. Per the file for Appeal # 1406645, the discharge appeal was approved, mainly because the nursing facility was trying to discharge for non-payment was premature and inappropriate, as the facility had been paid by the state for Appellant’s care for the relevant time period.

clinical denial and determination made by the Aging Services Access Point (ASAP)⁴ nurse reviewer, no copy of the clinical denial notice was put in the packet for the Board of Hearings. Appellant's side confirmed that Appellant had received a clinical denial notice.

At hearing, the nursing facility was asked to point out where was the evidence in the clinical record from the resident's physician which could explain and justify the discharge. The nursing facility indicated that no such documentation on that point from the Appellant's physician in the facility was in the record.

Findings of Fact

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

1. Appellant has been medically institutionalized at, and a resident of, Avery since June 21, 2013. (Testimony and Exhibit 3)
2. Appellant was admitted to the nursing facility primarily for an issue related to a wound or injury to a heel. Her medical diagnoses include a pressure ulcer heel, difficulty in walking and gait instability, degenerative disc disease in the back and/or spinal cord issues, spina bifida with hydrocephalus lumbar region, neurogenic bladder, obesity and depressive disorder. (Testimony and Exhibit 3)
3. On or around August 5, 2014, Avery presented a discharge notice to Appellant, listing a September 3, 2014 date of discharge to the proposed discharge location of the Barbara McInnis House. The reason for the discharge listed on the notice indicates that the basis for the discharge is that the Appellant is "*...not clinically eligible for MassHealth nursing facility payment and you do not meet the medical requirement for nursing facility services by MassHealth regulations at 130 CMR 456.409.*" At hearing, the nursing facility cited the improved health rationale as the basis. (Testimony and Exhibit 3)
4. There has been some discharge planning (e.g. applications related to public housing) in an effort to return Appellant to a community setting. (Testimony and Exhibit 3)
5. In or before June of 2014, Appellant had received a clinical determination from an ASAP that indicates that she was no longer clinically eligible for nursing facility services. Appellant had a hearing and an appeal on that clinical determination issue before the Board of Hearings in June of 2014, but that appeal was denied by the Board of Hearings. (Testimony and Exhibit 3)
 - a. Appellant's side raised issues about whether it was suitable for Appellant to return to the community setting. (Testimony)

⁴ ASAPs are entities charged with making various clinical and other determinations related to possible benefits available through the MassHealth program under the Volume II regulations at 130 CMR 515.000 through 130 CMR 522.000. This includes the screenings required for MassHealth payment for nursing-facility residents.

- b. There is no evidence or written documentation in the record from Appellant’s physician at the nursing facility, which is contemporaneous with the August 5, 2014 notice, which speaks to the more current condition of the Appellant and which explains that the discharge is appropriate because of improved health. (Testimony and Exhibit 3)
6. The discharge notice contained no indication of it being sent to a specific and designated individual, like a family member or legal representative. (Exhibit 1)
7. The discharge notice listed the appeal rights for expedited nursing facility discharges, but did not contain any mention of the word “expedited” on the notice. The notice did indicate a timeframe suggesting that the discharge would happen 29 days after the date of the notice. (Exhibit 1)
 - a. At hearing, the nursing facility made no argument or mention of a desire of the facility to have used the expedited discharge track. Exhibit 3 contains notations indicating the nursing home was proceeding as if this was a 30-day (or non-expedited) discharge action. (Testimony and Exhibits 1 and 3)
 - b. Appellant has not been discharged and remains a resident at Avery as of the hearing date. (Testimony)
8. The discharge notice from the Avery nursing facility which is located in Needham, lists a Legal Assistance office in Leominster as the contact for Legal Services. (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 follow and implement the federal requirements concerning a resident’s right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.002 apply:⁵
“Nursing facility” - a Medicare skilled nursing facility or Medicaid nursing facility licensed

⁵ The regulatory language in the MassHealth Nursing Facility Manual at 130 CMR 456.400 has regulations which are identical (or near-identical) to counterpart regulations be found within the Commonwealth’s Fair Hearing Rules at 130 CMR 610.000 as well as corresponding federal government regulations. As an example, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.002. Because of such identical (or near-identical) language, the remainder of this Fair Hearing decision will hereafter only make further regulatory references to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.701 through 704, and not mention the counterparts in the Fair Hearing Rules at 130 CMR 610.000 unless otherwise noted or required.

by the Department of Public Health to operate in Massachusetts, or a distinct Medicaid- or Medicare-certified unit within a facility.

“Discharge” - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility’s failure to readmit following hospitalization or other medical leave of absence.

“Transfer” — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;
- (2) a Medicaid-certified bed to a Medicare-certified bed;
- (3) a Medicare-certified bed to a Medicaid-certified bed;
- (4) one nursing facility to another nursing facility; or
- (5) a nursing facility to a hospital, or any other institutional setting.

A nursing facility’s failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

Based on the above definition, Avery is attempting to discharge Appellant to a community setting via its notice dated August 5, 2014. See Exhibit 1 and 130 CMR 456.002.

The regulations that apply in a determination of whether or not Appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for transfer or discharge of a resident from a nursing facility as well as the specific and strict requirements of the relevant notice and supplementary paperwork. If these requirements are not met, the facility must permit the resident to remain in the facility. 130 CMR 456.701 through 130 CMR 456.704 read in relevant part as follows:

456.701: Notice Requirements for Transfers and Discharges 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 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).

(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'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.

456.702: Time Frames for Notices Issued by Nursing Facilities

(A) The notice of discharge or transfer required under 130 CMR 456.701(C) must be made by the nursing facility **at least 30 days prior to the date the resident is to be discharged or transferred, except as provided for under 130 CMR 456.702(B).**

(B) Instead of the 30-day-notice requirement set forth in 130 CMR 456.702(A), the notice of discharge or transfer required under 130 CMR 456.701 must be made as soon as practicable before the discharge or transfer in **any of the following circumstances, which are emergency discharges or emergency transfers.**

(1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.

(2) **The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.**

(3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.

(4) The resident has not resided in the nursing facility for 30 days immediately prior to receipt of the notice.

...

456.703: Time Frames for Submission of Requests for Fair Hearings

(A) Appeals of discharges and transfers will be handled by the Division's Board of Hearings (BOH).

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

(1) **30 days after** a resident receives written notice of a discharge or transfer pursuant to 130 CMR 456.702(A); or

(2) **14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 456.702(B);...**

456.704: Stay of a Transfer or Discharge from a Nursing Facility Pending Appeal

(A) If a request for a hearing regarding a discharge or transfer from a nursing facility is received by the Board of Hearings during the notice period described in 130 CMR 456.703(B)(1), the nursing facility must stay the planned discharge or transfer until 30 days after the decision is rendered. While this stay is in effect, the resident must not be transferred or discharged from the nursing facility.

(B) If a hearing is requested, in accordance with 130 CMR 456.703(B)(2), and the request is received prior to the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision...

In addition to the MassHealth-related regulations discussed above, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to these types of appeals, 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.

As discussed in the Summary, it appears as if the nursing facility was attempting to do a 30-day discharge. See fn. 1, *supra*. In doing so, the nursing facility has several issues with its notice and production of documents which prevent the nursing home action from being upheld on appeal.

First, and perhaps most critical in terms of resolving this disputed matter, there is no adequate and acceptable documentation in the clinical record, from the resident's physician, signing off on and attesting to the statement that this Appellant's health has improved sufficiently enough to make the discharge appropriate. This is specifically required by the law at 130 CMR 456.701(B)(1). Without that element in the record, the discharge action and notice is inadequate as a matter of law, and the Appellant's appeal must be granted. Even if the earlier clinical determination from the ASAP nurse was in the file, it would be only somewhat probative and perhaps persuasive evidence, but it would not necessary be conclusive enough evidence to prove that 130 CMR 456.701(A)(2) has been satisfied. There are at least two reasons behind that conclusion. First of all, the clinical eligibility determination made by the ASAP nurse has a medical standard that is very similar to, but is not necessarily identical to, the slightly different standard. Here there has to be a determination and medical opinion as to whether the discharge (and consequently, the specific discharge plan or intended community services) are appropriate. Secondly, the clinical determination in this case is a few months old. In analyzing whether 130 CMR 456.701(A)(2) has been satisfied, it is natural to expect some more contemporaneous and current medical opinion. This is especially true when, at hearing, the Appellant Representative raised a question about Appellant's overall fitness, readiness, and capabilities of handling the return to the community setting.

In addition, there are many other issues, or at least questions, with the 30-day notice prepared and utilized by the nursing facility, any of which may have been problematic for the nursing facility's position at hearing, even if all the other documentation required by 130 CMR 456.701(B)(1) was in the record. First, it is difficult to tell if the nursing facility wanted to do an expedited appeal, as there was no mention of the expedited time frame anywhere. However, there is some suggestion of a desire to do an expedited discharge, as the nursing facility only gave 29-days notice and not 30 days. 130 CMR 456.703(B)(1), by mentioning "30 days after" makes it clear that you cannot count both the date of the notice and the discharge date when counting the 30 days. In addition, a copy of the discharge notice was never given to a designated family member.⁶

Appellant also received a notice which stated that, under the law, she only had 14 days to appeal and that the nursing facility could potentially discharge her within five days after an adverse decision from the Board of Hearings. The nursing facility's intention to give this information is likely an attempt to comply with 130 CMR 456.701(C)(5); however the actual timeframes are, if they are not incorrect, then they are inconsistent with everything else which indicates that the nursing facility did not want to pursue an emergency or expedited discharge. Again, this is also

⁶ It is possible that the Appellant never formally designated her mother to be an additional contact upon admission, but the record, and the mother's appearance in both the file and at hearing, suggests that this was a real possibility.

somewhat unclear due to the fact that it is not consistently clear as to whether this was an emergency discharge attempt or not.

Furthermore, 130 CMR 456.701(C)(9) states that any discharge notice requires that the address of the appropriate legal services offices be given with any discharge notice. In this case, the notice listed a Legal Assistance Corp. in Leominster as the potential source of legal services in the area for Appellant. The regulation explicitly requires that the “nearest” legal services organization be given. While there is no official list of legal services organization kept by the Commonwealth,⁷ it is easy to find that there is at least one legal services organization in Framingham that is nearer to Needham than Leominster is, and that organization serves the Needham area. Because the notice is technically flawed, the discharge attempt cannot be upheld, as the notice does not satisfy 130 CMR 456.701(C)(9). It is also possible that it does not satisfy 130 CMR 456.701(C)(5).⁸

In conclusion, there are multiple issues, most notably that required by 130 CMR 456.701(B), which prevent a finding in favor of the nursing facility. The appeal of the Appellant is therefore APPROVED and the nursing facility may not proceed with the discharge based on the August 5, 2014 nursing facility notice.

In closing, I will note that the record indicates that this nursing facility has already failed twice in trying to serve Appellant with proper and appropriate notices. While the nursing facility is free to make another attempt, the nursing facility is strongly encouraged to review the applicable law and regulations quoted within this decision, and make sure that its notice, discharge planning, and paperwork prepared for hearing comply with all the regulatory law and the requirements given by the Board of Hearings. See also e.g., Exhibit 2 (containing clear instruction from the Board of Hearings that the evidence prepared by the nursing facility for the hearing must be given to an appellant and/or her representative prior to hearing). The notice used in Exhibit 1 is certainly flawed.

Lastly, as was suggested at hearing, the nursing facility may want to consider whether reaching a mutually agreed upon discharge date in the near future with the Appellant – a position offered by the family at hearing – would be a more appropriate and efficient end result for all parties, and

⁷ A search for “legal services” of the Mass.gov website leads to the first result through the EOHHS website at <http://www.mass.gov/eohhs/consumer/basic-needs/advocacy/>. This site links to MassLegalHelp, <http://www.masslegalhelp.org/> which in turn contains what appears to be a updated and accurate map of such legal services within the Commonwealth found at <http://www.masslegalservices.org/program-list>. The nursing facility should verify this fact, but it appears that Metrowest Legal Services in Framingham, Mass. is the appropriate and nearest legal service for those in Needham. (All websites last viewed on September 15, 2014.)

⁸ Again, the nursing facility has an M.G.L. c.30A appeal right if it believes that the Board of Hearings should have overlooked the other issues and deficiencies with the discharge action and ruled in favor of the nursing home on the grounds that (1) Appellant did not technically appeal within the 14-day appeal timeframe given on the notice and (2) that the Board of Hearings should have dismissed the appeal of Appellant as a result. In looking at this issue, I will note again that the nursing facility never raise that issue at hearing, even after the Board of Hearings scheduled the matter for a hearing and all the facility other’s actions seem to be more consistent with an attempt of a 30-day discharge action. It is noted in Exhibit 1 that the facility appeared to assist Appellant with filing the request for a Fair Hearing and thus had actual advance notice that the appeal was not filed within the 14-day timeframe.

whether reaching such an agreement would be quicker and more appropriate than having a discharge notice vetted and signed off by the Board of Hearings. See 130 CMR 456.704(A) (stating that any decision in favor of a nursing facility will come with a 30-day waiting period from the date of any future written decision).

Order for Nursing Facility

Rescind the August 5, 2014 notice of intent to discharge and do NOT discharge Appellant pursuant to that notice.

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 S. Taffe
Hearing Officer
Board of Hearings

cc: