

**STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

Docket Number: 24-2269

V.

Department of Human Services

DECISION

I. JURISDICTION

The Executive Office of Health and Human Services (hereinafter “EOHHS”) is designated by the R.I. General Laws (§42-7.2-6.1(2)) and according to the Rhode Island Code of Regulations (hereinafter “RICR”), to be the entity responsible for appeals and hearings related to transfers and discharges of long-term care facility residents. (210-RICR-10-05-2.1.3).

II. INTRODUCTION

On April 1, 2024, [REDACTED] (hereinafter the “Facility”), which is licensed by the Department of Human Services, issued the Appellant, [REDACTED], a Pre-Transfer or Pre-Discharge 30-Day Notice (hereinafter the “Notice”). On April 3, 2024, the Appellant initiated this matter to EOHHS to appeal the Notice, the Appellant sought to have the discharge overturned and remain at the Facility.

A telephonic Administrative hearing was held on April 23, 2024, in accordance with the Administrative Procedures Act. (R.I. Gen. Laws §42-35.1 et. seq.). For the reasons detailed below, this appeal request is hereby, denied with stipulation.

III. ISSUES

The issue to be decided by the undersigned Appeals Officer is whether there is sufficient evidence and compliance with rules and regulations to permit the involuntary discharge of the Appellant.

IV. STANDARD OF PROOF

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. (2 Richard J. Pierce, *Administrative Law Treaties* § 10.7 (2002) & see *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases)). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. (*Id.*). When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. (*Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006))

V. PARTIES AND EXHIBITS

The Facility was represented at the hearing by Administrator, [REDACTED]; Director of Nursing, [REDACTED]; Business Office Manager, [REDACTED]; Long Term Care Social Worker, [REDACTED]; Social Worker, [REDACTED] and Medical Director, [REDACTED]. The Facility submitted one exhibit which included the Appellant’s Facility incident reports and various daily progress notes.

The Appellant was unable to attend the hearing, but was represented by Spouse, [REDACTED] and RI State Long Term Care Ombudsman, Charline Scanlon.

VI. RELEVANT LAW/REGULATIONS

Per the Federal Code of Regulations (hereinafter “CFR”) a resident must be permitted to remain in a facility and not be transferred or discharged unless: (A) It is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility. (B) It is appropriate because the

resident's health has improved sufficiently so the resident no longer needs the services provided by the facility. (C) The safety of individuals in the facility is endangered due to clinical or behavioral status of the resident. (D) The health of individuals in the facility would otherwise be endangered. (E) 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. (F) The facility ceases to operate. (42 CFR 483.15(c)(1)(i)(A) through (F))

When a facility transfers or discharges a resident under any of the above circumstances the facility must develop a post-discharge plan of care (hereinafter "discharge plan") to ensure a safe and effective transition. The discharge plan must indicate where the individual plans to reside, any arrangements that have been made for follow-up care and post-discharge services. The discharge plan will assist the resident to adjust to their new living environment and is developed with the participation of the resident, the resident's representative and with the resident's consent. (42 CFR 483.21(c)(2)).

A regulatory notice is mandated to be sent by a facility to notify a resident of an involuntary discharge. The written notice must include: the reason for the discharge in a language and manner they understand; the effective date of the discharge; the location to which the resident is to be discharged; a statement of the resident's appeal rights, and the contact information of the Office of the State Long Term Care Ombudsman must be included. In addition, the facility must also notify the Ombudsman office of the discharge. (210-RICR-50-00-7.6).

VII. FINDINGS OF FACTS

1. The Appellant entered the Facility on January 20, 2024.
2. There are several documented incidents from January 22, 2024 to April 12, 2024.

3. The nature of these incidents ranges from the Appellant being verbally or physically aggressive with other residents as well as staff, to wandering into other residents' rooms and all involve the use of profanity.
4. The Facility has expressed twice to the Spouse that an alternate setting would better fit the Appellant's needs. The Facility has fully explained to the Spouse that the Appellant requires a higher level of care, which they are not equipped to provide.
5. The Facility has made medication modifications and now has the Appellant on a one-to-one supervision watch (hereinafter "1:1") in hopes to decrease the risk of similar incident from occurring.
6. On April 1, 2024 the Facility issued a Notice informing of their intent of discharge or transfer effective May 2, 2024. The reason is for the health and/or safety of other individuals in the facility is endangered, they further note that the residents are fearful of the Appellant. The Appellant's home was listed as the place of discharge.
7. The Spouse is unable to care for the Appellant at home, due to the current condition of the residence itself, lack of available home care options and the Spouse's health condition.
8. The Spouse was previously opposed to a transfer of the Appellant, but testified is now open to exploring these options.
9. The Ombudsman's position is that the Appellant's does not have a safe discharge plan in place.

VIII. DISCUSSION

The Facility's position is that the Appellant's needs exceed the level of care they can provide. They further testified the safety of the other residents is endangered, due to the

Appellant's unpredictable aggressive behaviors. There were two resident-to-resident abuse reports, in which both incidents the Appellant hit another resident. The facility has documented that the Appellant wanders into residents' rooms and has had several outbursts when asked to leave. The staff have attempted to intervene, to which the Appellant then turns hostile towards them. On one occasion, it was reported that the Appellant injured a staff members wrist when the staff attempted to diffuse an incident between the Appellant and a resident. The Facility has made the accommodation of a 1:1 watch of the Appellant, but as they explained at the hearing, are unable to maintain this level of supervision indefinitely.

The notice sent by the Facility contained the mandated requirements of a regulatory Notice of an involuntary transfer or discharge. Although, under any circumstances, when a facility discharges a resident the facility must develop with the resident a discharge plan, to ensure a safe and effective transition of care. The Ombudsman raised the issued that the discharge location to home is not a "safe discharge." The Spouse testified she is unable to care for the Appellant, she recently had a fall, and she must use a walker to ambulate. The Facility has attempted to work with the Spouse to secure a transfer of the Appellant to a suitable facility but was initially met with hesitation. The Spouse now knows this is the best option for the Appellant and will work with the Facility to explore suitable transfer options.

IX. CONCLUSION OF LAW

After a complete review of the Administrative record, the undersigned Appeals Officer finds this involuntary discharge was initiated in accordance with applicable federal and state laws, that the rules and regulations, of such a discharge have partially been followed.

1. The evidence established the Facility's actions are necessary for the other resident's safety/welfare.
2. The evidence established the transfer is necessary as the resident's needs cannot be met in this Facility.
3. The evidence established the Facility did send the Appellant a regulatory 30-day Notice.
4. The evidence did not establish that the Facility developed a safe discharge plan for the Appellant.

X. DECISION

It is ordered that the Appellant's request for relief from this Facility actions is denied. The Facility does have sufficient grounds to involuntary transfer or discharge the Appellant, provided that the Appellant remain at the Facility until such time a safe discharge plan has been established.

APPEAL DENIED

/s/Holly Young | Appeals Officer | Executive Office of Health and Human Services

NOTICE OF APPELLATE RIGHTS

This final order constitutes a final order of the Department of Human Services pursuant to RI General Laws § 42-35-12. Pursuant to RI General Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to

_____;

_____; Charline Scanlon, C/o Alliance for Better

Long Term Care, 422 Post Road-Suite 204, Warwick, RI 02888 and via email at

charline@alliancebltc.org.

On this day of April 26th, 2024.

