

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

██████████

v.

DOCKET NO. 24-350

DEPARTMENT OF HUMAN SERVICES

DECISION

I. INTRODUCTION

A telephonic hearing on the above-entitled matter was held on February 06, 2024. The matter was initiated on behalf of the Appellant to appeal a “Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge Notice” (hereinafter “30-Day Notice”) issued by ██████████ ██████████, an Assisted Living Residence (hereinafter “ALR”), on January 10, 2024. The Appellant seeks to have the 30-Day Notice nullified. For the reasons discussed in detail below, the Appellant’s appeal is granted.

II. JURISDICTION

The Executive Office of Health and Human Services (hereinafter “EOHHS”) is authorized and designated by R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2.1.3(A)(2)(n) to be the entity responsible for appeals and hearings related transfers and discharge of all residents of ALRs, regardless of whether or not they are Medicaid recipients. The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. §42-35-1 et. seq. and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

The issue on appeal is whether there is sufficient evidence and compliance with the rules and regulations, to permit the involuntary discharge of the Appellant.

IV. PARTIES AND EXHIBITS

██████████, Administrator of the ALR (hereinafter “ALR Representative”), attended the hearing and provided testimony on behalf of the ALR. The ALR did not offer any documentary evidence.

██████████ and ██████████, the Appellant’s POAs, appeared at hearing and testified on behalf of the Appellant. The Appellant’s POA offered the following exhibits into evidence at hearing:

- Appellant Exhibit #1- the Appellant’s request for hearing, received by EOHHS on January 12, 2024.
- Appellant Exhibit #2- the “Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge 30 Day Notice.”
- Appellant Exhibit #3- email correspondences between the Administrator and the Appellant’s POAs.

Renee Miller, of the Rhode Island Long Term Care Ombudsman Office (hereinafter “Ombudsman”), appeared but did not testify.

V. RELEVANT LAW/REGULATIONS

The Rhode Island Code of Regulations (hereinafter “RICR”) for the EOHHS, 210-RICR-05-2.4.8 entitled “Institutional and Community-Based Long-Term Care Resident Involuntary Discharges and Transfers”, Section 2.4.8(C) allows for an involuntary discharge from an ALR when a resident or party responsible for the resident has failed, after reasonable and appropriate

notice, to pay for their stay at the facility. An ALR may also initiate a resident transfer/discharge in accordance with regulations set forth by the R.I Department of Health. Additionally, EOHHS regulation 210-RICR-50-00-7 entitled “Involuntary Discharge from a Long-Term Care Facility” Section 7.4 entitled “Discharge Criteria” stipulates that an involuntary transfer/discharge is only allowed in certain situations, including failure, after reasonable and appropriate notice, to pay for, or have paid under Medicare or Medicaid, a stay at a LTC facility, and further stipulates that transfer and discharge criteria and appeal rights must be provided verbally and in writing at time of admission, with written acknowledgement of receipt of notice by signature.

EOHHS regulations 210-RICR-10-2.4.8(D) and/or 210-RICR-50-00-7.6 further stipulate that an ALR must provide a formal notice of intent to transfer/discharge to the resident and/or their authorized representative, and the office of the State Long-Term Care Ombudsman, at least thirty (30) days in advance of the intended discharge, and the notice must include the following:

- The reason for the transfer/discharge
- The effective date of the transfer/discharge
- Where the resident will be relocated
- Appeal Rights
- Contact information for the State’s Long-Term Care Ombudsman and the RIDOH Center for Health Facility Regulations for the aged

Department of Health (hereinafter “DOH”) Regulation 216-RICR-40-10-2 entitled “Licensing Assisted Living Residences” Section 2.4.14 entitled “Residency Requirements” stipulates that an ALR must disclose the following in writing prior to admission:

- Identification of the residence and its owner and operator
- Level of license and an explanation of each level of licensure

- Admission and discharge criteria
- Services available
- Financial terms to include all fees and deposits, including any first month rental arrangements, and the residence's policy regarding notification to tenants of increases in fees, rates, services and deposits
- Terms of the residency agreement, including the process used in the event that a resident can no longer afford the cost of care being provided
- The names, addresses, and telephone numbers of: the Department; the Medicaid Fraud and Patient Abuse Unit of the Department of Attorney General; the state ombudsperson, and local police offices

Section 2.4.14 further stipulates that a Residency Agreement or Contract defining the financial terms/agreements between the resident or their representative and the ALR, as well as the discharge criteria and policies, must be signed prior to admission or the exchange of any funds.

216-RICR-40-10-2 Section 2.4.18 entitled “Rights of Residents” additionally stipulates that an ALR resident must be informed in writing at time of admission or at signing of a residential contract, of the ALR’s policies regarding overdue payments and criteria for termination of residency agreements. Section 2.4.18(B)(5)(d) allows for involuntary discharge from an ALR for failure to pay all fees and costs stated in a Residency Contract that results in bills more than thirty (30) days outstanding, but stipulates that an ALR must make “...reasonable efforts to accommodate temporary financial hardship and provide information on government or private subsidies available that may be available to help with costs”.

VI. FINDINGS OF FACTS

1. The Appellant has been a resident of the ALR since August 16, 2023.

2. The POAs testified that at the time of admission, they believed the Appellant's stay at the ALR would be covered by Medicaid, once a Medicaid waiver application was submitted and approved.
3. Both parties conceded there was a concern that \$60,000 of the Appellant funds were misbanded or misappropriated, and that this could affect the approval of the Medicaid waiver application.
4. The ALR Representative testified he submitted a full Medicaid application to [REDACTED] (hereinafter "[REDACTED]"), on behalf of the Appellant. He further testified he was given a verbal confirmation from [REDACTED] that the application would be denied due to excess of funds.
5. The ALR Representative testified that the POAs were informed at the time of admission, that the Appellant would have to pay the private rate if denied Medicaid.
6. The Appellant's POA testified that [REDACTED] also informed him that the Medicaid Waiver application would get rejected if submitted, but he was still waiting to hear back with a final decision.
7. The Appellant receives monthly income, consisting of a pension and Social Security, totaling \$1,702.00.
8. According to the ALR Representative's testimony, and a notice dated December 11, 2023, the Appellant's remaining monthly cost to the ALR, after payment of her monthly income to the ALR, minus \$120.00 she is allowed to keep for her personal needs allowance (hereinafter "PNA"), is \$1,784.00. According to the notice dated December 11, 2023, the Appellant had a balance due of \$7,136.00

for the months of September 2023, through December 2023. The notice additionally stated that starting January 2024, she would be required to pay a monthly amount of \$1,904.00 by the fifth day of each month. The ALR Representative testified that the Appellant's overdue balance through February 29, 2024, is \$11,235.00.

9. The POAs testified that they were unsure of the amount owed because they have been told multiple different monthly amounts by the ALR. The ALR Representative testified that he has changed the monthly cost to the Appellant in an attempt to help her financially.
10. The Facility issued a 30-Day Notice, dated January 10, 2024. The following are the pertinent details of the notice:
 - a. Pre-filled reason of "Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay" is indicated as the discharge reason. With a written note stating 1. Withholding of full social security check amount, 2. Non ability to get Medicaid, 3. Family understood if denied the private rate would be applied.
 - b. Effective date of discharge was written as January 10, 2024.
 - c. A discharge location was identified as either of the POAs.
 - d. The date and/or verification by signature that the notice was received by the Appellant or her POA(s) is missing.
 - e. The date the notice was given to the Ombudsman is missing.

VII. DISCUSSION

The ALR Representative maintains that the Appellant has failed to pay for her stay at the

ALR, after reasonable and appropriate notice has been provided to her POAs. The POAs concede full payment has not been made, but claim they believed the Appellant would be approved for the Medicaid waiver. The POAs also argue that they received three (3) different rates from the ALR over the last couple of months, which made knowing what to pay confusing.

Facilities are allowed to involuntarily discharge residents, when the resident has failed, after reasonable and appropriate notice, to pay or have paid under Medicaid, for a stay at the facility. The facility concedes that the Appellant's monthly rate was changed multiple times, but argues it was done for the financial benefit of the Appellant. While a notice dated December 11, 2023, stated that the Appellant had a past due balance of \$7,136.00 for the months of September through December 2023, the record lacks any evidence of prior invoices being issued for those months. Additionally, the December 11, 2023, notice states that the Appellant's monthly payment, after her pension and social security income is credited to the facility, would be \$1,904.00, but then later states it would be \$1,784.00 due to a PNA. While the ALR maintains that the POAs were informed, and thereby aware, that the Appellant would have to pay the facility privately if she were not Medicaid eligible, the emails were not clear as to when and what amount was owed.

The record establishes the POAs intended to apply for a Medicaid waiver so that the Appellant's stay at the ALR would be paid by Medicaid. The POAs relied upon the ALR Representative to advise them and assist them in applying for Medicaid. While there is no dispute that a Medicaid application was given to [REDACTED] and the December 11, 2023, notice from the ALR states that the Appellant's Medicaid application was denied, there is no evidence that the application was ever submitted to the State Agency authorized to determine Medicaid eligibility, or that the Appellant was issued a formal decision as to Medicaid eligibility.

Therefore, despite concerns about missing funds, there is no clear evidence that the Appellant's application for Medicaid would have been denied if it had been submitted for processing.

Per DOH regulations, an ALR must make reasonable efforts to accommodate temporary financial hardship, and the record establishes that the ALR initially agreed to do so by allowing the Appellant time to apply for Medicaid. In the absence of a signed Rental Agreement outlining the financial terms and agreement between the parties at the time of admission, and the processes that would be utilized in the event the Appellant was denied Medicaid, and or failed to pay for her stay at the ALR, as required by DOH regulations, the specifics of the agreement and/or whether it was adhered to is unknown.

EOHHS regulations 210-RICR-10-05-2.4.8(D) and 210-RICR-50-00-7.6(B) require a formal notice of intent to discharge be given to the resident or their authorized representative at least thirty (30) days in advance of the intended discharge, and include the reason for the discharge, and the effective date of the discharge. The issue date and the effective discharge date on the Appellant's 30-Day Notice are both written as January 10, 2024, and the date and/or verification by signature that the notice was received by the Appellant or her POA(s) is missing. Therefore, the requirements of the notice have not been met.

VIII. CONCLUSION OF LAW

Upon careful review of the evidence and testimony presented at the Administrative Hearing:

1. There is insufficient evidence to establish that the Appellant was denied, or is ineligible for, Medicaid.
2. There is insufficient evidence to establish that the Appellant's POAs received reasonable and appropriate notice to pay.

3. There is insufficient evidence to establish that the Appellant's POAs received written notification of the ALR's policies regarding overdue payments and/or the criteria for termination of a residency agreement.
4. The Appellant's POAs did not receive a valid notice of intended discharge.

IX. DECISION

Based on the foregoing Findings of Fact, Conclusions of Law, evidence, and testimony, it is found that a final order be entered that the regulatory criteria and procedures for involuntary discharge from an ALR have not been met. The Appellant's request to nullify the 30-Day Notice is thereby granted.

APPEAL GRANTED

/s/ Vermont Richardson

EOHHS APPEALS OFFICER

NOTICE OF APPELLANT 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 [REDACTED]; copies were sent to [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and Renee Miller, Alliance for Better Long-Term Care, 422 Post Road, Ste. 204, Warwick, RI 02888; copies were sent via email to [REDACTED] and to [REDACTED] [REDACTED], on this 16th day of February, 2014.


