

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

[REDACTED]

V.

DOCKET No. 24-4418

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

**I. INTRODUCTION**

A telephonic hearing on the above-titled matter was held Tuesday, August 20, 2024. The Rhode Island State Long-Term Care Ombudsman, representing the Appellant, [REDACTED], initiated this matter to appeal the Pre-Discharge 30-Day Notice (30-Day Notice) issued by [REDACTED] ([REDACTED]), on July 15, 2024. The notice stated the Appellant's bill for services at the facility has not been paid after reasonable and appropriate notice to pay, and that the Resident's power of attorney was notified and provided with a bill. The Ombudsman is seeking to have the discharge notice rescinded, and have the Appellant remain at [REDACTED]. For the reasons discussed in more details below, the Administrative Hearing has been decided against the Appellant.

## **II. JURISDICTION**

The Executive Office of Health and Human Services (EOHHS) is authorized and designated by R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 § 2.4.8 to be the entity responsible for appeals and hearings related to nursing facility transfers or discharges for all residents, both Medicaid and non-Medicaid. 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-10-05-02.

## **III. ISSUE**

The issue is whether there is sufficient evidence to permit the involuntary discharge of the Appellant, in accordance with the Rules and Regulations as set forth below.

## **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. 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. (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)).

## **V. PARTIES AND EXHIBITS**

█ Business Office Manager █ (█ representative) attended the hearing and provided testimony and the following evidence relevant to the Appellant’s involuntary discharge:

- Exhibit #1: Admission Packet including Admission Agreement
- Exhibit #2: Consent for [REDACTED] to Assist establishing Medicaid eligibility

The Appellant did not attend the hearing and was represented by her authorized representative, Ombudsman Charline Scanlon (Ombudsman), who testified on her behalf, and filed the appeal after the 30-Day Notice was received. No evidence was presented by the Ombudsman.

## **VI. RELEVANT LAW/REGULATIONS**

The Rights of Nursing Home Patients are outlined in R.I.G.L. Title 23 § 17.5-17 “Transfer to another facility.” It states a patient may be transferred or discharged “only for medical reasons, or for the patient’s welfare or that of other patients or for nonpayment of the patient’s stay.” A facility seeking to discharge a patient for nonpayment must, if the patient has been a patient of the facility for thirty (30) days or longer, provide the patient, and if known, a family member or legal representative of the patient, with written notice of the proposed discharge thirty (30) days in advance of the discharge.

In addition, 210-RICR-50-00-7, “Involuntary Discharge from a Long-Term Care Facility,” specifically sections 7.4, discharge criteria; 7.6, pre-transfer/discharge notice; 7.7, resident appeal rights; and 42 C.F.R. § 483 Subpart B, “Requirements for Long Term Care Facilities, specifically §483.15(c), “Transfer and discharge,” discuss established guidelines regarding transfers or discharges from long-term care facilities, along with notice requirements, and appeal rights.

## **VII. FINDINGS OF FACT**

1. The Appellant has been a resident of [REDACTED] since January 27, 2023. She signed the admission agreement, which includes the payment policy, and gave consent for [REDACTED] to assist in establishing Medicaid eligibility.
2. The Appellant received the 30-Day Notice from [REDACTED] on July 15, 2024, informing her she is being discharged August 13, 2024, to her son's home, citing "your bill for services at the facility has not been paid after reasonable and appropriate notice to pay." The 30-day notice included contact information for the Ombudsman.
3. A timely appeal was filed by the Ombudsman, and was received in the EOHHS Appeals Office on July 16, 2024.
4. The Appellant was not discharged August 13, 2024, and is still at [REDACTED] due to the pending appeal.
5. The HH Representative testified that the Appellant's status changed to Medicaid-pending April 1, 2024, as she filed a Long-Term Care application with the Department of Human Services (DHS). Prior to that, she paid the private rate of \$340 a day.
6. The application has not been approved, and the [REDACTED] Representative testified the Appellant's Power of Attorney (POA), her son, has not cooperated with DHS' requests for documentation.
7. Based on her social security and pension income, the Appellant's monthly cost of care as of April 1, 2024, is \$6,149.67 – that is the calculation based on her being approved for Medicaid.

8. The [REDACTED] Representative testified that the POA complied with paying the private rate. She testified problems with payment began when the Appellant became Medicaid-pending, accruing an \$18,748.35 bill, which prompted the issuance of the 30-Day Notice. She said the POA controls the Appellant's finances.
9. After issuing the 30-Day Notice, the POA paid some money owed. The [REDACTED] Representative testified the Appellant owes \$3,748.35, reflecting the remainder of the August 2024 bill.
10. A telephonic hearing was scheduled on Thursday, August 15, 2024. The hearing was rescheduled to August 20, 2024, at the Ombudsman's request.
11. The Ombudsman testified that the resident previously lived with the son, but said she feels it is not a safe discharge because the son is unreachable and unresponsive when she has tried to contact him.
12. Both the [REDACTED] Representative and Ombudsman testified that they have not directly talked to the son about having his mother move back in with him.

## **VIII. DISCUSSION**

The record consists of evidence and testimony from the [REDACTED] Representative and the Ombudsman. The POA did not attend the hearing, and it was unclear what notification he received in advance of it. Both the [REDACTED] Representative and Ombudsman testified that they have had difficulty getting in touch with him by telephone. It also is unclear why [REDACTED] is not dealing directly with the Appellant regarding payment, as she signed the admission agreement, gave consent for [REDACTED] to assist in establishing Medicaid eligibility, and signed the Pre-Discharge 30-Day Notice when it was given to her on July 15, 2024. The [REDACTED] Representative testified the son

has control over his mother's finances, but she is signing documents, not him. Also, no verification was provided to show that the Appellant's son is her POA.

Lacking evidence to the contrary, it appears the Appellant would be capable of setting up direct deposits of her Social Security and pension payments to ■■■ to pay her monthly share. Meanwhile, the Ombudsman's argument that the son's home is not a safe discharge does not carry much weight as nothing specific was presented or testified to showing it is unsuitable, other than she has not been able to contact him by telephone.

R.I.G.L. Title 23 § 17.5-17, which discusses the rights of nursing home residents, including transfers and discharges, states a resident must be provided written notice of the proposed discharge within thirty (30) days in advance of the discharge, and the 30-Day Notice given to the Appellant adheres to that timeline. Non-payment, as also discussed in RICR 210-50-00-7 §7.4(A)(5), is cited as a reason for involuntary discharge. RICR 210-50-00-7 §7.6 details written notice requirements, which must include the reason, effective date of the transfer or discharge, location to which the resident is being discharged, appeal rights, and contact information for the Ombudsman's office. The 30-Day Notice complies with these requirements.

The ■■■ Representative testified she was unable to make contact with the POA until the 30-Day Notice was issued, and that's when the bill was partially paid. There is no dispute that the Appellant owes money for her stay at ■■■ The Appellant's monthly cost of care since April 1, 2024, is calculated based on her being approved for Medicaid, which is a lower amount than what she had been paying privately. As the Medicaid application for Long-Term Care is still pending with DHS, it is uncertain when and if it would be approved.

## **IX. CONCLUSION OF LAW**

After careful review of the testimony and evidence present at the Administrative Hearing, it is clear that:

1. The Appellant has an outstanding balance of \$3,748.35 owed to [REDACTED]
2. [REDACTED] followed state and federal regulations pertaining to an involuntary discharge due to non-payment, and the Appellant was given adequate and timely notice regarding the discharge.
3. [REDACTED] took appropriate steps to ensure a safe discharge for the Appellant, by giving her proper and adequate notice, and listing an appropriate location to which she could be discharged.
4. The Ombudsman did not meet the burden of proof showing that the son's home is unsafe, as nothing specific was cited regarding its condition and accessibility.

## **X. DECISION**

After careful and considerate review of the Rules and Regulations for nursing homes, as well as the testimony and evidence provided, [REDACTED] may discharge the Appellant from the nursing home, but the discharge is contingent upon [REDACTED] following through with an appropriate discharge plan as outlined in federal and state regulations. The Appellant can continue to reside at [REDACTED] until the safe and orderly discharge can occur. The Appellant's request to rescind the Pre-Discharge 30-Day Notice is thereby denied.

**APPEAL DENIED**

*/s/ Lori Stabile*

Lori Stabile

Appeals Officer

**NOTICE OF APPELLATE RIGHTS**

This final order constitutes a final order of the Executive Office of Health and 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, via email, to [REDACTED], and Charline Scanlon at the Office of the Rhode Island State Long-Term Care Ombudsman at charline@alliancebltc.org on this 27th day of August, 2024.

