

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

[REDACTED]

V.

DOCKET No. 24-4932

[REDACTED]  
[REDACTED]

**DECISION**

**I. INTRODUCTION**

A telephonic hearing on the above-entitled matter was held on Wednesday, September 25, 2024, at 10:00 AM. [REDACTED] (Appellant) initiated this matter to appeal the thirty (30) day discharge notice issued by [REDACTED] ([REDACTED]). The Appellant was issued a Pre-Transfer or Pre-Discharge 30-Day Notice (30-Day Notice) on August 15, 2024. The Appellant then filed a timely appeal that was received by the Executive Office of Health and Human Services (EOHHS) on August 20, 2024. The Appellant is seeking to have the discharge overturned and remain at the nursing home. For the reasons discussed in more details below, the Appellant's appeal is granted.

**II. JURISDICTION**

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)(1) & (2)(n) to be the entity responsible for appeals and hearings related to transfers and discharges for all patients of nursing homes whether they are on Medicaid or not. 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 is whether there is sufficient evidence and compliance with administrative procedures 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 Treatises* § 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. 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**

██████████, ██████████ (Administrator); ██████████, ██████████ business office representative (Business Office Representative); and ██████████, ██████████ director, social services (Social Services Director), represented ██████████, and provided testimony regarding the case. The Appellant did not attend, but was represented by his daughter, ██████████ (Daughter), and Charline Scanlon (Ombudsman), Ombudsman for the Alliance for Better Long-Term Care. The following exhibits were presented as evidence:

- ██████████ Exhibits:
  - Exhibit #1: 30-Day Notice
- Appellant Exhibits:

Exhibit #1: November 27, 2023, DHS letter regarding pending Application

Exhibit #2: Request for hearing form, dated August 20, 2024, including \$3,880.00 bill owed to facility

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

Under 210-RICR-50-00-7, there is a set of requirements, both procedural and substantive, that a nursing home must take to involuntarily discharge a patient. This process is not limited to Medicaid patients. (See 210-RICR-50-00-7.1). Facilities are not allowed to discharge patients involuntarily, except in certain cases. (210-RICR-50-00-7.4(A)). One valid reason for discharge is for failure to pay for their stay after reasonable and appropriate notice, and failure to have a third party, including Medicare or Medicaid, pay for the stay or submitting the necessary documentation to have said third party payment. (210-RICR-50-00-7.4 (A)(5)).

Furthermore, 210-RICR-50-00-7.6 lays out several procedural requirements to discharge a patient from a nursing home involuntarily. These include:

1. Written notice being given to the patient and any representative they have, in a language they can understand; the Office of the State Long-Term Care Ombudsman also must be notified. (210-RICR-50-00-7.6(A)). The notice, according to 210-RICR-50-00-7.6(B) must:
  - a. list the reason for transfer/discharge.
  - b. list the effective date of the transfer/discharge.
  - c. list the location the patient is being transferred/discharged to.
  - d. contain a statement of the patient's appeals rights including the name, mailing address, email address, and telephone number of the entity that receives such appeals.
  - e. contain information on how to obtain the appeal form and on how to get assistance in completing the appeal if needed.
  - f. contain the name, mailing address, email address, and telephone number of the Office of the State Long-Term Care Ombudsman.

g. be provided at least 30 days in advance of the transfer, (210-RICR-50-00-7.6(C)), except in certain cases of:

- i. danger to the safety or health of the individuals in the facility.
- ii. when the patient's health improves sufficiently to allow a more immediate transfer or discharge.
- iii. when a more immediate transfer or discharge is needed based on the patient's urgent medical needs.
- iv. when the patient hasn't been in the facility for a period of at least 30 days. (See 210-RICR-50-00-7.6(E))

2. The patient also needs to receive a notice of appeal rights at the time of the discharge notice. (210-RICR-50-00-7.6(D)).

Finally, there is a requirement for the discharge to be a safe discharge. Federally, 42 C.F.R. § 483.15(c)(7) requires the facility must provide and document sufficient preparation and orientation to the patient to ensure a safe and orderly transfer or discharge. This must be in a form and manner that the patient can understand.

## **VII. FINDINGS OF FACT**

1. The Appellant was admitted to [REDACTED] on July 22, 2024, and is still residing at the facility.
2. The Appellant filed a Medicaid LTSS-Long Term Services and Supports (LTSS) Application with the Department of Human Services (DHS) sometime in November 2023.
3. A notice dated November 27, 2023, was sent to the Appellant from DHS confirming receipt of the LTSS Application.
4. A 30-Day Notice was given to the Appellant from [REDACTED] on August 15, 2024, stating he is being discharged or transferred as of August 15, 2024, because the bill for services at

██████████ “has not been paid after reasonable and appropriate notice to pay.” The effective date of the discharge also was listed as August 15, 2024.

5. The 30-Day Notice states the effective date must be at least thirty (30) days from the date the notice is given unless an exemption applies.
6. The 30-Day Notice does not state a location where the Appellant is to be discharged.
7. The Ombudsman testified the 30-Day Notice does not allow for a safe discharge as there is no location listed as to where the Appellant is supposed to be discharged or transferred to.
8. The Appellant did not sign the 30-Day Notice.
9. The Business Office Representative testified the Appellant was admitted to the nursing home as a private pay resident, but they learned after speaking to his daughter that he did not have resources to privately pay.
10. The Business Office Representative testified the Appellant was changed to Medicaid pending, and that they asked the daughter for a copy of the Medicaid Application that was filed so that they could calculate a cost of care.
11. The Business Office Representative testified they have not received a copy of the Application, and they would like more updated information regarding its status with DHS other than the November 27, 2023, DHS letter stating the Application was received.
12. A bill to the Appellant shows he owes \$3,880.00 for the month of July, and the Business Office Representative testified the Appellant now owes \$38,840.00, which represents a private pay amount.
13. The daughter testified the Appellant was admitted as a Medicare patient, that the LTSS Application is pending, and that the Application also was re-submitted to DHS in June, by a different nursing home.
14. The daughter testified ██████████ asked her to submit a new LTSS Application, which she does not feel is necessary since one is pending with DHS. She testified she was never asked for a copy of the original Application.

15. Both the Business Office Representative and Social Services Director testified the Appellant does not have active Medicare.
16. A call as recent as September 24, 2024, between the daughter, Ombudsman and DHS, confirmed the Application is pending, the daughter and Ombudsman testified.
17. The Ombudsman testified they were instructed by the DHS social worker during the call to “wait” to see what is owed to the nursing facility.
18. The daughter testified she would submit a payment to [REDACTED] “within reason” but conversations with the Administrator about payment have been difficult.
19. The Administrator testified there have been no discussions about cost of care for the Appellant, saying the daughter becomes “overly aggressive” when they ask for verification that the LTSS Application was submitted.
20. The Business Office Representative testified the Appellant refused to sign an insurance verification form when he was admitted to the facility.

## **VIII. DISCUSSION**

For an involuntary discharge from a nursing home to occur, the resident, or their representative, must be notified and told the reason for the discharge, and given a written a notice, in a language they can understand, that includes the location where the resident will be transferred or discharged (Sec 210-RICR-50-00-7.6(A) & (B)).

As it stands, the 30-Day Notice does not meet Notice requirements regarding a discharge location, and also does not follow safe and orderly discharge requirements, per state and federal regulations. The Ombudsman took issue with the discharge being safe, saying that would be “impossible,” as no location for the discharge/transfer was listed on the 30-Day Notice. The 30-Day Notice also repeats the date of August 15, 2024 in the field “date notice is given” and “effective date,” even though the notice states the effective date must be at least thirty (30) days from the date notice is given – unless an exemption applies.

No exemption applies in this case, per 210-RICR-50-00-7.6(E), because the Appellant is not endangering the health or safety of other individuals in the facility, his medical needs have not become more urgent, he has not been there less than thirty (30) days, and his health has not improved to the point where he can be more quickly discharged.

A resident can be discharged for non-payment, if they have failed, after reasonable and appropriate notice, to pay for their stay, and if the resident does not submit the necessary paperwork for third party payment, or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. See 210-RICR-50-00-7.4(A)(5)(a).

Though it is true that the Appellant has not paid anything toward his stay at [REDACTED], and that is criteria for discharge, the daughter testified she understands payment must be made, and is amenable to paying an amount “within reason.” Given her statement, the two sides, the daughter and [REDACTED], will need to meet to discuss payment options, as the LTSS Application remains pending. Nursing home residents typically pay a portion of their income toward their care. See 210-RICR-50-00-8.1(A).

## **IX. CONCLUSION OF LAW**

After careful review of the testimony and evidence present at the Administrative Hearing, this Appeals Officer concludes:

1. The 30-Day Notice does not meet notice requirements as outlined in 210-RICR-50-00-7.6(B) as it does not list a location where the Appellant is to be discharged.
2. The Appellant cannot be discharged if the discharge is not safe, according to federal regulations.
3. The 30-Day Notice also has an incorrect date regarding when the discharge/transfer is to take effect, as the date the notice was given (August 15, 2024) is the same as the effective

date, and the effective date must be at least thirty (30) days from the date the notice is given “unless an exemption applies.”

4. The Appellant does not meet an exemption to the thirty (30) day advance notice requirement.

**X. DECISION**

Based on the foregoing Findings of Fact, Conclusions of Law, evidence, and testimony it is found that a final order be entered that there is not sufficient evidence to support the involuntary discharge of the Appellant.

**APPEAL GRANTED**

*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

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\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_ and Charline Scanlon,

Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, Rhode Island, 02888;

copies were sent, via email, to \_\_\_\_\_,

\_\_\_\_\_, and Charline Scanlon at [charline@alliancebltc.org](mailto:charline@alliancebltc.org) on this

2nd day of October, 2024.

*Christy Ferrel*