

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

[REDACTED]

V.

DOCKET No. 25-0034

[REDACTED]

**DECISION**

**I. INTRODUCTION**

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on Monday, February 17, 2025, at 9:00 AM, and the Appellant declined the option of a video hearing. The Appellant, [REDACTED] (hereinafter the “Appellant”), initiated this matter to appeal the Pre-Transfer or Pre-Discharge 30-Day Notice issued by the [REDACTED] (hereinafter the “Facility”) on January 8, 2025. The Facility is seeking to discharge the Appellant due to his failure to pay for his stay and because the Appellant was found to be in violation of the Facility’s non-smoking policy on multiple occasions. The Appellant asserts that he was not notified of his outstanding balance with the Facility until August 2024, therefore, the discharge notice should be rescinded, and he should be permitted to stay at the Facility for an additional 30 to 45 days. For the reasons discussed in more detail below, the Appellant’s Appeal is denied.

**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)(2)(n) to be the entity responsible for appeals and hearings related to transfers and

discharges for all residents of assisted living and nursing homes, regardless of 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**

Is there sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of the Appellant from the Greenwood Center?

### **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. See (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. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. See (*Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006)).

### **V. PARTIES AND EXHIBITS**

Present for the Facility was [REDACTED], Administrator, [REDACTED], Director of Nursing, [REDACTED], Business Office Manager, and [REDACTED], Social Worker. The Facility representatives provided testimony related to the Appellant’s involuntary discharge and submitted the following exhibit as evidence:

Exhibit #1 – Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025.

The Appellant attended the hearing and testified on his own behalf. Judith Shaw (hereinafter “Ombudsman Shaw”), on behalf of the Alliance for a Better Long-Term Care/the Ombudsman Office,

also attended the hearing and testified in support of the Appellant. The following exhibit was offered as evidence by the Appellant:

Exhibit #2 – Appeal Form, Date Received: January 23, 2025.

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

Nursing home facilities may discharge a resident from a long-term care facility if the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. See (210-RICR-50-00-7.4(A)(5)).

Under 210-RICR-50-00-7, there is a set of requirements, both procedural and substantive, an institution, such as a nursing home or an assisted living facility, must take to involuntarily discharge a patient. This process is not limited to Medicaid patients. See (210-RICR-50-00-7.1).

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

1. Written notice being given to the patient and any representative they have. The notice must:
  - a. Be in a language and manner the patient understands.
  - b. List the reason for the transfer/discharge.
  - c. List the effective date of the transfer/discharge.
  - d. List the location the patient is being transferred/discharged to.
  - e. 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.
  - f. Contain information on how to obtain the appeal form and on how to get assistance in completing the appeal if needed.
  - g. Contain the name, mailing address, email address, and telephone number of the Office of the State Long-Term Care Ombudsman.
  - h. Be provided at least 30 days in advance of the transfer, except in certain cases.

2. Notification of the pending discharge must be provided to the Office of the State Long-Term Care Ombudsman. The Ombudsman is part of and operates out of the Alliance for a Better Long-Term Care.
3. The patient also needs to receive a notice of appeal rights at the time of the discharge notice. See (210-RICR-50-00-7.6 et seq.).

If a resident's appeal request is submitted within 10 days of the date of the notice of intent to discharge/transfer, the resident is prohibited from being relocated pending the decision of the hearing officer. See (210-RICR-10-05-2.4.8(G)).

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

## **VII. FINDINGS OF FACT**

1. The Appellant was admitted to the Facility in April 2024.
2. Upon admission to the Facility, the Appellant was informed that it was a non-smoking facility, and that the Appellant could be discharged if he violated the Facility's non-smoking policy.
3. The Facility testified that when they helped the Appellant complete a Long-Term Services and Support Medicaid application, they reviewed his applied income amount, and informed him that he would be responsible for paying his applied income to the Facility on a monthly and ongoing basis while he was a resident. The Facility further testified that on May 21, 2024, a staff member met with the Appellant to calculate his applied income amount. The staff member calculated the Appellant's applied income amount to be \$1,813.00 a month.
4. The Facility testified that they sent monthly invoices showing the applied income amount that was due and the Appellant's outstanding balance to both the Appellant and his daughter.

5. The Facility testified that staff members met with the Appellant in June 2024. They informed him that he was required to make applied income payments to the Facility and the Facility further testified that the Appellant only made a partial payment for his applied income for the month of June.
6. Staff members from the Facility met with the Appellant in August 2024 and again they informed the Appellant that his applied income was \$1,813.00 a month, and they informed him that he had accumulated an outstanding balance of \$6,752.36.
7. The Appellant conceded in his testimony that as of August 2024, he knew that he had an outstanding balance with the Facility.
8. The Facility testified that since the Appellant's admission to the Facility, he has only made one or two full payments of applied income to the Facility, and he now has an outstanding balance of \$15,749.44.
9. The Facility testified that the Appellant underwent surgery in November 2024 and as of February 17, 2025, the Appellant is independent with all his activities of daily life, he can ambulate independently with his walker, and he does not have any open or active wounds.
10. The Facility testified that they attempted to offer the Appellant a chance to transfer to a smoking facility and the Appellant declined. The Facility further testified that they tried to arrange several appointments for the Appellant to meet with the Nursing Home Transition Team so that they could assist him with discharge planning, and he canceled these appointments.
11. Because of the Appellant's failure to pay his outstanding balance and because he was found to be violating the Facility's non-smoking and non-vaping policy, the Facility initiated the involuntary discharge process, and a Pre-Transfer or Pre-Discharge 30-Day Notice was issued by the Facility to the Appellant on January 8, 2025.

## **VIII. DISCUSSION**

As stated above, nursing home facilities may discharge a resident if the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

The Facility testified that on May 21, 2024, staff members met with the Appellant, calculated his applied income, and informed him of his obligation to pay this amount on a monthly and ongoing basis. The Facility further testified that staff members continued to meet with the Appellant to discuss his applied income and outstanding balance, they sent monthly invoices to both the Appellant and his daughter, and since the Appellant was admitted to the Facility, he has only made one or two full payments for his monthly applied income. Furthermore, the Facility testified that upon the Appellant's admission to the Facility, he was informed that it was a non-smoking facility. The Facility testified that the Appellant was discovered to be smoking on the Facility's premises and that he was found to be in possession of a vape on multiple occasions. The Facility asserts that because the Appellant failed to pay for his stay, after reasonable and appropriate notice, and because he was found to be in violation of the Facility's non-smoking policy on multiple occasions, the Facility correctly issued the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, to the Appellant.

The Appellant testified that he never received any invoices from the Facility about his applied income and outstanding balance, and that he did not become aware of his outstanding balance with the Facility until August 2024. The Appellant is requesting to stay at the Facility for another 30 to 45 days so that he can continue to recover from a surgery he underwent in November 2024, as he currently cannot dress or shower independently. The Appellant conceded in his testimony that he was found to be smoking on the Facility's premises on one occasion, but he denied ever being found to be in possession of a vape.

Ombudsman Shaw testified that the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, is invalid because the Facility did not use a DHS-200-NF Form, it did not include the correct appeal form, and it did not include a copy of the resident's rights. Ombudsman Shaw asserts that because

the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, is invalid, the Appellant was unable to submit his Appeal within ten days of his receiving of the notice. Ombudsman Shaw also objected to the discharge location being a homeless shelter as she believes that it is an unsafe location for discharge.

While the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, does not include a full description of the resident's appeal rights, the Appellant was still able to submit his Appeal within 30 days, and the Facility did not object to the timeliness of his Appeal. Furthermore, despite the Appellant being unable to submit his Appeal within the ten-day deadline to file an appeal and remain at the Facility while his Appeal was pending, neither the Appellant nor Ombudsman Shaw testified that the Facility had already discharged the Appellant. Lastly Ombudsman Shaw was unable to identify any regulation or law stating that the Facility must use a DHS-200-NF Form as a Pre-Transfer or Pre-Discharge 30-Day Notice. Therefore, because neither Ombudsman Shaw nor the Appellant were able to show how the Appellant was harmed by the deficiencies contained in the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, Ombudsman Shaw's argument about the discharge notice being invalid is moot.

As stated above, the Facility testified that as of February 17, 2025, the Appellant is independent with all his activities of daily life, he can ambulate independently with his walker, and he does not have any open or active wounds. The Facility also testified that they attempted to offer the Appellant a chance to transfer to a smoking facility and they tried to arrange several appointments for the Appellant to meet with the Nursing Home Transition Team so that they could assist him with discharge planning. The Facility also testified that the Appellant declined to be transferred to another facility and he canceled these initial appointments with the Nursing Home Transition Team. Therefore, because the Appellant declined to be transferred to another facility and because he cancelled his initial appointments with the Nursing Home Transition Team, the Facility's decision to discharge the Appellant to a homeless shelter is permissible.

The Appellant concedes that as of August 2024, he was aware of his outstanding balance with the Facility, and he concedes that he currently has an outstanding balance of \$15,000.00. The Appellant also conceded in his testimony that Facility staff members continuously met with him to discuss his applied income and outstanding balance. Because the Appellant was aware of his outstanding balance as of August 2024, and because he only made one or two full payments for his monthly applied income since his admission to the Facility, there is a preponderance of evidence to show that the Facility correctly issued the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, to the Appellant.

**IX. CONCLUSION OF LAW**

After careful review of the testimony and evidence present at the administrative hearing, this Appeals Officer concludes that:

1. As of August 2024, the Appellant was aware that he had an outstanding balance with the Facility.
2. As of February 17, 2025, the Appellant has only made one or two full payments of his applied income to the Facility.
3. As of February 17, 2025, the Appellant has an outstanding balance of \$15,749.44.
4. There is a preponderance of evidence to show that the Facility correctly issued the Pre-Transfer or Pre-Discharge 30-Day Notice, Date: January 8, 2025, to the Appellant.

**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 sufficient evidence to permit the involuntary discharge of the Appellant. The Facility may discharge the Appellant if the Facility ensures a safe and orderly discharge.

**APPEAL DENIED**



/s/ Jack Peloquin

Jack Peloquin

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 an 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], Judith Shaw C/o Alliance for Better Long Term Care at 422 Post Rd, Suite 204, Warwick, RI 02888, and [REDACTED]; copies were sent, via email, to Judith Shaw at [REDACTED]; judith@alliancehlthc.org on this 19th day of February, 2025.

