

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

[REDACTED]

V.

DOCKET No.

25-0037

[REDACTED]  
[REDACTED]

**DECISION**

**INTRODUCTION**

The Appellant, [REDACTED], initiated this matter to appeal the 30-day discharge notice issued by [REDACTED]. The Appellant is seeking to have the discharge overturned and remain at the nursing home. A Microsoft Teams hearing in this matter occurred on February 25, 2025, at 1:00 PM. The Appellant declined the option of a video hearing. For the reasons discussed in more details below, the Appellant's appeal is denied.

**JURISDICTION**

EOHHS is authorized and designated by R.I.G.L. § 42-7.2-6.1 and 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 patients of nursing homes regardless of if they are on Medicaid or not. The administrative hearing was held in accordance with 210-RICR-10-05-2 and the Administrative Procedures Act (R.I.G.L. § 42-35-1 et. seq.).

## **ISSUE**

The issue is whether there is sufficient evidence and compliance with procedures to permit the involuntary discharge of the Appellant.

## **STANDARD OF PROOF**

It is well settled that in adjudications modeled on the Federal Administrative Procedures Act, a preponderance of the evidence is required to prevail. This means that for each element to be proven, the factfinder must believe that the facts asserted 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). 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).

## **PARTIES AND EXHIBITS**

██████████ (Director of Finance for ██████████), Beth Mantia (Ombudsman’s Office), ██████████ (Appellant’s Son), and the Appellant attended the hearing. The following exhibits were presented as evidence:

- The Pre-Transfer/Pre-Discharge 30-Day Notice
- The Appellant’s Appeal

## **RELEVANT LAW/REGULATIONS**

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

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 must be 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. contains 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. contains 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's Long-Term Care Ombudsman.
  - h. be provided at least 30 days in advance of the transfer 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.
  - i. For intellectually and/or developmentally disabled patients, the notice also needs to include the mailing address, email address, and telephone number of the Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals - Division of Developmental Disabilities.

- j. For patients with a mental disorder or related disability, the notice also needs to include the mailing address, email address, and telephone number of the Office of the Mental Health Advocate.
2. Notification of the pending discharge must be provided to the Office of the State's Long-Term Care Ombudsman. The Ombudsman is part of and operates out of the Alliance for Better Long-Term Care.
3. The patient also needs to receive a notice of appeal rights at the time of the discharge notice.

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. On the state level, 210-RICR-50-00-7.5(B) lays out the documentation requirements of a safe discharge. This includes 1) contact information for the practitioner responsible for the care of the patient 2) the patient's representative's information, including contact information, 3) any advance directives of the patient, 4) any special instructions or precautions for ongoing care, 5) comprehensive care plan goals, and 6) all other necessary information and documentation to ensure a safe and effective transition of care. This includes a copy of the discharge summary.

### **OBJECTIONS AND MOTIONS**

No objections or motions were made.

### **FINDINGS OF FACT**

1. The Appellant was admitted to [REDACTED] on October 8, 2022.
2. The Appellant became private pay on January 16, 2023.
3. The last payment that [REDACTED] received was in May of 2024.
4. The Appellant owes \$127,234.00 as of December 31, 2024. This increased to \$155,184.40 through the date of hearing. In addition, the Appellant owes a \$461.04 bed hold fee.

5. The original discharge date was set for February 7, 2025. This has been extended to March 31, 2025. The Appellant's son believes they would need an additional 15-30 days beyond that to get the house ready for the Appellant to return home.
6. To date the Appellant has not filed for Medicaid.
  - a. The Appellant did not want to apply for Medicaid until she could confirm, in writing, that her BlueCross/BlueShield Plan 65 would not be terminated by going on Medicaid.
  - b. The Appellant is a stage 4 cancer patient. She has been recently diagnosed with a metastasized tumor on her head that would require a PET scan and surgery.
  - c. The Appellant did not want to lose her BlueCross/BlueShield plan as it would possibly cause her to lose her current doctors and treatment providers.
7. The original agreement between the Appellant and [REDACTED], when the Appellant became private pay, called for the Appellant to pay a daily rate of \$434.66 for a semi-private room and \$450.49 for a private room. These rates are pre-tax.
  - a. The Appellant saw on some websites that [REDACTED] charges approximately \$9,000 a month. As such she believes that the amount they are being charged is excessive.
  - b. The Appellant is currently in a semi-private room, despite her belief that she is in a "roommate room" and not a semi-private room.
8. The Appellant's only source of income is from Social Security.

## **DISCUSSION**

[REDACTED] wants to discharge the Appellant for failing to pay for her stay. Based on the testimony provided, the Appellant currently owes \$155,645.44 between room, board, and a bed hold fee. The Appellant has already exhausted her insurance coverage (Medicare and BlueCross/BlueShield) and has depleted most of her 401(k). At this juncture, the only remaining payor source would be Medicaid. However, the Appellant has yet to apply for Medicaid.

The Appellant currently has a Plan 65 through BlueCross/BlueShield that she is afraid of losing with her ongoing cancer needs. This has caused the Appellant to be reluctant in applying for Medicaid. While her concerns are understandable, they do not get around her obligation to pay for her care. At this juncture, the Appellant has not made a payment to [REDACTED] in nine months. While a couple of months delay may be acceptable to coordinate coverage and evaluate options, going without paying a substantial obligation for nine months is unacceptable. Any other large obligation, such as rent or a mortgage, not being paid for nine months would result in legal action, such as an eviction or foreclosure, if such action had not already been taken.

The Appellant and her son raised concerns that [REDACTED] is overcharging the Appellant based on statements on some websites. However, the issue of rates is beyond this tribunal's scope. What is clear is that there was an agreement between the Appellant and [REDACTED] setting forth the private pay rate the Appellant was supposed to pay for her stay. Those monies have not been paid for nine months. As such [REDACTED] is justified in seeking to discharge the Appellant for non-payment.

### **CONCLUSION OF LAW**

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

1. The Appellant has not paid for her stay at [REDACTED] for nine months and has not sought to apply for Medicaid to cover the stay.
2. The reasoning of fearing losing her BlueCross/BlueShield plan does not justify nine months of non-payment and not applying for Medicaid.
3. The discharge is permitted, subjected to a safe and orderly discharge, for non-payment reasons.

## **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 support the discharging of the Appellant.

██████████ is permitted to discharge the Appellant, subject to it being a safe and orderly discharge.

## **APPEAL DENIED**

*Shawn J. Masse*

Shawn J. Masse

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.

