

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

[REDACTED]

V.

DOCKET No. 25-0311

[REDACTED]

DECISION

I. INTRODUCTION

A Microsoft Teams meeting on the above-entitled matter was held on March 10, 2025, and the Appellant, [REDACTED], declined the option of a video hearing. The Appellant initiated this matter to appeal the 30-day Discharge Notice issued by [REDACTED], an Assisted Living Residence (ALR), on February 11, 2025. The Notice stated that “your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” The Appellant disagrees with the ALR and is seeking to have the discharge rescinded so he may remain at the ALR. 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 to be the entity responsible for appeals and hearings related to transfers and discharges for all residents of assisted living facilities regardless of whether Medicare, Medicaid or private parties pay for a

- Exhibit #1: Appeal letter requesting hearing, received February 13, 2025.

VI. RELEVANT LAW/REGULATIONS

The Rhode Island Code of Regulations (RICR) for ALRs in effect at the time of the discharge notice, Rhode Island Department of Health (RIDOH) 216-RICR-40-10-2 entitled "Licensing Assisted Living Residences," requires ALRs to adhere to certain standards in connection with its residents. Specifically, § 2.4.14 entitled "Management of Services" states the ALR must have a policy and procedure manual which includes, but is not limited to, an admission, discharge, and involuntary discharge policy. § 2.4.15 entitled "Residency Requirements" states that the ALR must disclose certain information to each resident prior to admission which includes executing a residency agreement. The residency agreement provides pertinent requirements such as, resident's rights and discharge criteria and policies. In addition, residents can be discharged if they fail to pay all fees and costs stated in the contract, resulting in bills more than 30 days outstanding; the ALR must make a good faith effort to counsel the resident if the resident shows indications of no longer meeting residence criteria or if service with a termination notice is anticipated. § 2.4.19(B)(5)(d) & (e).

The ALR shall also observe the standards stated in R.I. Gen. Laws Title 23 Health and Safety, Chapter 23-17.4 "Assisted Living Residence Licensing Act" specifically 23-17.4-16, "Rights of residents." (xviii) and (xix) further provide established guidance to discharges, counseling, and providing a safe and orderly move to another facility. It repeats that a resident can be discharged for bills more than 30 days outstanding, stating chronic and repeated failure to pay rent is a violation of the lease covenant, and the residence must make reasonable efforts to accommodate temporary hardship and provide information on government or private subsidies available that may be able to help with costs. It states that the residence must provide a safe and orderly move out, including assistance with identifying a resource to help locate another setting, regardless of the moving reason.

Under 210-RICR-50-00-7, there is a set of requirements an assisted living facility must take to involuntarily discharge a resident. Facilities are not allowed to discharge residents involuntarily, except in certain cases, which include non-payment. 210-RICR-50-00-7.4(A)(5).

Furthermore, 210-RICR-50-00-7.6 lays out several procedural requirements to discharge a resident from an ALR involuntarily. These include:

1. Written notice being given to the resident and any representative they have. The notice must:
 - a. be in a language and manner the resident understands.
 - b. list the reason for the transfer/discharge.
 - c. list the effective date of the transfer/discharge.
 - d. list the location the resident is being transferred/discharged to.
 - e. contain a statement of the resident'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 involving the safety or health of the other facility residents, or the resident's health.
2. Notification of the pending discharge must be provided to the Office of the State Long-Term Care Ombudsman.
3. The resident 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. 210-RICR-50-00-7.5(B)

VII. FINDINGS OF FACT

1. The Appellant resides at the ALR that issued the 30-Day Notice, and has been a resident there since June 4, 2024.
2. The 30-Day Notice was given to the Appellant on February 11, 2025, stating he is more than 90 days in arrears for some or all of the rent owed under his rental agreement for his apartment at [REDACTED] Assisted Living, and that unless he paid the \$5,709.00 owed, his tenancy would be terminated on March 13, 2025.
3. [REDACTED] testified the Appellant's son has paid some of the money owed, but the February and March rent are still outstanding; the Appellant's monthly rent is \$1,903.00, and \$3,806.00 is owed.
4. The Appellant signed a Residency Agreement when he moved into the ALR that stated monthly charges are due on the first day of each month, and any amount unpaid after the fifth day of each month is subject to a late fee of \$30. The Residency Agreement also states that "you will be required to make all payments due to Owner in a timely manner" and "if you fail to pay your monthly residency fee or other charges by the 15th day of each calendar month, Owner may, in its discretion, terminate this Agreement."
5. The Appellant signed the Agreement on June 4, 2024, and again on July 23, 2024, reflecting his change to Medicaid-eligible status and the lower rent fee of \$1,903.00 a month.
6. The Residency Agreement states that only the Appellant is responsible for payment. The son did not sign the Residency Agreement as a responsible party.
7. The Ombudsman testified the Appellant is his own responsible party.
8. The Appellant does not have a power of attorney (POA). The Appellant designated his son as his "rep payee" to manage his social security check and told him to pay the ALR.
9. [REDACTED] testified they are concerned about the son managing the Appellant's social security checks. She said they do not have a POA or a financial responsibility form signed by the son.

10. [REDACTED] testified it has been a struggle to get the rent from the son. He outlined the difficulties they have had in obtaining payment from the son since the Appellant moved into the facility (Exhibit #3). [REDACTED] and his assistant have been either calling or emailing the son; an email sent to the son asking for a family meeting about the account balance and how to resolve it went unanswered.
11. The Ombudsman testified the son has not been easy to connect with, but said he is a crucial part of the rent issue and needs to be part of the discussion. The Ombudsman testified she called him to notify him of the hearing, but she did not hear back from him. The son did not attend the hearing.
12. The Ombudsman testified the involuntary discharge letter has “grieved” the Appellant “tremendously” and given him anxiety.
13. The Appellant testified he was under the impression that everything was fine and he considers the ALR his home.
14. The Appellant testified he has not discussed the late rent payment issue with his son.
15. The 30-day Notice did not state where the Appellant would be discharged to, even though a location is required.
16. ALR representatives did not provide documentation that the matter involving the non-payment was addressed with the Appellant until the 30-Day Notice was given to him, nor did they show they attempted to rectify the rent issue with the Appellant before issuing the Notice.
17. No documentation was provided showing that outstanding bills (with the exception of February) were sent to the Appellant.

VIII. DISCUSSION

The record consists of evidence and testimony from the ALR representatives, as well as testimony from the Appellant and Ombudsman. The ALR was clearly communicating only with the son,

who was not the POA for the Appellant, nor did he sign anything indicating he was the responsible party for payment.

Even though the Appellant verbally told the ALR representatives his son was receiving his social security checks and would manage his money and payments, the ALR had a responsibility to make the Appellant aware that there had been a problem with timely payments every month since his admission. The Appellant was the one who signed the Residency Agreement, which stated his monthly charge and when it was due. Therefore, he was the one ultimately responsible for the payments to the ALR each month as the sole signer of the agreement.

The Appellant testified that he had no conversations with his son about the rent issue, and planned to reach out to him with the Ombudsman after the hearing. Perhaps if the Appellant has been more involved in the payment process the rent would not continually be in arrears. The Appellant testified at the hearing that “everything was working so good before” regarding payments even though it clearly was not.

██████████ testified numerous phone calls and emails had been made to the son regarding problems with checks and late rent, but the only proof of any physical bill that had been sent was the one to the Appellant’s address dated February 1, 2025, as part of the pre-discharge 30-Day Notice package.

Furthermore, the 30-Day Notice failed to include a location for the Appellant to be discharged to as required. While R.I.G.L. Chapter 23-17.4 “Assisted Living Residence Licensing Act” states that a resident can be discharged for bills more than 30 days outstanding, it also states the ALR must provide a safe and orderly discharge. The Appellant testified he would move in with his son if he had to, but stated he has not talked to him about that. ██████████ said she and ██████████ also have not talked to the son about a plan if the Appellant is discharged from the ALR.

IX. CONCLUSION OF LAW

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

1. The Appellant signed the Residency Agreement twice, which outlined his monthly charge to the ALR, and when it was due. The Appellant signed the Responsible Party section agreeing to be financially responsible for payments.
2. While the ALR was communicating with the son per the Appellant's directive, the ALR failed to also directly communicate with the Appellant, who was the responsible financial party per the Residence Agreement, about the rent problems. The son was not the POA, nor did he sign the Residency Agreement.
3. The 30-Day Notice given to the Appellant does not allow for a safe discharge, as required in R.I. General Laws, as there is no discharge location identified.

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 [REDACTED] request to involuntarily discharge the Appellant from the ALR.

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

_____;

_____;

and _____ and _____

_____; copies were sent, via email, to _____

_____, and _____ and _____

_____ on this 18th day of March, 2025.

