

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

V.

DOCKET No. 25-1686

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on May 6, 2025, at 2:00 PM, 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 [REDACTED] (hereinafter the "Facility") on March 18, 2025. The Facility seeks to discharge the Appellant due to her failure to pay for her stay. The Appellant is seeking to have the discharge overturned and remain at the Facility as she does not believe that she should have to pay for her stay. The Appellant also feels that a discharge at this time would be unsafe as she is currently undergoing dialysis treatments. 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 home facilities, 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?

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

Administrator, [REDACTED], Regional Director of Business Development, [REDACTED] and [REDACTED] attended the hearing and provided testimony on the Facility’s behalf. The facility submitted the following exhibit as evidence:

1. Exhibit #1 – Pre-Transfer or Pre-Discharge 30 Day Notice.

The Appellant attended the hearing and provided testimony. Long-Term Care Ombudsman, Judith Shaw (hereinafter “Ombudsman Shaw”), also attended the hearing and provided testimony on the Appellant’s behalf. The Appellant submitted the following exhibit as evidence:

2. Exhibit #2 – Appeal Form.

VI. RELEVANT LAW/REGULATIONS

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). Facilities are not allowed to discharge patients involuntarily, except in certain cases. See (210-RICR-50-00-7.4(A)).

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

Furthermore, 210-RICR-50-00-7.6 et seq. lays out the 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.
 - h. 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 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 resident has not 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 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.

If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available. See (42 C.F.R. § 483.15(c)(6) (2024)).

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 resident to ensure a safe and orderly transfer or discharge. See (42 C.F.R. § 483.15(c)(7) (2024)). 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 or transfer. This includes 1) Contact information for the practitioner responsible for the care of the patient, 2) The patients 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. See (210-RICR-50-00-7.5(B)(1-6)).

VII. FINDINGS OF FACT

1. The Appellant was admitted to the Facility on October 13, 2021, for short-term rehabilitation. After the Appellant completed her skilled-care services at the facility, she was unable to be discharged to the community because there was no suitable location for discharge.
2. The Appellant is not a U.S. citizen. The Appellant previously had a work visa, however the Appellant's work visa expired, and it was never renewed.
3. The Appellant applied for Medicaid on January 24, 2022. The application was denied due to the Appellant's immigration status.
4. The Facility testified that they informed the Appellant that she would be required to pay for her stay at the Facility as a private payer on multiple occasions, including conversations held on September 8, 2023, October 19, 2023, October 23, 2023, and January 5, 2024.
5. On September 8, 2023, the Facility informed the Appellant that she would not be able eligible for Medicaid due to her immigration status, she had accrued a very large bill for her stay at the Facility, and that she could be discharged for failing to pay for her stay.
6. The Facility testified that they have set up phone calls between the Appellant and Dorcas International to attempt to resolve the Appellant's immigration status, but the Appellant does not take the initiative to resolve her immigration status on her own and she has been unable to obtain a legal immigration status.
7. The Facility testified that the Appellant has not made any reasonable attempts to pay for her stay and she now has an outstanding bill of \$320,000.00.

8. The Facility testified that the Appellant is independent with her care, she has no cognitive or motor deficits, she can ambulate 150 feet with a rolling walker, and she can independently administer her own medications.
9. The Facility testified that have offered the Appellant several options for discharge locations including staying with family members and friends, but the Appellant did not agree to any of these discharge options.
10. The Appellant is currently on dialysis, going for treatments three days a week.
11. The Facility testified that they would continue to work with the Appellant to develop an acceptable discharge plan and they are willing to discharge the Appellant to a hotel. The Facility is willing to pay for the hotel stay and a bus pass so that the Appellant can continue her dialysis treatments after discharge.

VIII. DISCUSSION

As stated above, a resident can be involuntarily discharged if the resident has failed, after a reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare and Medicaid, denies the claim and the resident refuses to pay for his or her stay. Written notice must be given to the patient and any representative they have, and the notice must list the location the patient is being transferred/discharged to. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

The Facility's position is that their decision to issue the Pre-Transfer or Pre-Discharge 30 Day Notice is permissible because the Appellant has failed to pay for her stay at the facility after reasonable and appropriate notice. The Facility testified that the Appellant's application for Medicaid was denied due to her immigration status, and the Appellant was unable to obtain a legal immigration status during her three years at the Facility. The Facility further testified that the Appellant was previously warned that she

could be discharged for her failure to pay for her stay, and she has not made any reasonable attempts to pay for her stay so far.

The Appellant testified that the Facility only discussed her obligation to pay for her stay with her on one occasion, prior to her receiving the Pre-Transfer or Pre-Discharge 30 Day Notice. Because it is unreasonable to expect to stay at a nursing facility for over three years without having to pay for the stay, and because the Facility's testimony about speaking to the Appellant about her obligation to pay for her stay on several occasions conflicts with the Appellant's testimony, the Appellant's testimony is not credible.

The Appellant also testified that a discharge to a hotel with a bus pass is unsafe because she may be too sick to travel to and from her dialysis appointments on a bus. The Facility testified that the Appellant could try to utilize alternative transportation options such as ride-share and that there are plenty of people on dialysis who are able to be transported to and from dialysis without having to stay in a nursing home.

Ombudsman Shaw testified that the Facility admitted the Appellant knowing her immigration status and that the payer source for the Appellant's stay was questionable, therefore, the Appellant should not have to pay for her stay at the Facility. The Facility testified that there is no evidence to show that the Facility knew of her immigration status when she was admitted to the Facility and that the Facility was unaware that the payer source for the Appellant's stay was questionable because she was admitted to the Facility under a 30-day community Medicaid plan which initially covered her skilled-care stay during the first 30 days of her stay. Because the Appellant is not eligible for Medicaid or Medicare and because she was informed on several occasions that she would be required to pay for her stay at the Facility as a private payer, she does have an obligation to pay for her stay at the Facility.

Ombudsman Shaw also testified that because there is no resident representative information nor discharge location shown on the Pre-Transfer or Pre-Discharge 30 Day Notice, the notice is invalid, and it

does not meet the requirements for a safe discharge. The Facility testified that the Appellant does not require a representative because she is alert, orientated, and can make her needs known. The Facility further testified that she does not have an appointed guardian and therefore, the decision to leave the resident representative information section blank was correct. The Facility also testified that the discharge location on the Pre-Transfer or Pre-Discharge 30 Day Notice is blank because the Appellant has not agreed with previous discharge plans of being discharged to the homes of family members or friends. The Facility testified that they are still working with the Appellant to identify a suitable location for discharge and that they are willing to pay for a hotel stay and a bus pass so that the Appellant can continue her dialysis treatments after discharge.

Because the Appellant is alert, orientated, and can make her needs known, and because there is no evidence or testimony to show that the Appellant had previously appointed a representative, the decision to leave the resident representative section of the Pre-Transfer or Pre-Discharge 30 Day Notice blank does not render the notice invalid. Because the Pre-Transfer or Pre-Discharge 30 Day Notice can be amended at any time before the discharge occurs, a complete discharge plan is not needed at the time the notice is issued. The Appellant and the Facility have been unable to agree on suitable location for discharge, however the record shows that the Facility is making efforts to develop a safe and orderly discharge plan. If a safe and orderly discharge plan is established by the date of discharge, the lack of a complete discharge plan at this juncture is not fatal to the Pre-Transfer or Pre-Discharge 30 Day Notice.

Because the record clearly shows that the Appellant has failed to pay for her stay at the facility after reasonable and appropriate notice, there is sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of 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. The Pre-Transfer or Pre-Discharge 30 Day Notice is procedurally sufficient.
2. The Appellant was informed on September 8, 2023, that she would not be eligible for Medicaid due to her immigration status, she had accrued a very large bill for her stay at the Facility, and she could be discharged for failing to pay for her stay.
3. The Appellant owes \$320,000.00 to [REDACTED] and she has not made sufficient arrangements to pay for her stay during her three years at the facility.
4. Failure to pay after reasonable and appropriate notice is a valid reason for an involuntary discharge from a nursing facility.
5. The discharge would be subject to the regulatory provisions regarding a safe and orderly discharge.

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 support the involuntary discharge of the Appellant. [REDACTED] is permitted to discharge the Appellant once a safe and orderly discharge plan is established.

APPEAL DENIED

/s/ Jack Peloquin

Jack Peloquin

Appeals Officer

NOTICE OF APPELLATE RIGHTS

This final order constitutes a final order of the Department of 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

_____ ,

_____ ,

and to Judith Shaw at C/o Alliance for Better Long Term Care, 422 Post Rd, Suite 204, Warwick, RI 02888; copies were sent, via email, to Judith Shaw at judith@alliancebltc.org on this 12th day of May, 2025.


