

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

[REDACTED]

V.

DOCKET No.

25-2197

[REDACTED]

DECISION

INTRODUCTION

The Appellant, [REDACTED], initiated this matter to appeal effectively being discharged from the Assisted Living Facility [REDACTED] (the Facility) without being issued a 30-day discharge notice. The Appellant is seeking to have the discharge overturned and be able to return to the Facility until a suitable location elsewhere can be established. A Microsoft Teams hearing in this matter occurred on Monday, May 19, 2025, at 10 am. The Appellant declined the option of a video hearing. For the reasons discussed in more details below, the Appellant's appeal is granted in part and denied in part.

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 residents of assisted living facilities 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 there sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of the Appellant and to allow the Appellant to return to the Facility against the Facility's wishes.

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

The Facility's Executive Director [REDACTED], the Facility's Attorney Michael Tauber, Esq., Rhode Island Legal Services Attorney Steven J. Bagian, Esq., Alliance Representative Charline Scanlon, and the Appellant's son [REDACTED] attended the hearing. The following exhibits were presented as evidence:

- Rhode Island Legal Services cover letter.
- The Facility's email accompanying their documentary evidence.
- An email between the Facility and a Fox Rehabilitation clinician about the Appellant's ability to return to the Facility.
- Rhode Island Hospital Discharge Review Committee report for the Appellant.
- Multiple Rhode Island Hospital daily progress reports, assessments, and medical records for the admission.

- The Facility's Progress Notes, Order Summary, and Admission Record for the Appellant.
- The Facility's Residency Agreement and the signature page for the Appellant's executed agreement.
- Fox Rehabilitation physical therapy evaluations, progress reports, treatment encounters, and discharge reports.
- Rhode Island Department of Health investigation report dated May 19, 2025.
- Email from the Appellant's attorney regarding comments on the Facility's evidence submission.

RELEVANT LAW/REGULATIONS

Under 210-RICR-50-00-7 et. al., there is a set of requirements, both procedural and substantive, an assisted living facility must take to involuntarily discharge a resident. This process is not limited to Medicaid residents. Facilities are not allowed to discharge residents involuntarily, except in certain cases. 210-RICR-50-00-7.4 (A). There are several exceptions to the 30-day requirement. These include in cases of urgent medical needs necessitating an earlier discharge. However, notice still must be given as soon as practicable before the move. 210-RICR-50-00-7.6 (E). Furthermore, 210-RICR-50-00-7.6 (A-D) lays out several procedural requirements to discharge a resident from an assisted living facility involuntarily.

The Department of Health (DOH) is responsible for the licensing of assisted living facilities. See 216-RICR-40-10-2. DOH defines who qualifies to be a resident of an assisted living facility. 216-RICR-40-10-2.3 (A)(34). DOH prohibits individuals requiring medical or nursing care provided in a health care facility from being an assisted living resident.

In licensing assisted living facilities, DOH prohibits them from admitting or retaining residents who do not meet the definition of a resident or those where the facility is not able to provide the services needed by the resident as agreed to in the service plan. 216-RICR-40-10-2.4.1 (B) & 216-RICR-40-10-2.4.14 (A).

R.I.G.L. § 23-17.4-16 sets forth various rights of an assisted living resident. These include the right to remain in their room or apartment unless a change is related to the resident's preference or on condition stipulated in their contract. It also requires 30-day notice if the facility is terminating the resident's residency at the facility and only for certain conditions. R.I.G.L. § 23-17.4-16 (v & xviii).

OBJECTIONS AND MOTIONS

The record of hearing was left open for the remainder of the day of hearing for the submission of documentary evidence. The following day was given for any objections or issues to any of the submissions.

FINDINGS OF FACT

1. The Appellant was a resident of the Facility.
2. The Residency Agreement between the Facility and the Appellant contains the following terms:
 - a. The Residency Agreement remains in effect during absences from the facility, including for hospitalizations.
 - b. 30-day notice is required for the Facility to terminate the agreement, including in situations where the care is not available at the Facility or the Appellant's welfare is in danger.
 - c. The agreement can be terminated immediately for medical emergencies, but written notice is required to be sent out.
 - d. The care provided at the Facility does not include one-on-one care, assistance, or supervision. The Appellant could be left alone for long periods of time.
 - e. The Facility cannot guarantee they can prevent falls or injuries.
3. The Appellant has several medical conditions. These include:
 - a. Dementia/Alzheimer's, which is described as severe/end stage dementia or as Alzheimer's with behavioral disturbances and impulsions.

- b. Aphasia.
 - c. A history of falls.
 - d. Delirium.
 - e. Anxiety.
 - f. Osteoarthritis.
 - g. Vision difficulties, ranging from glaucoma, cloudiness in the left eye, both eye lenses previously being replaced, to legal blindness with 100% blindness in the left eye and reduced vision in the right.
4. The Appellant had nine falls within six months at the Facility. This averages 1.5 falls per month.
5. Between January 28, 2025, and April 24, 2025, the Appellant received physical therapy. While improvements were made, there were consistent reports of cognitive impairments causing additional time to be needed for activities and periods of regression. The Appellant was discharged from physical therapy because of plateauing with the treatment and their cognitive impairments being a hinderance to the treatment process.
6. On April 26, 2025, the Appellant fell at the Facility and was sent to Kent Hospital for a nasal fracture which warranted a transfer to Rhode Island Hospital. During the stay at Rhode Island Hospital, the Facility communicated to the hospital that the Appellant needs to be able to sit/stand, transfer, and ambulate independently to return to the Facility.
7. There were discussions of the Appellant's discharge from Rhode Island Hospital as early as May 1, 2025. The Facility did an evaluation on the Appellant's possible return. However, there were concerns that the Appellant would need a higher level of care (i.e., a nursing home) and the Facility wanted an updated physical therapy evaluation.
8. There were concerns throughout the hospitalization that the Appellant may be declining and reaching the point of needing a higher level of care than could be provided at the Facility. These include:
- a. That the Appellant would need physical therapy upon discharge.

- b. The Appellant's Activities of Daily Living (e.g., eating, grooming, bathing, and dressing) were at maximum assistance.
 - c. During the stay, the Appellant was disoriented to place, time, and situation. The Appellant exhibited periods of struggling to remain awake or having meaningful conversations. The Appellant could not remember their own birthday. The Appellant was repeatedly described as being "pleasantly confused" by hospital staff.
 - d. The Appellant's social worker noted seeing the Appellant require a two-person assist to walk with lots of redirects and guidance on May 1, 2025.
9. The Appellant was eventually discharged from Rhode Island Hospital due to her Medicare no longer covering the stay. The Appellant was admitted into a nursing home temporarily while it was worked out where she was going to go. The Appellant is currently still in that nursing home.
10. The Facility concedes that they should have issued a 30-day discharge notice with the previous falls. They, however, were trying to allow the Appellant to stay in her familiar environment.
11. To date, no 30-day notice has been issued by the Facility discharging the Appellant.

DISCUSSION

30-Day Notice

Regulations require the Facility to issue a 30-day notice prior to involuntarily discharging a resident. 210-RICR-50-00-7. The record is clear that the Appellant had several falls leading up to the one in question. None of these falls were followed with a 30-day discharge notice. Likewise, this fall and later hospital admission did not come with a discharge notice being issued. Regulations are clear that for the Facility to discharge the Appellant involuntarily, the Facility is required to provide a discharge notice to the Appellant prior to the discharge. That did not occur in this case. While the fall would require an immediate transfer to the hospital, it does not negate the duty to provide a discharge notice if the Facility is not going to permit the Appellant's return. The Facility was in regular communication with Rhode Island Hospital regarding the Appellant. When it became apparent to the Facility that the Appellant was

no longer suitable to be cared for at the Facility, they should have issued a 30-day notice. Again, that did not occur in this case.

Remedy

The Appellant seeks to return to the Facility pending finding a new location to reside. It is this tribunal's view that the remedy being sought cannot be granted at this juncture.

This tribunal cannot deviate from existing regulations. This includes DOH regulations 216-RICR-40-10-2.4.1 (B) & 216-RICR-40-10-2.4.14 (A). Those DOH regulations limit who is suitable to reside in an assisted living facility. Those who's care exceeds what can be provided by an assisted living facility are excluded from being considered for assisted living. Given that the Appellant has severe/end stage dementia, is visually impaired (described as being legally blind), is a fall risk with an average of 1.5 falls a month, has delirium, and osteoarthritis, the Appellant's health is likely beyond what any assisted living facility can provide for care. This tribunal cannot ignore the DOH regulations on who is suitable for an assisted living facility.

Furthermore, the Appellant is currently safe at a nursing home pending either her return to the Facility or to a different assisted living facility. The record is clear that, at this point, neither party anticipates a return to the Facility to be long term. The Facility made it clear that they would likely issue a 30-day discharge notice if the Appellant returns. Testimony at hearing makes it clear that multiple moves, like the one going back to and then leaving the Facility can advance the Appellant's dementia negatively. Likewise, Rhode Island Hospital records establish that the Appellant's transfer from the Facility to Rhode Island Hospital caused agitation, especially at the beginning. To transfer the Appellant from their current nursing home to the Facility only to have them transfer again would likely cause more harm than good, something this tribunal cannot endorse or allow considering regulations require a safe and orderly discharge of the Appellant from their current nursing home. See 42 C.F.R. § 483.15 & 210-RICR-50-00-7.5.

CONCLUSION OF LAW

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

1. A discharge notice has not been issued by the Facility to the Appellant.
2. A discharge notice is required to involuntarily discharge the Appellant.
3. A transfer of the Appellant from her current nursing home back to the Facility only to transfer them again to another assisted living facility or nursing home would cause more harm than good.
4. Medical records clearly show that the Appellant's health is in a state where it would not be safe for them to return to the Facility. This also would likely violate the regulations regarding a safe and orderly discharge from the Appellant's current nursing home.

DECISION

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony it is found that a final order be entered that a 30-day discharge notice was required but not provided. However, a return to the Appellant to the Facility is not an acceptable remedy based on health and safety grounds at this juncture.

APPEAL GRANTED IN PART AND DENIED IN PART

/s/ 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.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED], Rhode Island Legal Services, Attn: Steven J. Bagian, Esq. at 56 Pine Street, Suite 400, Providence, RI 02903, Alliance for Better Long Term Care, Attn: Charline Scanlon at 422 Post Road, Suite 204, Warwick, RI 02888, and to [REDACTED]; copies were sent, via email, to [REDACTED], Charline Scanlon at charline@alliancebltc.org, Steven J. Bagian, Esq. at sbagian@rils.org, and to [REDACTED] on this 23rd day of May, 2025.

