

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

[REDACTED]

V.

DOCKET No.

25-2821

[REDACTED]

**DECISION**

**INTRODUCTION**

The Appellant, [REDACTED], initiated this matter to appeal the 30-day discharge notice issued by the assisted living facility [REDACTED]. The Appellant is seeking to have the discharge overturned and return to the assisted living facility. A Microsoft Teams hearing in this matter occurred on July 22, 2025, at 9:00 AM. The Appellant declined the option of a video hearing. For the reasons discussed in more details below, the Appellant's appeal is denied.

**JURISDICTION**

The Executive Office of Health and Human Services 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 the involuntary 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 whether there is sufficient evidence and compliance 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**

██████ Executive Director ██████, The Appellant, and Renee Miller from the Ombudsman’s office attended the hearing. The following exhibits were presented as evidence:

- The Appellant’s appeal.
- The ██████ letter of April 3, 2025.
- The ██████ letter of June 17, 2025.
- The Pre-Transfer or Pre-Discharge 30 Day Notice.

## **RELEVANT LAW/REGULATIONS**

Under 210-RICR-50-00-7, there is a set of requirements an assisted living facility must take to involuntarily discharge a resident. Assisted living facilities are not allowed to discharge residents involuntarily, except in certain cases. 210-RICR-50-00-7.4(A). This includes when the health and/or safety of the resident is endangered by remaining at the facility or the discharge is medically necessary.

There are also procedural requirements under 210-RICR-50-00-7.6 related to the discharge process that need to be met.

The Department of Health regulates who qualifies to be a resident of an assisted living facility. 216-RICR-40-10-2.3(A)(33). The Department of Health requires an assisted living resident to be capable of self-preservation in emergency situations. The Department of Health prohibits individuals requiring medical or nursing care provided in a health care facility from being an assisted living resident. The Department of Health prohibits assisted living facilities from admitting or retain residents who do not meet the definition of an assisted living resident or those where the facility is not able to provide the services need 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). An assisted living resident cannot require a two-person assist unless they are on hospice care per the Department of Health's regulations. 216-RICR-40-10-2.3(A)(33).

#### **OBJECTIONS AND MOTIONS**

No objections or motions were made at hearing. Prior to the appeal being filed, the Appellant and the Ombudsman's office raised issue with the April 3, 2025, letter being legally insufficient to discharge the Appellant as it lacked appeal rights. A second letter with the Pre-Transfer or Pre-Discharge 30-Day Notice completed with the required appeal rights and appeal form were issued on June 17, 2025. The Appellant filed a timely appeal on this corrected notice.

#### **FINDINGS OF FACT**

The Appellant was a resident [REDACTED]. The Appellant had two events that required hospitalization and skilled nursing rehabilitation in a short period. Tamarisk determined that the Appellant was requiring a two person assist and therefore did not fall within the qualifications of an assisted living resident. [REDACTED] moved to discharge the Appellant, as not meeting the Department of Health's definition of an assisted living resident means the care the Appellant needs is not available at [REDACTED].

The Appellant is currently at [REDACTED]. The Appellant wishes to return to [REDACTED].

### DISCUSSION

The Department of Health's regulations are clear that a person requiring a two-person assist cannot reside in an assisted living facility. 216-RICR-40-10-2.3(A)(33), 216-RICR-40-10-2.4.1(B), & 216-RICR-40-10-2.4.14(A). Here, [REDACTED] believes that the Appellant requires a two-person assist and therefore is seeking a discharge due to medical reasons as the care the Appellant needs is not available at [REDACTED]. The Appellant disagrees and believes they can function with only a one-person assist.

It is more probable that the Appellant is a two-person assist and therefore is not a suitable candidate for an assisted living setting. The record is light on medical evidence, so this comes down to a credibility determination. [REDACTED] assessment appears more creditable. First, people tend to overestimate their own abilities. Second, [REDACTED] would be able to objectively assess the Appellant's abilities. Finally, the two recent events requiring hospitalization supports that the Appellant requires more assistance than is available at Tamarisk.

### CONCLUSION OF LAW

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

1. A person requiring a two-person assist is not a suitable candidate for an assisted living facility. A discharge based on being a two-person lift falls under the medically necessary reason for a discharge.
2. The Appellant requires a two-person assist. As such she can be discharged for medically necessary 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 discharge of the Appellant.

## **APPEAL DENIED**

/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]

[REDACTED] to Renee Miller at the Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, RI 02888, and to [REDACTED]

[REDACTED]; copies were sent, via email, to Renee Miller at [rmiller@alliancebltc.org](mailto:rmiller@alliancebltc.org) and to

[REDACTED] on this 23rd day of

July, 2025.

Renee Miller