

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

V.

DOCKET No. 26-1009

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on March 18, 2026, and the Appellant declined the option of a video hearing. The Appellant, [REDACTED] initiated this matter to appeal the Pre-Transfer or Pre-Discharge 30-Day Notice issued by [REDACTED] (hereinafter the "[REDACTED]"). The [REDACTED] seeks to discharge the Appellant because he was found to be in violation of their smoking policy on multiple occasions. For the reasons discussed in more detail below, the Appellant's Appeal is denied.

II. JURISDICTION

The Executive Office of Health and Human Services (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

██████████, Assistant Administrator, attended the hearing on behalf of the ██████████ ██████████ provided testimony relevant to the Appellant’s involuntary discharge and submitted the following exhibit as evidence:

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

The Appellant attended the hearing and testified on his own behalf. Renee Miller, on behalf of the Alliance for a Better Long-Term Care, also attended the hearing and testified in support of the Appellant. The Appellant submitted the following exhibit as evidence:

Exhibit #2 – Appeal Form.

VI. RELEVANT LAW/REGULATIONS

An assisted living residence can discharge a resident if the resident does not meet the requirements for residency criteria stated in the residency agreement or requirements of state or local laws or regulations. An assisted living residence can also discharge a resident if the resident is a danger to themselves or the welfare of others. The residence must first attempt to make a reasonable accommodation to address resident behavior in ways that would make termination of residency agreement or change unnecessary, and this must be documented in the resident's records. The residence 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. See 216-RICR-40-10-2.4.19(B)(5) et seq.

There is a requirement for the discharge to be a safe discharge. Federally, 42 C.F.R. § 483.15(c)(7) requires the facility to provide (and document) sufficient preparation and orientation to the resident to ensure a safe and orderly transfer or discharge. This must be in a form and manner that the patient can understand. See 42 C.F.R. § 483.15(c)(7) (2024). 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. See 210-RICR-50-00-7.5(B)(1-6).

VII. FINDINGS OF FACT

1. The [REDACTED] has a policy that forbids smoking within the building and within 25 feet of the building. This policy was in place when the Appellant became a resident.
2. The [REDACTED] testified that smoking within 25 feet of the building is also a violation of Rhode Island law.

3. The Appellant was found to be smoking in his bathroom on February 6, 2026. The [REDACTED] testified that the Appellant was verbally warned that he could be discharged if he continued to smoke inside his room.
4. On February 10, 2026, the State Fire Marshall and the [REDACTED] Fire Department were walking through the [REDACTED] and they spotted smoke coming out of the Appellant's door. The [REDACTED] testified that they entered the Appellant's room, and the Appellant admitted to the [REDACTED] staff that he was smoking in his room.
5. The [REDACTED] issued a Pre-Transfer or Pre-Discharge 30-Day Notice to the Appellant on February 10, 2026.
6. On February 27, 2026, the [REDACTED] testified that they smelled smoke coming from the Appellant's room. The [REDACTED] also testified that they were unable to immediately enter the room because the Appellant had barricaded his door using his bed frame. The [REDACTED] further testified that when they were eventually able to enter his room, it smelled of cigarette smoke.
7. The [REDACTED] testified that on the morning of March 18, 2026, the Appellant was seen smoking right outside the [REDACTED] within 25 feet of the building, despite a nearby sign stating that smoking within 25 feet of the building is prohibited.
8. The Appellant conceded that he was smoking in his bathroom on February 6, 2026.
9. The Appellant also conceded that he "Lit up a cigarette as soon as I got out the door." on March 18, 2026.

VIII. DISCUSSION

As stated above the [REDACTED] can discharge a resident if the resident does not meet the requirements for residency criteria stated in the residency agreement or requirements of state or local laws or regulations or if the resident is a danger to themselves or the welfare of others. Before issuing a discharge notice, the [REDACTED] must first attempt to make a reasonable accommodation to address resident behavior in ways that would make termination of residency agreement or change unnecessary,

and it 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.

The [REDACTED] testified that they are seeking to discharge the Appellant because he was found to be smoking within the building on three occasions and because he was recently observed to be smoking within 25 feet of the building. The Appellant concedes that he was smoking in his bathroom on February 6, 2026, but he disputes that he was smoking within the building on the other two occasions. When the Appellant was asked if he was smoking in his room on the other two occasions, the Appellant appeared to be evasive in his responses, stating that he was not smoking in his room and that he only smokes in his bathroom with the window open. When asked if he was smoking in his bathroom on the other two occasions, the Appellant stated, "Not that I remember." Because the Appellant's testimony about his smoking within the building conflicts with the [REDACTED] testimony, and because of the evasive manner of the Appellant's responses to the questions asked about his smoking within the building, the Appellant is not credible.

The Appellant did not dispute that the [REDACTED] has a policy forbidding smoking within the building and within 25 feet of the building, nor that he was smoking in his bathroom on February 6, 2026. The [REDACTED] made a good faith effort to accommodate the Appellant by stating that if he continued to smoke within the [REDACTED] he would be discharged. The record shows that he continued to smoke within the [REDACTED] on February 10, and February 27, 2026. The Appellant also conceded that he did smoke within 25 feet of the building on March 18, 2026. By repeatedly violating the [REDACTED] smoking policy, the Appellant failed to meet the requirements for residency criteria stated in the residency agreement and/or requirements of state or local laws or regulations. Furthermore, by repeatedly violating the [REDACTED] smoking policy, the Appellant poses a danger to themselves and to the welfare of others as his cigarettes are a fire hazard and his second-hand smoke threatens the health of both residents and staff. Therefore, 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 [REDACTED] has a policy that forbids smoking within the building and within 25 feet of the building.
2. The Appellant was in violation of that policy on four separate occasions over the last two months.
3. Violating the [REDACTED] smoking policy constitutes a failure to meet the requirements for residency criteria stated in the residency agreement and/or requirements of state or local laws or regulations and it poses a danger to the Appellant and the welfare of others.
4. There is sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of the Appellant.

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 and compliance with administrative procedures to permit the involuntary discharge of the Appellant. The [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 decision is a final order under R.I.G.L. § 42-35-12. Under R.I.G.L. § 42-35-15, this Order may be appealed to court within thirty (30) days of the mailing of this decision. Such appeal, if taken, must be completed by filing a complaint in 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.

Appeals are generally filed in the Providence County Superior Court. However, appeals affecting or concerning children under the age of eighteen (18) and/or appeals of a DCYF action may need to be filed in Providence Family Court. If you have any questions about which court a complaint for appeal should be made, you should seek the advice of an attorney, Rhode Island Legal Services, or the clerk of the court where you wish to file your appeal. The courts' contact information can be found on the judiciary's website (<https://www.courts.ri.gov>). Copies of the appeal must be served upon all parties in your case within ten (10) days of the filing of your appeal.

If you exercise any of these appellate rights, please inform the EOHHS appeals office of this so we can prepare a copy of the record for the court. You can contact the Appeals Office at OHHS.AppealsOffice@ohhs.ri.gov, 401.462.2132 (Phone), 401.462.0458 (Fax), or at 3 West Road, Virks Building, Cranston, RI 02908.

