

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

[REDACTED]

v.

DOCKET No. 26-1534

[REDACTED]

DECISION

I. INTRODUCTION

A hearing in this matter was held via Microsoft Teams on March 31, 2026. The Appellant, [REDACTED], declined the option of a video hearing. The Appellant initiated this matter to appeal an involuntary discharge from [REDACTED] (Facility). The Appellant was issued a Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge 30 Day Notice (30-Day Discharge Notice) on March 3, 2026, for endangering the health and/or safety of individuals in the facility, with an effective discharge date of April 3, 2026. The Appellant then filed a timely appeal received by the Executive Office of Health and Human Services (EOHHS) Appeals Office on March 6, 2026. The Appellant is seeking to have the discharge overturned and remain at the Facility. For the reasons discussed in more detail below, the Appellant's appeal is denied.

II. JURISDICTION

EOHHS is authorized by R.I.G.L. § 42-7.2-6.1 and 210-RICR-10-05-2.1.3(A)(2)(n) to be the agency responsible for appeals and hearings related to transfers and discharges for all



residents of nursing 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 210-RICR-10-05-2.

III. ISSUE

The issue under appeal is whether there is sufficient evidence and compliance with administrative procedures to permit the involuntary discharge for endangering the health and/or safety of individuals in the facility.

IV. STANDARD OF PROOF

It is well settled that in adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. 2 Richard J. Pierce, *Administrative Law Treaties* §10.7 (2002) & *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (a preponderance standard is the “normal” standard in civil cases). 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. *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

V. PARTIES AND EXHIBITS

Present for the Facility were Administrator [REDACTED] and Substance Abuse Counselor [REDACTED]. The Facility submitted one 22-page exhibit consisting of three signed No Harm Agreements, signed Resident Smoking Agreement Forms with Smoking Policy, signed Room Entry and Search Acknowledgment Forms, signed Acknowledgment of Smoking Policy Education Forms, Progress Notes, and Admission Records of the Appellant.

The Appellant attended the hearing with Ombudsman Beth Mantia, with The Alliance for Better Long-Term Care, both of whom testified. The Appellant submitted no documents as evidence at hearing.

VI. RELEVANT LAW/REGULATIONS

According to 210-RICR-50-00-7, nursing facilities and assisted living facilities must adhere to certain discharge criteria to involuntarily discharge a resident. A resident may be discharged if the health and/or safety of individuals in the facility would otherwise be endangered. 210-RICR-50-00-7.4(A)(4).

Furthermore, according to 210-RICR-50-00-7.6, there are procedural requirements for the involuntary discharge of someone from a long-term care facility. These include:

1. Written notice must be given to the resident and any representative they have, which
 - a. is in a language and manner the patient understands.
 - b. lists the reason for the transfer/discharge.
 - c. lists the effective date of the transfer/discharge.
 - d. lists the location to which the patient is being transferred/discharged.
 - e. contains 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. contains information on how to obtain the appeal form and 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 some instances 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 hasn't been in the facility for a period of at least 30 days.
 - i. For intellectually and developmentally disabled patients, the notice must 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 must include the Office of the Mental Health Advocate's mailing address, email address, and telephone number.
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 Better Long-Term Care.
 3. The patient must also receive a notice of appeal rights at the time of the discharge notice.

Finally, there is a requirement that the discharge be safe. 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 discharge.

VII. FINDINGS OF FACT

1. The Appellant was issued the 30-Day Discharge Notice on March 3, 2026, which stated that the Appellant would be discharged from the Facility to [REDACTED] located at [REDACTED], on April 3, 2026. The Appellant is being discharged for endangering the health and/or safety of individuals in the facility by violating the smoking policy and for substance use. Upon the Appellants' room search, staff found an open bottle of alcohol. The Appellant also smoked cigarettes in his room and smoked marijuana outside on Facility grounds.
2. According to the Facility:
 - a. The Appellant was issued three safety plans, all of which he did not comply with. The Appellant signed these safety plans on September 11, 2025, January 5, 2026, and March 2, 2026.
 - b. Each safety plan implemented safety measures to prevent harm to the Appellant and other residents of the Facility. The Appellant agreed not to use marijuana or alcohol and agreed not to smoke in the building.
 - c. Facility staff have had conversations with the Appellant regarding substance use, and the Appellant was advised numerous times of the Facility's smoking and substance use policy. These conversations began immediately after the first safety plan was signed and continued until the 30-day Discharge Notice was issued.

- d. The Facility offered education and counseling to the Appellant. He was assigned to a substance abuse counselor right after the first safety plan was signed on September 11, 2025. The counselor educated the Appellant on the policies and risks of substance use as well as the harm it poses to himself and other residents in the Facility.
 - e. The Appellant's failure to comply with the rules or avail himself of the help offered to him was the major determining factor in issuing the 30-Day Discharge Notice
 - f. Social workers have attempted to get the Appellant into an assisted living facility, but because the Appellant has no income, no assisted living facility would admit him.
3. According to the Appellant:
 - a. He did not think there would be any consequences for having alcohol, smoking cigarettes in his room, and smoking marijuana outside on Facility grounds.
 - b. He now knows that he should have taken the entire situation seriously, he should have followed the safety plans, and attended all counseling and training sessions.
 4. According to the Ombudsman, the discharge is not safe for the Appellant because [REDACTED] is not a permanent residence.

VIII. DISCUSSION

The issue is whether the Facility can involuntarily discharge the Appellant because his actions endangered the safety of others in the Facility. The Appellant signed three safety plans with the Facility but did not follow any of them, and he repeatedly failed to comply with the

Facility's rules. The Facility also attempted to work with the Appellant through education and counseling, but he did not take it seriously.

The Appellant does not dispute that he had alcohol in his room, smoked cigarettes in his room, and smoked marijuana outside on Facility grounds. Having alcohol, smoking in his room, and possessing and smoking marijuana on facility grounds does pose a safety risk to residents in the Facility. The Appellant could have caused a fire by smoking in this room, putting others in danger. The only argument raised by the Appellant is that the involuntary discharge is unsafe because [REDACTED] is not a permanent residence.

The Appellant entered the facility because he needed rehabilitation for injuries. According to a progress note dated January 5, 2026, social services began discussions with the Appellant about an alternative placement because he no longer needed the high level of care provided by a nursing facility. The record is devoid of any pertinent medical conditions or any other issues that would contradict the Appellants' transfer to [REDACTED]. Furthermore, prior to the Appellant being injured and needing nursing facility care, he was homeless, and being transferred to [REDACTED] is much safer than being on the streets.

IX. CONCLUSION OF LAW

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

1. The Appellant's actions endangered the safety of others in the Facility.
2. An involuntary discharge is permitted when a resident's actions endanger the safety of others in the facility.
3. The 30-Day Discharge Notice was issued in accordance with State and/or Federal regulations.

4. The Facility is taking steps to ensure that the discharge is safe and orderly.

X. DECISION

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony, it is found that a final order is hereby entered that the criteria for involuntary discharge from a long-term care facility has been met. Therefore, the 30-Day Discharge Notice issued on March 3, 2026, is valid.

APPEAL DENIED

/s/ Robert Pelosi
EOHHS Appeal Officer

NOTICE OF APPELLANT 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 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 a stay, or the reviewing court may order one, upon the appropriate terms.

Appeals are generally filed in the Providence County Superior Court. However, appeals affecting or concerning children under the age of 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 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.

CERTIFICATION

I hereby certify that I mailed a true copy of the foregoing to [REDACTED]
[REDACTED]
[REDACTED], and Beth Mantia, The Alliance for Better Long-Term Care, 422 Post Road, Suite 204, Warwick, RI 02888, via regular mail, postage prepaid. Copies were sent via email to Beth Mantia at beth@alliancebltc.org and [REDACTED] at [REDACTED] on this 3rd day of April, 2026.


