

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

██████████

Docket: 26-1559

V.

██████████

DECISION

I. INTRODUCTION

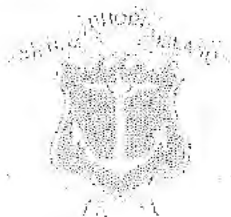
On March 6, 2026, ██████████, (Appellant) filed a FORMAL REQUEST FOR HEARING in response to ██████████ (the Facility) PRE-TRANSFER OR PRE-DISCHARGE 30 DAY NOTICE (“30-Day Notice”) dated March 5, 2026, in which ██████████ plans to discharge the Appellant from the facility as of April 5, 2026. An administrative hearing was conducted on March 25, 2026, the hearing was held telephonically, as the declined the video option. The hearing was held in accordance with the Administrative Procedures Act R.I. Gen. Laws §42-35.1 and EOHHS Rhode Island Code of Regulations (“RICR”) 210-RICR-10-05-2. For the reasons discussed in more detail below, the appeal is denied.

II. JURISDICTION

In accordance with R.I. Gen. Laws § 42-7.2-6.1, EOHHS is the entity responsible for publicly funded health and human services programs administered by the agencies operating under the EOHHS umbrella, including the appeal entity for transfers and discharges from licensed nursing facilities and assisted living residences for all payers.

III. ISSUES

The issue is whether there is sufficient evidence to discharge the Appellant and did the Facility comply with the necessary rules and regulations to permit this involuntary discharge.



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. (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. (Id.). 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

The Facility was represented by Administrator [REDACTED] and Director of Nursing [REDACTED]. The following was marked as Facility evidence: exhibit 1 30-Day Notice, exhibit 2 Progress notes, exhibit 3 Signed Smoking Agreement, and exhibit 4 Excerpts from R.I. Gen. Laws §23-17.5-26.

The Petitioner appeared and testified on their own behalf. Ombudsman Charlene Scanlon appeared and testified on the Appellant’s behalf. The following was marked as Appellant evidence exhibit A Request for Hearing form and exhibit B Excerpts from 210-RICR-50-00-7.

VI. RELEVANT LAW/REGULATIONS

Per 210-RICR-50-00-7, state licensed long-term care facilities, without regard to the resident’s source of payment, are prohibited from transferring/discharging a resident without the agreement or consent of the resident. These involuntary discharges are permitted in some

instances such as the health and safety of the residents or if other residents in the facility would be endangered by their stay, non-payment or if the facility ceases to operate.

The long-term care facility must notify the resident at least 30 days in advance of the resident's transfer or discharge. The notice must inform the resident of the reasons for the discharge in a language and manner they understand. The long-term care facility must also notify the Office of the State Long-Term Care Ombudsman. The written notice must include (1) The reason for transfer or discharge; (2) The effective date of transfer or discharge; (3) The location to which the resident is transferred or discharged; (4) A statement of the residents appeal rights, including the name, the mailing and email address, and telephone number of the entity that receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request; (5) The name, mailing and email address and telephone number of the Ombudsman. At the time the resident receives the discharge notice, they must receive a notice of appeal rights.

VII. FINDINGS OF FACTS

1. On April 26, 2024, the Appellant signed the Facility's smoking agreement:
 - i. The Appellant agreed to smoke only in designated smoking areas, to not smoke near oxygen, to not share smoking materials with others and to not bring illegal substances into the facility.
 - ii. It informed that marijuana is not allowed as it is against federal law.
 - iii. It warned the first violation would result in 30 days of supervised smoking; the second in permanent supervised smoking and the third and final violation is grounds for a 30-day notice for jeopardizing the health and safety of other residents in the facility.

2. The Appellant's first violation of the smoking rules was on May 17, 2024, while on his first 30 days supervised smoking, he again violated smoking rules on May 22, 2024, and has been on a supervised smoking status since.

3. Toxicology screens over the last two years have shown numerous positive results for marijuana and the Facility has documented in its progress notes that the Appellant has admitted the violations of the smoking agreement on several different occasions.

4. In the last and final infraction, the Appellant was smoking marijuana in his room, and sharing smoking materials with others on February 19, 2026, and February 20, 2026.

5. On March 5, 2026, the Facility issued the 30-Day Notice.

6. The Appellant denies the Facility's allegations. He testified that what he does on his own time is his own business.

7. The Ombudsman argued that the Facility must provide a safe and orderly discharge, to the Appellant's preferred area and facility.

8. The Facility testified they will send referrals statewide to provide the Appellant with a regulatory discharge.

9. Per R.I. Gen. Laws § 23-17.5-26 all nursing home patients have the right to live in a tobacco and smoke-free environment. Smoking is prohibited except in designated areas. Violations of these rules shall be reported to the department of health, who serves written notice of compliance to the person, organization or facility manager charged with the violation. Each instance of a violation, the violator shall be liable for a civil penalty from \$50.00 to \$500.00.

VIII. DISCUSSION

From the record it is evident that the Facility has done their due diligence and documented several conversations with the Appellant regarding the rules of the facility and the

Appellant's non-compliance with said rules. The progressive penalty process has been followed, but the Appellant refuses to adhere to facility rules and the smoking agreement. The Facility presented R.I. Gen. Laws § 23-17.5-26, stating that because they are accountable to the department of health, they must follow the rules and maintain a smoke-free environment for all their patients. They maintain they issued a regulatory discharge notice and will assist the Appellant with a transition to an appropriate setting.

According to 210-RICR-50-00-7.4(A), residents that endanger the health and safety of other residents due to their own clinical or behavioral status, can be involuntarily discharged. The Facility must inform residents both verbally and in writing of rules, a written acknowledgment of the receipt of the notice, signed by the resident, shall be obtained; the Facility must document in the clinical record the basis for the transfer and lastly, they must issue a regulatory notice. The Facility cited department of health regulations that do require nursing facilities to enforce a smoke free environment, but this law explains civil penalties for these infractions, which do not pertain to this matter.

The first issue to be decided is if there is a preponderance of evidence that supports the Facility's allegations of the Appellant's behaviors. The Appellant challenged the Facility's evidence of the documentation in the clinical records of the incidents and infractions of the smoking rules. The Appellant denied that he possessed, used or shared illegal substances and smoking materials. He testified that it all belonged to his roommate, and his roommate is the one that shared it with him. The record was void of any evidence submitted by the Appellant or witness testimony that corroborated his statements. He wishes to remain at the Facility and not be discharged. While the Appellant ascertains the facts as reported by the Facility are false, the

Facility's provided direct evidence of the 30 pages of progress notes and positive marijuana toxicology screens that support their claims.

The second issue to be decided is if the Appellant's actions are grounds for involuntary discharge. There are four basic reasons specified per policy in which a facility is permitted to involuntary discharge a resident. These reasons are listed on a blank 30-day notice form and the applicable reason is to be selected by the facility upon issuance. Based on the behaviors and the signed smoking agreement it is clear that the Appellant was informed of and agreed to the rules and refuses to follow them. The Facility has a responsibility to protect all its residents, including the Appellant. His actions continue to put the health and safety of others at risk, by providing illegal substances and smoking material encourages other residents to engage in these activities; by using a lighter, in his room that has oxygen could cause an explosion, which endangers the entire building. As required when a resident is discharged due to health and safety reasons, the 30-Day Notice provided a brief explanation and a physician's signature was included.

The last and final issue to be decided is if the Facility provided the Appellant with a regulatory notice of discharge. The 30-Day Notice indeed gave the Appellant 30 days advance notice, as was issued on March 5, 2026, with an effective discharge date of April 5, 2026. The Appellant was informed of appeal rights and the contact information for the Appeal's and Ombudsman's Office was included. The notice reason, along with the accompanying explanation and physician's signature was included. The transfer location was discussed, as it was not clear on the notice but due to the Facility testimony that they will work to provide a safe discharge, all considered, the requirements of a proper notice have been met.

IX. CONCLUSION OF LAW

After review of the administrative record, there is a preponderance of evidence to support the involuntary discharge of the Appellant from the Facility based on the following:

- The Appellant continues to use marijuana, smoke in non-designated areas and share smoking materials with others, in violation of the smoking agreement.
- The Appellant's actions endanger the health and safety of others in accordance with the reasons for an involuntary discharge per 210-RICR-50-00-7.4(A).
- The Facility issued the Appellant a valid 30-Day Notice in accordance with 210-RICR-50-00-7.6(A).

X. DECISION

Based on the foregoing Findings of Facts, Conclusion of Law, and testimony it is ordered that the Facility has met the requirements of an involuntary discharge.

The Appellant's request to rescind the 30-Day Notice is denied. The Appellant may continue to reside at the Facility until an appropriate location, and a safe discharge plan is implemented, at such time the Facility is then permitted to discharge the Appellant.

APPEAL DENIED

/s/Holly Young | Appeals Officer | Executive Office of Health and Human Services

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.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to

[REDACTED]; Charline

Scanlon, c/o Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, RI 02888

and via email to charline@alliancebltc.org; [REDACTED]

[REDACTED] and via email to [REDACTED].

On this 30th day of March, 2020.

