

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

[REDACTED]

V.

DOCKET No. 26-1820

[REDACTED]

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above-entitled matter was held on April 20, 2026. The Appellant, [REDACTED], initiated this matter to appeal the Pre-Transfer or Pre-Discharge 30-Day Notice (30-Day Discharge Notice) issued by [REDACTED] ([REDACTED]) on March 12, 2026. The Appellant then filed a timely appeal that was received by the Executive Office of Health and Human Services (EOHHS) on March 17, 2026. The Appellant is seeking to have the discharge overturned and remain at the assisted living facility. For the reasons discussed in more detail below, the Appellant's appeal is granted.

II. JURISDICTION

EOHHS is authorized and designated by R.I. General Laws § 42-7.2-6.1 and the Rhode Island Code of Regulations (RICR) 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 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.).

III. ISSUE

The issue is whether there is sufficient evidence to permit the involuntary discharge of the Appellant, in accordance with Rules and Regulations as set forth below.

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 Treatise* § 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. *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

V. PARTIES AND EXHIBITS

No one from [REDACTED] attended the hearing. The Appellant testified on his own behalf. The Alliance for Better Long-Term Care Ombudsman Renee Miller (Ombudsman) also testified on behalf of the Appellant and provided evidence:

- o Pre-Transfer or Pre-Discharge 30-Day Notice, with appeal attached.
- o 210-RICR-50-00-7 – Medicaid Long-Term Services and Supports, Involuntary Discharge from a Long-Term Care Facility.

VI. RELEVANT LAW/REGULATIONS

The Rhode Island Code of Regulations for an assistance living residence (ALR) in effect at the time of the discharge notice, Rhode Island Department of Health (RIDOH) 216-RICR-40-10-2 “Licensing Assisted Living Residences” requires ALRs to adhere to certain standards regarding its residents. Specifically, § 2.4.14 “Management of Services” states the ALR must have a policy and procedure

manual which includes, but is not limited to, an admission, discharge, and involuntary discharge policy. In addition, § 2.4.15 “Residency Requirements” states that the ALR must disclose certain information to each resident prior to admission, which includes executing a residency agreement. Signed by both the ALR and the resident, the agreement defines the services to be provided, as well as the resident’s rights, admission criteria, and discharge criteria and policies. The ALR can discharge a resident if a resident does not meet the requirements for residency criteria stated in the residency agreement or requirements of state and local laws or regulations.

The ALR shall also observe the standards stated in the R.I.G.L. Title 23 Health and Safety §23.17.4-I6 “Rights of Residents” section (a)(2)(xix) which states the residence must provide for a safe and orderly move out, including assistance with locating another setting, regardless of the moving reason.

Under 210-RICR-50-00-7 “Involuntary Discharge from a Long-Term Care Facility,” there is a set of requirements an ALR (included under the definition of long-term care facility) must take to involuntarily discharge a resident. Facilities are not allowed to discharge residents involuntarily, except in certain cases, including if the transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the long-term care facility. 210-RICR-50-00-7.4(A)(1).

Furthermore, 210-RICR-50-00-7.6 lists procedural requirements to discharge a resident from an assisted living facility involuntarily, including:

1. Written notice being given to the resident and their representative. The notice must:
 - a. be in a language and manner the resident understands.
 - b. list the reason for the transfer/discharge.
 - c. list the effective date of the transfer/discharge.
 - d. list the location the resident is being transferred/discharged to.
 - e. contain a statement of the resident’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 on 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 certain cases involving the safety or health of other facility residents in the facility, or the resident's health.
2. Notification of the pending discharge must be provided to the Office of the State Long-Term Care Ombudsman.
 3. The resident also needs to receive a notice of appeal rights at the time of the discharge notice.

Finally, there is a requirement for the discharge to be a safe discharge. 210-RICR-50-00-7.5(B)

VII. FINDINGS OF FACT

The Appellant has been a resident of [REDACTED] for three years. [REDACTED] issued the 30-Day Discharge Notice to the Appellant on March 12, 2026, with an effective discharge date of April 11, 2026. The Notice did not list a location to which the Appellant would be transferred, as is required. He testified he has nowhere else to go.

[REDACTED] checked the box indicating that the health and/or safety of the resident is endangered by remaining in the facility/ the discharge or transfer from the facility is necessary for medical reasons. The facility's representative, [REDACTED], wrote that the resident needs a higher level of care after experiencing a stroke in December. While the resident passed an assessment to return to [REDACTED] after the stroke, she wrote that he has since declined, experiencing frequent falls and cannot self-manage his insulin anymore. She also wrote that "PT/OT/skilled nursing dropped him due to failure of doctor's order because resident refused PCP appointment." The Appellant, in his request for a hearing on March 17, 2026, wrote he disagreed with the discharge.

No one from the facility attended the hearing. The Appellant testified that he did not go to the PCP appointment because his ride never came to the facility to pick him up. The Ombudsman testified that in an ALR, a resident must be able to administer their own insulin, and [REDACTED] has been teaching the Appellant how to do it. The Appellant testified he has been able to administer his own insulin for more than a month. The Appellant also testified he had three falls: 1) he tried to get into his hospital bed, which he described as "kind of high" and slid off; 2) his lift malfunctioned and began lifting on its own and he slid on the floor; and 3) he was using his rolling walker to walk to the bathroom, but the brakes did not lock when he went to get up and he then fell on the floor. That walker has since been replaced with a regular walker, the Appellant testified.

VIII. DISCUSSION

The facility did not meet its burden of proof for an involuntary discharge since they failed to attend the hearing and provide evidence to support the 30-Day Discharge Notice. In addition, the reason for the 30-Day Discharge Notice was that the Appellant was not able to administer his own insulin. According to the Appellant and the Ombudsman, he can administer his own insulin. Another reason for the discharge was because the Appellant was not attending his medical appointments. The Appellant testified, however, that he missed the doctor's appointment through no fault of his own because his transportation failed to show up to bring him to the appointment.

Furthermore, the 30-Day Discharge Notice also did not list a location where the Appellant could be discharged, despite the requirement to do so in the Rhode Island Code of Regulations. 210-RICR-50-00-7.6(B)(3).

IX. CONCLUSION OF LAW

After careful review of the testimony and evidence presented at the Administrative Hearing, this Appeals Officer concludes:

1. The facility failed to attend the hearing and offer evidence for and reasons to support the involuntary discharge, and
2. The 30-Day Discharge Notice failed to list a location to which the Appellant would be discharged, as is required in 210-RICR-50-00-7.6(B)(3).

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 not sufficient evidence to support [REDACTED]'s request to involuntarily discharge the Appellant from the ALR.

APPEAL GRANTED

Lori Stabile

Lori Stabile

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

