

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

[REDACTED]

V.

DOCKET No. 26-1821

[REDACTED]

DECISION

**I. INTRODUCTION**

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on April 14, 2026, and the Appellant declined the option of a video hearing. The Appellant [REDACTED], initiated this matter to appeal the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice issued by [REDACTED] (hereinafter the "Facility"). Per the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice, the Facility is seeking to discharge the Appellant because they claim that the Appellant is being disruptive and the health and/or safety of other individuals in the facility is endangered. 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 granted.

**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**

Present for Facility was, Executive Director, [REDACTED], Director of Culinary Services, [REDACTED], and Engage Life Director [REDACTED]. The Facility submitted the following exhibit as evidence:

Exhibit #1 – March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice.

The Appellant was represented by Laura Handwerger Esq. The Appellant attended the hearing as well as her daughter, [REDACTED], and the Long-Term Care Ombudsman, Beth Mantia (hereinafter “Ombudsman Mantia”). The Appellant submitted the following exhibit as evidence:

Exhibit #2 – Appeal Request.

## **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 the resident's 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 also 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.

## **VII. FINDINGS OF FACT**

1. The Appellant was admitted to the Facility on October 30, 2025.
2. The Appellant is a small, 95-year-old woman, who utilizes a walker to assist with ambulation.
3. The Appellant has a severe hearing problem. Ombudsman Mantia testified that the Appellant speaks loudly due to her hearing problem.
4. The Facility issued a Pre-Transfer or Pre-Discharge 30-Day Notice in January because they believed that the health and/or safety of other individuals in the facility was endangered and the Appellant was being disruptive. The Facility conceded that they did not feel that they had enough evidence to support the notice and the Facility did not attend the hearing requested by the Appellant to challenge the January notice. The Appellant's Appeal was granted, and the January Pre-Transfer or Pre-Discharge 30-Day Notice was rescinded.
5. The Facility then issued the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice to the Appellant for the same reasons as specified in the January notice.
6. The Facility testified that there were two incidents when the Appellant got into verbal altercations with two different housekeepers at the residence. These incidents occurred on March 23, and

March 25, 2026. The Facility called the police to the residence on March 25, 2026, the police filled out a police report, and no charges were filed against the Appellant. [REDACTED] initially testified that the Appellant assaulted the housekeepers but later testified that the Appellant did not physically assault the housekeepers.

7. [REDACTED] testified that one on occasion the Appellant slapped and pushed her when she was warning the Appellant not to eat a bowl of clam chowder because the Appellant had previously informed the Facility that she was lactose intolerant. [REDACTED] was unable to articulate the exact date of this incident, nor did she provide any evidence of it.
8. [REDACTED] initially testified that the Appellant had never assaulted any other residents. Later she testified that on March 22, 2026, the Appellant pushed her walker into another resident. [REDACTED] testified that an incident report was generated by the Facility for the incident.
9. The Facility testified that since her admission, the Appellant has been disruptive, argumentative, and paranoid.
10. Ombudsman Mantia testified that she only received one incident report from the Facility concerning the Appellant's behavior and that was the incident report regarding the police department and the housekeepers. She also testified that she felt that the Appellant was being targeted by the Facility due to her mental health issues.
11. The Facility testified that they will typically call an ambulance to the Facility if a resident has an incident and cannot calm down and they have never needed to do that for the Appellant.
12. The Facility conceded that they never explicitly told the Appellant that she could be discharged for her disruptive behavior until they issued the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice.

## VIII. DISCUSSION

As stated above, an assisted living residence can discharge a resident if the resident is a danger to themselves or the welfare of others, but they must first 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 Facility testified that they are seeking to discharge the Appellant due to her disruptive behavior and because she has physically assaulted a staff member.

Apart from some testimony from [REDACTED] and [REDACTED] the Facility mostly relied on [REDACTED] testimony to prove its case. There are several reasons why [REDACTED] testimony is not credible. [REDACTED] first testified that there were three incidents where the Appellant physically assaulted staff members, one incident involved herself, and the other incidents involved two housekeepers. Later [REDACTED] testified that there were only two incidents of physical assaults. Eventually, after Attorney Handwerger clarified that the police report from March 25, 2026, did not contain any description of the Appellant assaulting either housekeeper, [REDACTED] conceded that the Appellant did not physically assault the housekeepers. [REDACTED] initially testified that the Appellant had never assaulted any other residents, then she later testified that the Appellant pushed her walker into another resident. [REDACTED] also testified that [REDACTED] had generated an incident report for the walker incident, but [REDACTED] testified that he did not know if an incident report had been generated and Ombudsman Mantia testified that her office would typically receive an incident report in the event of a resident-to-resident assault and she never received such an incident report from the Facility. Because [REDACTED] testimony conflicted with her own testimony and because her testimony also conflicted with the testimonies of [REDACTED] Ombudsman Mantia, and Attorney Handwerger, [REDACTED] testimony is not credible.

The Facility failed to provide any evidence to show that the Appellant is a danger to the welfare of others. Because [REDACTED] testimony is not credible and because there is no evidence to show that the Appellant physically assaulted anyone, there is not a preponderance of evidence to show that the Appellant physically assaulted [REDACTED] nor the other resident with her walker. While the Facility argues that

the Appellant's behaviors can be disruptive to the milieu at the Facility, none of the incidents described by the Facility credibly described a situation where the Appellant posed a significant danger to the health and safety of others. Therefore, there is not a preponderance of evidence to show that the Appellant is a danger to the welfare of others. Furthermore, most of the incidents described by the Facility occurred after the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice was issued to the Appellant. While the Facility testified that they had previously issued a Pre-Transfer or Pre-Discharge 30-Day Notice to the Appellant in January due to her disruptive behaviors and because she was deemed to be a danger to the health and safety of others, the Facility did not attend the hearing for that notice, nor did they fully explain to the Appellant what she was doing that could lead to her being discharged from the Facility. The Facility conceded that they did not try to warn the Appellant that she could be discharged due to her disruptive behavior prior to issuing the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice. As such, there is insufficient evidence to show that the Facility made a good faith effort to counsel the Appellant when service with a termination notice was anticipated. Therefore, there is insufficient 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. There is not a preponderance of evidence to show that the Appellant is a danger to the welfare of others.
2. There is not a preponderance of evidence to show that the Facility made a good faith effort to counsel the Appellant when service with a termination notice was anticipated.
3. There is insufficient 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 insufficient evidence to support the involuntary discharge of the Appellant. The Facility is to rescind the March 9, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice.

**APPEAL GRANTED**

*/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](mailto: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]

Beth Mantia at C/O Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, RI 02888,

and to [REDACTED]; copies

were sent, via email, to Beth Mantia at [beth@alliancebitc.org](mailto:beth@alliancebitc.org), and [REDACTED] at

[REDACTED], on this 17<sup>th</sup> day of April,

2020.

*Samantha M. Henderson*