

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

[REDACTED]

V. Docket #: 26-2047

[REDACTED]
[REDACTED]

DECISION

INTRODUCTION

The Appellant [REDACTED], initiated this matter to appeal the 30 Day Move-Out Notice issued by [REDACTED] ([REDACTED]). The Appellant is seeking to have the discharge overturned and be able to remain at [REDACTED]. A Microsoft Teams hearing in this matter occurred on Monday, April 27, 2026, at 1:00 pm [REDACTED] requested the appeal be held over video. All parties appeared by video except for the Appellant who attended by phone only. For the reasons discussed in more details below, the Appellant's appeal is granted.

JURISDICTION

EOHHS is authorized and designated by R.I.G.L. § 42-7.2-6.1 and 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 of whether 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.).

ISSUE

The issue is whether there is sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of the Appellant.

STANDARD OF PROOF

It is well settled that in adjudications modeled on the Federal Administrative Procedures Act a preponderance of the evidence is required to prevail. This means that for each element to be proven, the factfinder must believe that the facts asserted are more probably true than false. 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). 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).

PARTIES AND EXHIBITS

In attendance at the hearing were:

- The Appellant
- [REDACTED] – Administrator/Owner/RN of [REDACTED]
- Beth Mantia – Representative of the Alliance/Ombudsman’s Office
- [REDACTED] – Personal Care Aid for [REDACTED]
- [REDACTED] - Personal Care Aid for [REDACTED]
- [REDACTED] – Food Manager for [REDACTED]
- [REDACTED] from [REDACTED]

The following exhibits were presented as evidence:

- Select regulations regarding involuntary discharges
- [REDACTED] Police Report, Incident # [REDACTED], Call # [REDACTED]

- Handwritten notes of attempts to locate the Appellant a new facility along with fax cover sheets of faxes going to several of those facilities
- [REDACTED] 30 Day Move-Out Notice
- Appeal Request
- [REDACTED] RI Records Request Form
- Handwritten letter about requesting the [REDACTED] Police Report
- Notes to Office/statements from staff at [REDACTED]
- Behavior Report Forms
- The Admission Agreement

RELEVANT LAW/REGULATIONS

Under 210-RICR-50-00-7, there is a set of requirements, both procedural and substantive, an assisted living facility must take to involuntarily discharge a resident. This process is not limited to Medicaid residents. Facilities are not allowed to discharge residents involuntarily, except in certain cases. 210-RICR-50-00-7.4(A). This includes when the resident does not meet the requirements to be a resident stated in the admission agreement or when the resident is a danger to themselves or others. The facility must attempt to make reasonable accommodations which would negate the need for the termination, and which have failed before discharging a resident due to being a danger to themselves or others. 216-RICR-40-10-2.4,19(B)(5)(c).

Furthermore, 210-RICR-50-00-7.6 lays out several procedural requirements to discharge a resident from an assisted living facility involuntarily. These include:

1. Written notice being given to the resident and any representative they have. The notice must:
 - a. be in a language and manner the resident understands.
 - b. list the reason(s) 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. contains 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 Ombudsman's Office.
 - h. be provided at least 30 days in advance of the transfer except in certain cases.
2. Notification of the pending discharge must be provided to the Ombudsman's Office. The Ombudsman is part of and operates out of the Alliance for Better Long-Term Care.
 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).

FINDINGS OF FACT

The Appellant is a resident of [REDACTED]. The staff at [REDACTED] have several concerns related to the Appellant's behavior. Such as:

1. The Appellant being too close to a developmentally disabled resident. Both physically and emotionally. There are concerns that the Appellant invades this resident's space and privacy.
2. The Appellant heard a comment made by another resident and then proceeded to make fun of that resident and called them stupid.
3. The Appellant gets aggressive or mean at staff. This includes when staff were questioning the Appellant on why they canceled a colonoscopy and a separate time when staff asked the Appellant about taking a shower.

Staff have raised concerns with the Appellant's behavior and how it makes them feel. One staff member asked to move from third to first shift as they stopped feeling safe due to the Appellant's

behavior. Other staff overheard the Appellant had mouth the staff over the phone to a relative. The discharge notice lists the Appellant's behaviors with staff, issues with hygiene and grooming, and discussing medical issues of other residents out in the open. [REDACTED] has reached out to several facilities to see who can take the Appellant. Three facilities have said they have a bed available. The Appellant refused to do the nursing assessment with one of those facilities as they had this appeal pending. The Appellant likes where [REDACTED] is located as it is near the [REDACTED] where they spend a significant proportion of their time.

The Alliance/Ombudsman's Office raised that they did not receive a single issue or complaint about the Appellant from [REDACTED] and/or the Department of Health prior to the discharge notice.

The residence agreement states that bathing assisting is provided as part of the basic rate and that 2 baths/showers a week are required.

DISCUSSION

This appeal comes down to balancing the concerns of [REDACTED] with the autonomy of the Appellant. One of the concerns [REDACTED] has with the Appellant is regarding the Appellant's bathing. [REDACTED] claims the Appellant does not bathe at least twice a week, as required by the Admission Agreement. The Appellant gets angry when staff push the topic of bathing. While the Admission Agreement requires bathing twice a week, the Appellant has the autonomy to fulfill that requirement when and how they please. The Appellant has the autonomy to change their mind regarding when they want to bathe. If the Appellant wants to switch from evening showers on Wednesday to cold showers in the morning, it is the Appellant's prerogative to do so. The Appellant may choose to bathe at the [REDACTED] instead of at [REDACTED]. This is equally acceptable. The Appellant rejecting to shower at a specified time is not sufficient evidence to warrant a discharge for violating the Admission Agreement.

[REDACTED] also has concerns with the amount of time the Appellant spends with another resident who is developmentally impaired. While [REDACTED] may have valid concerns of this

relationship, this alone is insufficient to discharge the Appellant. Again, the Appellant has autonomy which includes the freedom to associate with who they want. Concerns related to who the Appellant's relationship with this other resident being inappropriate is best addressed elsewhere. Entities such as the Ombudsman's office, the Department of Behavioral Healthcare, Developmental Disabilities & Hospitals' Quality Assurance Unit (for those 18-59 with developmental and/or intellectual disabilities), and the Office of Healthy Aging's Adult Protective Services (for those 60 or older) are more properly suited to determine if this relationship is appropriate or not.

Finally, [REDACTED] asserts that the Appellant has been difficult with staff. While being a danger to the safety and welfare of staff is a valid discharge reason, 216-40-10-2.4.19 (B)(5)(c). There is insufficient evidence to warrant the discharge. Most of the specific examples provided by [REDACTED] are related to the staff asking the Appellant about bathing and doctors appointments. These are matters that the Appellant retains autonomy in, including the right to privacy. Beyond these incidents there is little evidence of the Appellant being a danger to the staff. The only concrete example provided was about a staff that wished to move from third shift to first shift because they were concern about being the only staff person on at night with the Appellant. Allowing this shift change would alleviate the concern as expressed by the staff person. Without more evidence of how the Appellant is a danger to the staff, there is not enough evidence to warrant an involuntary discharge.

CONCLUSION OF LAW

After careful review of the testimony and evidence present at the administrative hearing, this tribunal concludes:

1. The Appellant has autonomy in association, choosing when to bathe, and in managing their doctor appointments.
2. There is insufficient evidence of the Appellant being a danger to other residents or staff to warrant an involuntary discharge.

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 the involuntary discharge of the Appellant.

APPEAL GRANTED

/s/ Shawn J. Masse

Shawn J. Masse

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.

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED], Alliance for Better Long Term Care, Attn: Beth Mantia, 422 Post Road, Suite 204, Warwick, RI 02888, and to [REDACTED]; copies were sent, via email, to [REDACTED] at [REDACTED], and Beth Mantia at beth@alliancebltc.org on this 30th day of APRIL, 2026.

Rehman Z. Ali