

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

[REDACTED]

V.

DOCKET No. 26-2441

EXECUTIVE OFFICE OF HEALTH
AND HUMAN SERVICES

DECISION

I. INTRODUCTION

An administrative hearing on the above-entitled matter was held on May 21, 2026, via Microsoft Teams, and the Appellant, [REDACTED], declined the option of video. The Appellant filed an appeal on April 21, 2026, regarding the Executive Office of Health and Human Services' (EOHHS) denial of her request to be a personal care attendant (PCA) for her mother through the Personal Choice program because a criminal background check revealed disqualifying information on her criminal record. For the reasons discussed in more detail below, the Appellant's appeal is denied.

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 to be the entity responsible for appeals and hearings related to Medicaid programs. 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 and 210-RICR-20-00-1.7(C).

III. ISSUE

The issue is whether EOHHS' denial of the Appellant's request to be a PCA for her mother through the Personal Choice program due to her criminal background was done in compliance with state regulations.

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

Present for EOHHS were Karen Statser, administrator of Family and Adult Services for the EOHHS Office of Community Programs, (Administrator Statser) and Nicholas James, of the EOHHS Office of Program Integrity, provider enrollment, (Program Integrity Representative) who provided testimony and evidence regarding the case. The Appellant represented herself and also offered evidence and testimony. The following exhibits were presented as evidence:

- EOHHS Exhibits:
 - Exhibit #1: Letter dated April 7, 2026, from Administrator Statser to the Appellant.
 - Exhibit #2: Letter from the Appellant's mother [REDACTED] (mother).
 - Exhibit #3: National Background Check information.
 - Exhibit #4: National Background Check Committee Review Notes.

- Exhibit #5: Memorandum regarding Appellant dated April 29, 2026, from Administrator Statser to the EOHHS Appeals Office.
- Appellant Exhibit:
 - Exhibit #1: Appeal filed April 21, 2026.
 - Exhibit #2: Employment letter dated March 2, 2026.

VI. RELEVANT LAW/REGULATIONS

EOHHS screens all providers to ensure that they meet all state and federal requirements for enrollment and/or continued participation in the Medicaid program. State and federal law require a National Criminal Records (NCR) check supported by fingerprints, conducted through the Office of Attorney General, for individual personal care attendants and homemakers providing direct care to individuals under Chapter 50-10-2 – the Personal Choice self-directed program. 210-RICR-20-00-1.6(C).

Upon discovery of any disqualifying information, as defined in R.I.G.L. § 42-7.2-18.4 and in accordance with the rule promulgated by the secretary of EOHHS, the bureau of criminal identification will inform the applicant, in writing, of the nature of the disqualifying information; and, without disclosing the nature of the disqualifying information, will notify EOHHS, in writing, that disqualifying information has been discovered. R.I.G.L. § 42-7.2-18.3(b). Disqualifying information, as defined in § 42-7.2-18.4, includes a conviction for felony larceny.

An applicant against whom disqualifying information has been found, for purposes of appeal, may provide a copy of the National Criminal History Check to EOHHS, which shall make a judgment regarding the approval of the applicant. R.I.G.L. § 42-7.2-18.3(c).

In addition, 210-RICR-50-10-2.8(G) explains further that the individual may participate as a PCA or representative, notwithstanding evidence of a disqualifying conviction, only if, in the judgment of the EOHHS Office of Community Programs Review Committee, such participation:

- a. Would not threaten the health, welfare, or safety of participants; and

b. Would not compromise the integrity of the Rhode Island Medicaid program.

A provider who does not meet the requirements of this section is entitled to a hearing on the issue of eligibility pursuant to the Administrative Procedures Act, as found at R.I. Gen. Laws Chapter 42-35, as amended, and in conformance with Part 10-05-2 of this Title, Appeals Process and Procedures for EOHHS Agencies and Programs. 210-RICR-20-00-1.7(C).

In addition, 210-RICR-20-00-1.3(A)(3) defines a "high-risk provider" as a provider that poses a high risk of fraud, waste or abuse. High-risk providers include individual PCAs and homemakers providing direct care to individuals through the Personal Choice program provided by PCAs. 210-RICR-20-00-1.3(A)(3)(b).

The Personal Choice Program, a long-term care program, provides self-directed home and community-based services to Medicaid Long-Term Services and Supports (LTSS) eligible individuals through PCAs. It is for individuals with disabilities who are over 18, or 65 and over, who meet either a high or highest level of care. Services are geared toward reducing unnecessary institutionalization by providing specialized home and community-based services to qualified Medicaid participants at an aggregate cost which is less than or equal to the cost of institutional or nursing facility care. 210-RICR-50-10-2.2(A).

VII. FINDINGS OF FACT

1. The Appellant applied to be a PCA for her mother, who is a Medicaid recipient participating in the Personal Choice Medicaid program.
2. Personal Choice program participants can employ PCAs to help meet their care needs. PCAs must undergo a National Criminal Background Check as required by R.I.G.L. § 42-7.2-18.3.
3. An NCBC revealed the Appellant plead guilty on [REDACTED], to Felony Grand Larceny – second degree, property value exceeds \$50,000, and received a one-year sentence.

4. According to R.I.G.L. § 42-7.2-18.4, which lists crimes that bar an applicant from working as a PCA, a felony larceny conviction is disqualifying.
5. On March 2, 2026, the Appellant requested that the EOHHS Office of Community Programs reconsider the disqualification; that unit convenes a review committee to make a judgment regarding a PCA applicant who has disqualifying information in their criminal record.
6. EOHHS' four-member National Background Check Review Committee (which included Administrator Statser) reviewed the Appellant's reconsideration request on March 23, 2026, but did not change the decision to not fund her as a PCA given her criminal record. The committee considers convictions, background information, and supporting statements, in weighing its decision. The Appellant was notified in an April 7, 2026, letter from EOHHS that her appeal of her Medicaid provider denial was not granted.
7. The Program Integrity Representative testified that when the review is conducted, in addition to considering the disqualifying criminal information, they also look at the "risk factor," noting that a PCA, who provides one-on-one care and receives federal funds, is deemed a high-risk provider, meaning they pose a high risk of fraud, waste or abuse; for example, he said a PCA could falsify time sheets and state they are working more hours than they actually are. The Program Integrity Representative testified that the Appellant's conviction of theft more than \$50,000 concerns the committee in terms of potential risk.
8. The Appellant filed an Appeal with the EOHHS Appeals Office on April 21, 2026, to request a formal hearing regarding the denial.
9. The Appellant testified that she moved in with her mother, who has heart and kidney failure, chronic obstructive pulmonary disease (COPD) and emphysema, in January 2025 to care for her. She does not consider herself high-risk as she already lives with her mother. The Appellant testified her sister will be handling all financial paperwork.

10. The Appellant testified that her mother only wants her to care for her, not a stranger. The Appellant also works for [REDACTED]. She testified it is difficult to work full-time and care for her mother.
11. The Appellant regrets that a mistake made when she was young is preventing her from being her mother's paid caregiver – she bought fake credit cards in 2010 in [REDACTED] when she was 23. She testified that she served her sentence, has not been in trouble with the law since, and is a changed person.
12. The Appellant testified she is confused by the disqualification because she worked for the company which would be involved in her mother's personal choice program – the [REDACTED] – twice before, as a certified nursing assistant (CNA) for her sister in 2020, and prior to that in 2017 or 2018. The Appellant testified she has been in people's homes and worked at [REDACTED] nursing home in [REDACTED] she did not have any problems while working in those positions and was never fired.
13. The Appellant's mother wrote a letter of support stating she is aware of the Appellant's record and wants her to be her PCA. The mother wrote that she is most comfortable with the Appellant taking care of her out of all her children, and wrote that the Appellant has turned her life around.
14. At one time, only a State Background check was needed to become a PCA, which may not have revealed the Appellant's 2013 crime since it was committed in another state, Administrator Statser testified, in explaining why the past conviction did not prevent her from working as a CNA or in a nursing home previously.

VIII. DISCUSSION

PCAs who have direct contact with participants in the personal choice program must undergo a NCBC in order to provide assistance to participants in that program, and must not have any disqualifying convictions. 210-RICR-50-10-2.8(G).

Because the Appellant has disqualifying information on her criminal record – a felony Grand Larceny conviction for which she served a one-year sentence – she is not eligible to work as a PCA, per § 42-7.2-18.4, which outlines the types of disqualifying convictions, such as felony larceny.

Once the Appellant received notification of the disqualification, she appealed to the EOHHS Office of Community Programs, which convened a committee to review the matter, but upheld the disqualification given the circumstances of the crime. It could only be overturned if the committee felt the Appellant's participation would not threaten the health, welfare or safety of participants, and would not compromise the integrity of the state Medicaid program. 210-RICR-50-10-2.8(G)

Though the Appellant's mother wrote a letter in support of the Appellant, stating she wants her to care for her and wrote that the Appellant has turned her life around, the Program Integrity Representative noted that PCAs are considered "high-risk" providers because there is a high risk of fraud, waste and abuse involved with the job, and the Appellant's past conviction of larceny (credit card theft) concerned the committee in terms of potential risk. Therefore, the Medicaid provider denial was sustained.

The Appellant then appealed that decision to the EOHHS Appeals office, making a case for caring for her sick mother by saying she already lives with her and cares for her in an unpaid capacity, and that the credit card theft occurred when she was young, she regrets it, and she has not been in trouble with the law since. However, in the absence of more evidence that she is a changed person and capable of caring for an elderly person, the decision by the National Background Check Review Committee is well-grounded.

IX. CONCLUSION OF LAW

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

1. The Appellant has a felony conviction of Grand Larceny on her record.

2. The PCA position is considered a high-risk provider, meaning it has a high risk of fraud, waste of abuse.
3. There is a preponderance of evidence to show that the Appellant's criminal conviction, paired with the high-risk position she is seeking and its potential for fraud, disqualifies her from employment as a PCA in the Personal Choice Program.

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 sufficient evidence to support the EOHHS review committee's decision to not fund the Appellant as a PCA for her mother due to the disqualifying information on the Appellant's criminal record.

APPEAL DENIED

/s/ Lori Stabile

Lori Stabile

Appeals Officer

NOTICE OF APPELLATE RIGHTS

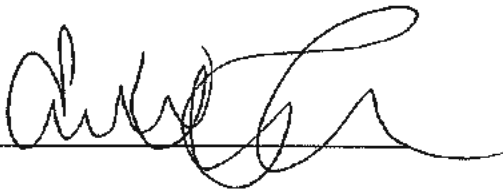
This decision is a final order under R.I.G.L. § 42-35-12. Under R.I.G.L. § 42-35-15, this Order may be appealed to court within thirty (30) days of the mailing of this decision. Such appeal, if taken, must be completed by filing a complaint in court. The filing of the complaint does not itself stay enforcement 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 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]; copies were sent, via email, to [REDACTED] Karen Statser, Nicholas James, John Bonin, and Emily Tumber on this 15th day of June, 2020.

A handwritten signature in black ink, appearing to be "A. Statser", is written over a horizontal line.