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

[redacted]

V. DOCKET No. 26-3740

[redacted]

**DECISION**

## I. INTRODUCTION

A Microsoft Teams hearing on the above-entitled matter was held on June 30, 2026. The Appellant, [redacted], initiated this matter to appeal two Pre-Transfer or Pre-Discharge 30-Day Notices (30-Day Notice) issued by [redacted]) on June 4, 2026. One notice states that [redacted] will be undergoing substantial construction and repair work which will require the Appellant to move out. The other notice states the Appellant has engaged in behavior that repeatedly interferes with the rights, health, safety and well-being of residents and staff. The Appellant filed a timely appeal that was received by the Executive Office of Health and Human Services (EOHHS) on June 15, 2026. The Appellant is seeking to have the discharge overturned and remain at the assisted living facility. For the reasons discussed in more details below, the Appellant's appeal is granted in part and denied in part.

## 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

Present for [redacted] were Owner/Administrator [redacted] (Administrator [redacted] Administrator [redacted] (Administrator [redacted] and Nurse [redacted] (Nurse) who provided testimony and evidence regarding the case. [redacted] (Contractor), [redacted] in [redacted], testified about construction work at [redacted]. The Appellant testified on

his own behalf. Alliance for Better Long-Term Care Ombudsman Beth Mantia (Ombudsman) also testified on behalf of the Appellant and presented evidence.

- [redacted] Exhibits:
    - Two 30-Day Discharge Notices issued June 4, 2026.
    - Behavior Report Forms dated March 5, 2023, June 23, 2023, November 19, 2024, February 1, 2024, February 10, 2024, and June 1, 2026.
    - Incident Report dated June 23, 2023.
    - Nursing Notes November 19, 2024, October 10, 2025, and May 20, 2026.
    - [redacted] Incident Report #[redacted]-OF dated October 10, 2025.
    - Incident Report dated October 12, 2025, and Five (5) Day Investigation Report dated October 14, 2025.
    - Resident statement dated June 18, 2026.
    - Previous 30-Day Discharge Notice issued August 24, 2023.
    - House Rules dated January 14, 2025, and January 27, 2026.
    - Admissions Agreement.
- Appellant Exhibits:
    - Appeal request reeeived June 15, 2026.
    - 210-RICR-50-00-7: 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 (DOH) 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 §23.17.4-16 "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

1. The Appellant has been a resident of [redacted] since November 23, 2022.
2. Two 30-Day Discharge Notices were issued to the Appellant on June 4, 2026: One is about an upcoming renovation that will displace him from his shared third floor unit. The other is about his behavior, and states he has engaged in smoking and/or alcohol consumption in violation of facility rules, and has demonstrated an unwillingness to comply with House Rules.
3. Neither 30-Day Discharge Notice names a discharge destination for the Appellant, and the Ombudsman argued it is therefore not a safe discharge. Administrator [redacted] testified a new facility has not yet been identified for the Appellant, but said they will look for another Medicaid-accepting facility for him.
4. Administrator [redacted] testified repair work needs to be done on the building and it will affect the third-floor residents. Two of the four residents affected by the construction project will move to other rooms at [redacted]. The Appellant and his roommate are to be placed at another facility as there are no other rooms available at [redacted].
5. The Contractor was unsure when construction would be completed but testified he cannot work with residents in their rooms.

6. The Ombudsman argued that a renovation is not a valid reason to discharge someone from a facility. She further argued that she was notified of only two behavioral incidents regarding the Appellant from October 2025 and June 2026.
7. The Appellant signed the House Rules on January 14, 2025 and again on January 27, 2026. The House Rules state smoking, drinking or foul language is not allowed in the house or on the premises. It states [redacted] is a smoke- and alcohol-free facility.
8. Administrator [redacted] Administrator [redacted] and the Nurse all testified that the Appellant's behavior issues have been a persistent problem. Administrator [redacted] testified the Appellant is a safety risk because of his smoking. Administrator [redacted] testified that the Appellant is violating the other residents' rights, and is particularly negative and disruptive at meal times. Administrator [redacted] testified the Appellant argues with the female residents and discussed an incident that occurred last weekend involving the Appellant having words with a female resident, though no report regarding the incident was submitted. The Nurse testified she does not believe [redacted] is a good fit anymore for the Appellant.
9. [redacted] submitted the following documentary evidence regarding the Appellant's behavior:
    - June 1, 2026: The Appellant and two other residents were loudly using profanities. Other residents were nearby and someone seated nearby appeared visibly scared and was shaking.
    - May 20, 2026: The Nurse asked the Appellant if he had been drinking because she smelled alcohol on him. She testified that he became angry and told her that he does not drink alcohol; the Appellant then came into her office approximately a half hour later, slammed his hands down on her desk and told her not to ask him if he's drinking, ever. The nurse testified his reaction frightened her and she told him she will ask him as many times as she wants if she suspects he has been drinking.

- October 10, 2025: a resident claimed that the Appellant offered him methadone. Fourteen bottles of methadone were then found in the Appellant's closet, which Administrator [redacted] testified is in violation of [redacted]' policies because that type of "highly-controlled substance" is supposed to be dispensed on-site by his behavioral health clinic, and not brought back to the facility. The Administrator testified that the police were called to make an incident report, and the incident was reported to the Ombudsman's Office and the DOH which also investigated the incident.
- Three separate incidents in 2024: A worker reported that the Appellant was verbally aggressive towards her, the Appellant was written up for constantly bullying and picking on a fellow resident, and the Appellant called a staff member an expletive and slammed a door, but later apologized and said that he understood his behavior was not acceptable.
- Two smoking incidents in 2023 that led to a 30-Day Discharge Notice being issued to the Appellant that was later rescinded.

10. Administrator [redacted] testified that she had been apprehensive about allowing the Appellant to reside at [redacted] because he was taking methadone, but felt he deserved the chance to live there. She said it was made very clear to the Appellant upon him signing the admission agreement that he would have to leave the facility to receive his methadone and use it at the clinic only.
11. The admission agreement does not state anything about methadone use in it. It states that medication is locked in the medication cart, and medications are not kept in the residents' rooms. The nurse or certified medication aides pass all medications.
12. The Appellant testified that he has apologized for the methadone incident. The Appellant said he earned "take homes" from the clinic, meaning he could take the methadone home, because he did not feel like going there every day to receive his dosage.

13. Administrator [redacted] testified that she has been working with the Appellant for more than three years and with his primary care doctor to help him.
14. Administrator [redacted] said the Appellant is apologetic, but the problems continue. She said they have tried smoking cessation medication with the Appellant and he still violates the smoking policy; in mid-June, the staff could smell smoke on the Appellant, so they asked him where his smoking materials were. The Appellant led them across the street to where he hid a pack of cigarettes under a traffic cone. He then crushed the remaining cigarette in the pack. The Ombudsman questioned why this was necessary since the Appellant is an adult and the tobacco products were off premises.
15. Negativity and personality disorders are not a reason for a discharge, the Ombudsman testified.
16. The Appellant wants to stay at [redacted]. He blamed a pill that he takes for diabetes that makes him smell like alcohol. The Appellant testified he has not had alcohol since he moved into [redacted], and said he does not like confrontation. The Appellant testified he was stating his case to the nurse after he had been accused and was not given a Breathalyzer.
17. The Appellant knows he is loud and overzealous and said he has always been this way. Regarding the most recent June incident, the Appellant thought he was joking with the female resident and did not realize he upset her; he said he will never talk to her again.

## VIII. DISCUSSION

The reasons for the discharge according to [redacted] administrators are twofold: the upcoming renovation that will displace him from his shared third-floor room, and his behavior.

While there was extensive testimony about the Appellant's behavior and violations of the House Rules, specifically smoking and drinking alcohol, it cannot be determined if he was actually under the influence of alcohol during the May 2026 incident, and the cigarettes hidden under the traffic cone were off premises. It appears that the last actual smoking violations were in 2023, which led to a 30-Day Discharge Notice that was later rescinded. The administrators failed to provide evidence that the

Appellant was smoking and drinking in the facility recently, and the Appellant should not be penalized now for smoking incidents three years ago.

In addition, the methadone incident, in which [redacted] police made a report, occurred in October 2025, more than eight months ago. It does not appear that there have been any other problems with the Appellant bringing methadone into the facility since then. A review of the admissions agreement does not specifically state anything about residents who use controlled substances and how they are supposed to be handled, but it does say medications are not supposed to be stored in residents' rooms, and are supposed to be locked in the medication cart. Administrator [redacted] testified that it was made clear to the Appellant upon admission that methadone had to be used at the clinic and could not be brought back to [redacted]

Regarding the two June 2026 incidents involving his behavior, only one was documented with a report. Prior to that, there were three behavior incidents documented in 2024, which were not recent. It is unclear if [redacted] would take action to discharge the Appellant if not for the upcoming construction project.

While it is clear the Appellant may exhibit some challenging behavior at times, it does not appear to rise to the level to warrant a discharge from the facility. However, because the Contractor testified he cannot work on the building with residents in their rooms, and the project specifically affects the third floor where the Appellant resides, he needs to be discharged from the facility. It is not safe to remain and there is no available room for him to move into. 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).

R.I.G.L. Title 23 Health and Safety §23.17.4-16(a)(2)(xix) calls for a safe, and orderly move out, including assistance with identifying a resource to help locate another setting. No location was listed as a

discharge destination for the Appellant on the two 30-Day Discharge Notices that he received. [redacted] must find an ALR for the Appellant to move into, and notify him and the Ombudsman's Office.

## IX. CONCLUSION OF LAW

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

1. The Appellant's behavior does not warrant an involuntary discharge from [redacted]. [redacted] administrators and staff did not prove that he violated the smoking and drinking policy as outlined in the House Rules.
2. An involuntary discharge is warranted as it is unsafe for the Appellant to remain in his room at [redacted] while necessary construction renovations/repairs are completed. There are no alternative rooms available for him at [redacted].
3. Once an appropriate location is found, [redacted] must notify the Appellant and Ombudsman's Office in writing as to where the Appellant will be relocated so he can prepare for the move, and to ensure that the discharge is safe and orderly, per 210-RICR-50-00-7.5(B) and 210-RICR-50-00-7.6.

## 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 [redacted] can discharge the Appellant to another ALR because of the renovation project.

**APPEAL GRANTED IN PART AND DENIED IN PART**

*/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]; [redacted], and Beth Mantia, c/o Alliance for Better Long Term Care, 422 Post Road, suite 204, Warwick, Rhode Island 02888; copies were sent, via email, to [redacted] at [redacted], [redacted], and Beth Mantia at beth@alliancebltc.org on this _____ day of _____, _____.

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I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [redacted]; [redacted], and Beth Mantia, c/o Alliance for Better Long Term Care, 422 Post Road, suite 204, Warwick, Rhode Island 02888; copies were sent, via email, to [redacted], [redacted], and Beth Mantia at beth@alliancebltc.org on this 8th day of July, 2026.

Marilyn Gaudet