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

[redacted]

V. DOCKET No. 26-3972

[redacted]

DECISION

I. INTRODUCTION

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on July 20, 2026, with [redacted] (hereinafter the "Facility") and [redacted] (hereinafter the "Appellant"). The Appellant declined to utilize the option to schedule a video hearing. The Appellant initiated this matter to appeal the Pre-Transfer or Pre-Discharge 30-Day Notice issued by the Facility on June 10, 2026. The Facility seeks to discharge the Appellant due to their continued use of alcohol during off-site visits. The Facility testified that when the Appellant returns to the Facility in an intoxicated state it increases the Appellant's fall risk. 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 denied.

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. 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 the Facility were [redacted], Administrator, [redacted], Regional Director of Operations, and [redacted], Regional Director of Nursing. The Facility entered the following exhibits as evidence:

Exhibit #1 – June 10, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice.

Exhibit #2 – Screenshot of May 15, 2026, Health Status Note.

Exhibit #3 – 30 Day Discharge Overview.

Exhibit #4 – May 10, 2026, Positive Ethanol Test Results.

Exhibit #5 – Drug and Alcohol Contract.

Exhibit #6 – June 6, 2026, Positive Ethanol Test Results.

Exhibit #7 – Progress Notes.

Exhibit #8 – Hearing Appointment Notice.

The Appellant attended the hearing and testified on their own behalf. Charline Scanlon (hereinafter "Ombudsman Scanlon"), on behalf of the Alliance for a Better Long-Term Care, also attended the hearing and testified in support of the Appellant. The following exhibits were offered as evidence by the Appellant and Ombudsman Scanlon:

Exhibit # 9 – June 25, 2026, Appeal Form.

Exhibit # 10 – Overview of Federal and Rhode Island Regulations.

Exhibit # 11 – June 9, 2026, Negative Ethanol Test Results.

Exhibit # 12 – Title 210 – Executive Office of Health and Human Services – Chapter 50 – Medicaid Long-Term Services and Supports – Subchapter 00 – Long Term Services (210-RICR-50-00-7).

Exhibit # 13 – Title 42 – Public Health – Chapter IV – Centers for Medicare & Medicaid Services, Department of Health and Human Services – Subchapter G – Standards and Certification – Part 483 – Requirements for States and Long Term Care Facilities – Subpart B Requirements for Long Term Care Facilities – §483.15 Admission, Transfer, and Discharge Rights (42 C.F.R. § 483.15).

Exhibit # 14 – Title 42 – Public Health – Chapter IV – Centers for Medicare & Medicaid Services, Department of Health and Human Services – Subchapter G – Standards and Certification – Part 483 – Requirements for States and Long Term Care Facilities – Subpart B Requirements for Long Term Care Facilities - §483.10 Residents Rights (42 C.F.R. § 483.10).

VI. RELEVANT LAW/REGULATIONS

Nursing home facilities may discharge a resident from a long-term care facility if the health of individuals in the long-term care facility would otherwise be endangered. See 210-RICR-50-00-7.4(A)(4).

Before a facility transfers or discharges a resident, the facility must notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must also send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman. See 42 C.F.R. § 483.15(c)(3)(i). The written notice must include (i) The reason for transfer or discharge; (ii) The effective date of transfer or discharge; (iii) The location to which the resident is transferred or discharged; (iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request; and v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;. See 42 C.F.R. § 483.15(c)(5)(i-v). If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available. See 42 C.F.R. § 483.15(c)(6).

The Facility must provide (and document) sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge and the documentation must be in a form and manner that the patient can understand. See 42 C.F.R. § 483.15(c)(7). The documentation for a safe transfer or discharge must include: 1) Contact information for the practitioner responsible for the care of the patient; 2) The patients representative's information, including contact information; 3) Any advance directives of the patient; 4) Any special instructions or precautions for ongoing care; 5) Comprehensive care plan goals; and, 6) All other necessary information and documentation to ensure a safe and effective transition of care, including a copy of the discharge summary. See 210-RICR-50-00-7.5(B)(1-6).

VII. FINDINGS OF FACT

1. The Appellant was admitted to the Facility, which is a nursing home, in November 2025. The Appellant is 45 years old, has a diagnosis of demyelinating disease of the central nervous system and alcohol dependence, and is totally dependent upon staff with most of their activities of daily life. The Appellant utilizes a wheelchair for mobility.
2. On April 17, 2026, the Appellant returned to the Facility after an off campus visit with her family. The Facility suspected that the Appellant was intoxicated from the use of alcohol, but no alcohol testing was conducted.
3. On May 10, 2026, the Appellant returned to the Facility in an intoxicated state after another off campus visit with her family. The Appellant tested positive for alcohol use, and a substance abuse counselor was assigned to work with the Appellant.
4. On May 15, 2026, the Appellant met with Facility staff. The Appellant was informed that that a 30-day discharge notice would be issued if the Appellant continued to return to the facility in an intoxicated state because it presented a risk to the Appellant's health and safety.
5. On June 5, 2026, the Appellant returned to the Facility in an intoxicated state after an off-site visit with her family. An alcohol test was conducted and the Appellant tested positive for alcohol use.
6. The Facility issued a 30-day discharge notice to the Appellant on June 10, 2026.
7. The Facility testified that the Appellant's alcohol use poses a risk to the Appellant's health because it increases the Appellant's fall risk.

VIII. DISCUSSION

As stated above, nursing home facilities may discharge a resident if the health of individuals in the long-term care facility would otherwise be endangered. The Facility testified that they issued the June 10, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice to the Appellant because their alcohol use endangers their safety. The Facility further testified that the Appellant was explicitly warned on May 15, 2026, that they would be discharged if they returned to the facility in an intoxicated state. This

conversation was recorded in the May 15, 2026, Health Status Note, and the Appellant does not dispute that this conversation occurred.

The Appellant is dependent upon staff to carry out most of their activities of daily life. By consuming alcohol, the Appellant increases their risk of falling, which increases the chance of an accident occurring while staff are assisting the Appellant with their daily activities. The Appellant was clearly warned that if they returned to the Facility in an intoxicated state, they would be discharged and on June 5, 2026, they returned to the Facility in an intoxicated state as evidenced by the June 6, 2026, Positive Ethanol Test Results. Because the Appellant's use of alcohol increases the Appellant's fall risk and because the Appellant returned to the Facility in an intoxicated state after being warned that it would lead to their discharge from the Facility, there is sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of the Appellant.

Ombudsman Scanlon raised the issue that the June 10, 2026, Pre-Transfer or Pre-Discharge 30-Day Notice does not contain a specific discharge location. The Facility listed the discharge location as "Any RI SNF" which implies that the Facility intends to discharge the Appellant to another nursing home facility in Rhode Island. Because the Pre-Transfer or Pre-Discharge 30 Day Notice can be amended at any time before the discharge occurs, a complete discharge plan is not needed at the time the notice is issued. If a safe and orderly discharge plan is established by the date of discharge, the lack of a complete discharge plan at this juncture is not fatal to the Pre-Transfer or Pre-Discharge 30 Day Notice.

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 sufficient evidence and compliance with administrative procedures to permit the involuntary discharge of the Appellant.
2. The Pre-Transfer or Pre-Discharge 30 Day Notice is procedurally sufficient.

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 involuntary discharge of the Appellant. Berkshire Place Nursing and Rehabilitation is permitted to discharge the Appellant once a safe and orderly discharge plan is established.

APPEAL DENIED

/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, 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], Charline Scanlon 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 Charline Scanlon at charline@allianceltc.org and [redacted] on this 22ND day of JULY, 2026.