

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

[REDACTED]

V.

DOCKET No. 26-4023

[REDACTED]

DECISION

I. INTRODUCTION

A telephonic hearing on the above-titled matter was held on July 21, 2026. The Appellant, [REDACTED], waived his right to a video hearing. The Appellant initiated this matter to appeal the 30-Day Discharge Notice (30-Day Notice) issued by [REDACTED] (Facility), on June 19, 2026. The notice stated that the Appellant's health and/or safety of other individuals in this facility is endangered. According to the notice, the Appellant has been involved in multiple altercations, most recently on June 7, 2026, when the Appellant physically harmed another resident, which resulted with the other residence requiring medical intervention. The Appellant disagrees with the facility and is seeking to have the discharge rescinded so he may remain at the facility. For the reasons discussed in more detail below, the Administrative Hearing has been decided in the Appellant's favor.

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 to be the entity responsible for appeals and hearings related to transfers or discharges for all residents of Nursing Facilities, regardless of whether Medicare, Medicaid or private parties pay for a resident's stay. 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

The issue is whether there is sufficient evidence to permit the involuntary discharge of the Appellant from a long-term care facility and/or whether the notification of the intent to discharge from a long-term care facility was in accordance with the State and Federal 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. This means that for each element to be proven, the factfinder must believe that the facts that are asserted by the proponent are more probably true than false. (2 Richard J. Pierce, Administrative Law Treatises 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).

V. PARTIES AND EXHIBITS

The Facility Administrator [REDACTED] (Administrator) attended the hearing and provided testimony relevant to the Appellant’s involuntary discharge. The Facility offered the following evidence as full exhibits at the hearing:

- Facility Exhibit #1 – Progress Notes and Psychiatric Evaluation & Consultation reports, dated May 15, 2026, and June 7, 2026.
- Facility Exhibit #2 - Admission Record, dated February 13, 2025.

The Appellant’s Guardian, [REDACTED] (Guardian), attended the hearing on the Appellant’s behalf. Also in attendance, the Alliance for Better Long-Term Care Ombudsman Charline Scanlon (Ombudsman). The Appellant and the Ombudsman offered the following evidence as full exhibits at hearing:

- Exhibit #1 – Rhode Island Department of Human Services Pre-Transfer or Pre-Discharge 30 Day Notice, dated June 19, 2026.
- Exhibit #2 – Care Plan Report, dated February 13, 2025.
- Exhibit #3 – Public Health Title 42 Chapter IV, Subchapter G, Part 483. C.F.R. 483.20
- Exhibit #4 – Department of Health regulation 216-RICR-40-10-1, and EOHHS regulation 210-RICR-50-00-5
- Exhibit #5 – Letter from BHDDH, Audra DiChiaro, Public Consultant RN

VI. RELEVANT LAW/REGULATIONS

Pursuant to 210-RICR-50-00-7.4, entitled “Discharge Criteria”, states in part that a resident can be discharged if the safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident or if the health of individuals in the long-term care facility would otherwise be endangered.

Pursuant to 210-RICR-50-00-7.6, entitled “Pre-Transfer/Discharge Notice”, states “Before transferring or discharging a resident, a long-term care facility must notify the resident (and, if known, a resident representative) of the transfer or discharge and of the reasons for the discharge in a language and manner they understand. The long-term care facility must also notify the Office of the State Long-Term Care Ombudsman” Subpart B of this section continues to detail what the notice must include; the reason for transfer, effective date of transfer or discharge and the location to which the resident is transferred or discharged.

Pursuant to 210-RICR-50-00-7.7 (C) entitled Resident Appeal Rights, The long-term care facility may not transfer or discharge the resident while the appeal is pending, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the long-term care facility.

VII. FINDINGS OF FACT

The Appellant has resided at the facility since February 13, 2025. According to the Appellant's Care Plan Report, he is a PASRR Level 2, as he's diagnosed with bipolar disorder with psychotic features. According to exhibits and testimony, the Appellant is wheelchair bound, suffers from a mood disorder, anxiety disorder and insomnia. There were two documented incidences where the Appellant was engaged in a resident-on-resident altercation. Both incidences were unwitnessed. The first incident occurred on May 15, 2026. Another resident entered the Appellant's room and laid in his bed. The Appellant and the other resident provided conflicting accounts which could not be substantiated; therefore, the Facility's investigation was unfounded. The Appellant was temporarily placed on a 1:1 supervision but was cleared shortly thereafter as his demeanor was calm and he contracted for safety. The staff placed a "Stop" sign outside the Appellant's room, to deter other residents from wandering in. The second incident occurred on June 7, 2026. This time, staff found the Appellant on the floor in his bathroom, and another resident had a visible injury to his hand. The facility investigation was unable to determine the exact sequence of events leading to the altercation, due to the unwitnessed nature of the incident and the residents' cognitive impairments and inability to explain the event.

The facility issued a 30-Day Notice to Appellant, which was signed by his Guardian on June 19, 2026. The Ombudsman testified that the Notice was not valid as it did not have a location to which the Appellant would be transferred or discharged. Also, the area on the form which states; Date the Notice was given, and the Effective Date, which were clearly required, were both left blank.

The Guardian testified that after the June 7, 2026, incident, she requested that the Appellant be tested for a Urinary Tract Infection (UTI). A test was subsequently given and was positive for a UTI. The Guardian attributed this infection to the change in the Appellant's demeanor as he is usually not an aggressive person. The Ombudsman argued that any PASRR Level 2 patient, who exhibits a change in behavior, the facility must ensure resident and staff safety, notify state agencies, and trigger a formal clinical reassessment. Furthermore, the Ombudsman testified that under Federal and Rhode Island

Medicaid guidelines, a nursing home must have a formal interdisciplinary team meeting, including BHDDH and the resident/representative, before initiating an involuntary discharge for a PASRR Level 2 resident. According to Appellant's exhibit #5, the Facility had not contacted the PASRR Office regarding the Appellant within the last fourteen calendar days, therefore a formal interdisciplinary team meeting did not occur.

VIII. DISCUSSION

The record consists of evidence from the Administrator, the Guardian and the Ombudsman. Per State Law, Federal regulations, and EOHHS regulations, a nursing facility may involuntarily transfer/discharge a resident when the resident's continued presence in the Facility endangers the safety of other individuals in the Facility. 210-RICR-50-00-7.6, entitled Pre-Transfer/Discharge Notice", states "Before transferring or discharging a resident, a long-term care facility must notify the resident (and, if known, a resident representative) of the transfer or discharge and of the reasons for the discharge in a language and manner they understand. The long-term care facility must also notify the Office of the State Long-Term Care Ombudsman" Subpart B of this section continues to detail what the notice must include; the reason for transfer, effective date of transfer or discharge and the location to which the resident is transferred or discharged. Although the Ombudsman argued that the Notice was invalid as it lacked a location to which the resident is transferred or discharged, the Facility indicated on the Notice "Any RI SNF". However, the Notice also lacked a date the Notice was given and an Effective Date, which in itself, invalidates the Notice.

Additionally, the Administrator testified that the Appellant is a danger to other residents, however the record lacked sufficient evidence to prove this. Facility Exhibits documented incidents that occurred between the Appellant and other residents, however the record lacked evidence to show that the Appellant was the aggressor and/or antagonist in those incidences. Furthermore, after both incidences occurred, the Appellant was briefly placed on a 1:1 supervision, which ended as his demeanor was calm and he contracted for safety. No changes were made to his care plan following the second incident, which makes

it more likely than not that the Appellant is not a danger to himself and/or others, as precautions would have been implemented to mitigate the possibility of another incident. Therefore, the record lacked sufficient evidence to show how the Petitioner is a danger to other residents.

IX. CONCLUSION OF LAW

As to the NF's issuance of the 30-Day Notice, this Hearing Officer finds that the intended involuntary discharge of the appellant from the NF for endangering the health and/or safety of other residents is not supported by the evidence. This Hearing Officer further finds that the NF has not taken appropriate steps to ensure a safe discharge in accordance with State and Federal regulations by means of the 30-Day Notice.

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 not sufficient evidence to support the NF's discharge of the Appellant. The Appellant's request to rescind the 30-Day Notice is thereby granted.

APPEAL GRANTED

/s/Jenna Vilardo

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 EOHHS.AppealsOffice@ehhs.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] Charline Scanlon c/o Alliance for Better Long Term Care at 422 Post Road, Suite 204, Warwick RI 02888, [REDACTED]
[REDACTED], copies were sent, via email, to [REDACTED], Charline Scanlon at charline@alliancebltc.org, and [REDACTED], on this 24TH day of JULY, 2026.


