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

[redacted]

V. Docket #: 26-4054

[redacted]

DECISION

INTRODUCTION

The Appellant, [redacted], initiated this matter to appeal the 30-Day Discharge Notice issued by [redacted] ([redacted]). The Appellant is seeking to have the discharge overturned and remain at [redacted] A Microsoft Teams hearing in this matter occurred on Friday, July 3, 2026, at 9:00 AM. The Appellant did not elect the option of a video hearing. For the reasons discussed in more detail below, the Appellant's appeal is denied.

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 patients of nursing homes 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:

- [redacted] – Administrator of [redacted]
- Lori Light – Rhode Island's Long Term Care Ombudsman

The following exhibits were presented as evidence:

- Timeline completed by [redacted]
- Appellant's appeal request
- Appellant's second appeal request
- 30-Day Discharge Notice
- Amended 30-Day Discharge Notice
- Letter from the Ombudsman regarding the appeal
- Resident Smoking Agreement dated January 13, 2026
- Resident Smoking Agreement dated April 2, 2026
- Resident Smoking Agreement dated June 24, 2026

- Department of Health, Center for Health Facilities Regulation – Nursing Facility Required Reporting form
- Behavioral contract
- Letter accompanying the behavior contract

RELEVANT LAW/REGULATIONS

Under 210-RICR-50-00-7, there is a set of requirements, both procedural and substantive, a nursing home must take to involuntarily discharge a patient. This process is not limited to Medicaid patients. Facilities are not allowed to discharge patients involuntary, except in certain cases. 210-RICR-50-00-7.4 (A). This includes when the resident is a danger to the health and safety of others.

Furthermore, 210-RICR-50-00-7.6 lays out several procedural requirements to discharge a patient from a nursing home involuntarily. These include:

1. Written notice is given to the patient and any representative they have and 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 Office of the State Long-Term Care Ombudsman. The Ombudsman is part of and operates out of the Alliance for Better Long-Term Care.
3. The patient also needs to receive a notice of appeal rights at the time of the discharge notice.
4. Finally, there is a requirement for the discharge to be a safe discharge. 42 C.F.R. § 483.15 (c)(7) & 210-RICR-50-00-7.5 (B).

OBJECTIONS AND MOTIONS

The record of hearing was held open to the end of the day to permit additional evidence to be submitted by [redacted]

FINDINGS OF FACT

The Appellant was originally admitted to [redacted] for short term rehabilitation early in 2026. The Appellant, a smoker, signed a smoking agreement form on January 12, 2026. That agreement required that smoking would only occur in designated spaces, at designated times, under staff supervision, away from where oxygen is being used, and smoking materials (e.g., lighters, cigarettes, etc.) will be kept locked up with staff. A second smoking agreement was signed by the Appellant in April 2026 detailing the same provisions. Around this same time, a half cigarette was found in the resident's bathroom. It was believed by [redacted] to be the Appellant's. The Appellant was roommates with someone on continuous oxygen.

In June of 2026, the Appellant was in an altercation with another resident where the Appellant attempted to grab a cigarette from the other resident. The following day, the Appellant was observed by staff smoking outside the designated time. This means that the Appellant had their smoking materials on them when the smoking materials should have been locked up with staff. That same day a third smoking agreement was signed by the Appellant, who also agreed to turn in their smoking materials to staff. The following day the Appellant was observed smoking outside of designated times again and was asked to turn their smoking materials in. The Appellant refused to turn them in and told the facility to write them up. [redacted] issued a 30-Day Discharge Notice. Two days later the Appellant was out in the community, as they do so on an almost daily basis, when they fell while smoking a cigarette at a gas station. The Appellant went to the hospital for observations and when the hospital was ready to discharge, [redacted] refused to take the Appellant back due to the Appellant's risk to the health and safety of residents at the facility.

It is common knowledge that having open flames and smoking indoors, and especially near areas of concentrated oxygen, poses increased risk of fire and explosions.

DISCUSSION

[redacted] seeks to involuntary discharge the Appellant for being a danger to the health and safety of the other residents. The Ombudsman argues that the discharge is an improper one and that the discharge should be for violation of the smoking policy. This decision comes down to the meaning of being a danger to the health and safety of others.

The smoking policy clearly includes provisions related to keeping the residents of [redacted] safe. The use of open flames and smoking cigarettes imposes significant safety risks to residents nearby if this occurs in an unsafe location. This includes in locations where concentrated oxygen is being used where the open flame of a lighter or a lit cigarette could cause a serious fire.

In this case, the Appellant has a history of violating the smoking policy. This includes finding a half cigarette in the bathroom of the Appellant when they were rooming with someone on continuous oxygen and multiple observations by staff of the Appellant smoking outside the supervised hours. The latter also means that the Appellant possessed their smoking materials instead of them being locked up with staff as required. Furthermore, before a 30-Day Discharge Notice was issued the Appellant confessed to staff that they had their smoking materials and would turn them into the staff. However, the following day, when confronted with why they had not turned the smoking materials in, the Appellant refused to turn them in and told [redacted] to write them up. As such, it is within [redacted] scope to seek to discharge the Appellant for being a risk to the health and safety of the residents with their disregard for the smoking policy and the associated risk of fire it imposes on the other residents.

The Ombudsman argues that if [redacted] believed the Appellant was a danger to others that the medical doctor could have issued orders to have the Appellant searched or certified the Appellant for a 72-hour psychiatric hold. This is unreasonable suggestion in this case. R.I.G.L. § 40.1-5-7 limits a 72-hour psychiatric hold to cases where the "patient is in need of immediate care and treatment and that a likelihood of serious harm by reason of psychiatric disability exists…" Furthermore, the patient must first

be given the option of voluntary admission and all alternatives to involuntary commitment have been investigated and determined unsuitable. While the Appellant is making poor decisions regarding their smoking, it clearly does not meet the standard imposed by R.I.G.L. § 40.1-5-7.

In addition to the original discharge for being a danger to the health and safety of the other residents (i.e., violating the smoking policy) the issue of the Appellant not being allowed back following their observational stay at the hospital was also raised. However, because the initial discharge is being upheld, this later question becomes moot. The suggested remedy of requiring the Appellant to return would be contrary to the decision of permitting the initial involuntary discharge. Furthermore, it is the Appellant's own actions, being out in the community and then falling, that led to the hospital observational stay and the later refusal by [redacted] to readmit. Absent the fall, the Appellant would have likely remained at the facility until this appeal was heard and decided on.

CONCLUSION OF LAW

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

1. The Appellant's numerous violations of the smoking policy demonstrate that they are a danger to the health and safety of the residents at [redacted]
2. Requiring the facility to readmit the Appellant following the hospital observation would be contradictory to allowing the initial 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 sufficient evidence to support the involuntary discharge of the Appellant from [redacted]

APPEAL DENIED

/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]

Jamie Pfantz, Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, RI 02888, [redacted], and to [redacted]; copies were sent, via email, to [redacted] at [redacted] and to Jamie Pfantz at jamie@alliancebltc.org on this 9th day of July, 2026.