

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

V.

DOCKET No. 26-4593

DECISION

I. INTRODUCTION

A Microsoft Teams Hearing on the above-entitled matter came before an Appeals Officer on July 31, 2026, and the Appellant's representative declined the option of a video hearing. The Alliance for Better Long-Term Care, on behalf of the Appellant, [REDACTED], initiated this matter to appeal the Pre-Transfer or Pre-Discharge 30-Day Notice issued by [REDACTED] (hereinafter the "Facility") on July 10, 2026, as well as the subsequent discharge of the Appellant. The Facility initially sought to discharge the Appellant due to their repeated violations of the Facility's Smoking Policy, but the Facility discharged the Appellant immediately on July 17, 2026, because the Facility deemed them to be a danger to the safety of the other individuals at the Facility. 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], Director of Social Services, and [REDACTED], Substance Abuse Counselor. The Facility provided the following exhibits as evidence:

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

Exhibit #2 – Smoking Policy and Smoking Policy Violations.

Exhibit #3 – Substance Abuse Counselor’s Progress Notes.

Exhibit #4 – July 17, 2026, Department of Health Incident Report.

Exhibit #5 – July 24, 2026, Department of Health Five-Day Investigation Report.

Exhibit #6 – Nurse’s Progress Note for July 17, 2026.

The Appellant did not attend the hearing. Beth Mantia (hereinafter “Ombudsman Mentia”), on behalf of the Alliance for Better Long-Term Care, attended the hearing and submitted the following exhibits as evidence:

Exhibit #7 – July 27, 2026, Appeal Form.

Exhibit #8 – Overview of Relevant Regulations.

VI. RELEVANT LAW/REGULATIONS

A long-term care facility must permit each resident to remain in the long-term care facility and not transfer or discharge the resident from the long-term care facility unless the safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident. See 210-RICR-50-00-7.4(A)(3). Thirty days advance notice of pre-transfer or discharge is not required in the event of danger to the safety or health of the individuals in the long-term care facility. See 210-RICR-50-00-7.6(E)(1).

VII. FINDINGS OF FACT

1. The Appellant was admitted to the Facility on December 10, 2025.
2. Upon the Appellant’s admission to the Facility, they signed the Facility’s Smoking Policy Education and Acknowledgement Form and the Smoking Policy Form. The Smoking Policy clearly states that Residents who violate the Smoking Policy may be subject to a 30-Day Discharge Notice.
3. Since the Appellant’s admission to the Facility, the Appellant has violated the Facility’s Smoking Policy on 11 occasions. Violations include: 1) Smoking in a non-designated area or at a non-designate time; 2) Having cigarettes, lighters, matches, or other smoking materials in their position; 3) Aggressive or abuse language or behavior towards staff and/or other residents during

- designated and non-designated smoke times; 4) Lighting a cigarette in the Facility; 5) Possessing and smoking marijuana at the Facility; and 6) Smoking despite suspension of smoking privileges.
4. The Facility issued a Pre-Transfer or Pre-Discharge 30 Day Notice to the Appellant on July 10, 2026, due to their repeated violations of the Facility's Smoking Policy.
 5. At roughly 4 AM on July 17, 2026, the Appellant was found to be in a blind woman's room, with their hands under her sheets while she was sleeping.
 6. The Appellant was discharged to a hospital on July 17, 2026, because the Appellant was deemed a threat to the safety of the other individuals at the Facility.
 7. The Facility testified that the Providence Police Department agreed that the Appellant's discharge was necessary to protect the other residents.

VIII. DISCUSSION

The Facility issued the July 10, 2026, Pre-Transfer or Pre-Discharge 30 Day Notice because the Appellant's repeated violations of their Smoking Policy presented a serious safety and fire hazard to the Appellant and the other residents. The Appellant was discharged prior to the end of the 30-day period because they were deemed to be a threat to the safety or health of the other individuals at the Facility on July 17, 2026. Ombudsman Mentia testified that they did not receive the July 10, 2026, Pre-Transfer or Pre-Discharge 30 Day Notice, until July 17, 2026, and that this prevented the Appellant from being able to file an appeal which would have forced the Facility to re-admit the Appellant to the Facility while the discharge was under appeal. The Facility testified that the 30-day notice was provided to both the Appellant and Ombudsman Mentia on July 10, 2026, but that they could not confirm that a fax was sent to Ombudsman Mentia because they never received a fax confirmation sheet.

As stated above, a long-term care facility is permitted to discharge a resident when the safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident and thirty days advance notice of pre-transfer or discharge is not required in the event of danger to the safety or health of the individuals in the long-term care facility. While the delayed receipt of the

July 10, 2026, Pre-Transfer or Pre-Discharge 30 Day Notice, may have delayed the Appellant's ability to file their Appeal, they were ultimately able to file their Appeal, hence the Appellant's Hearing and this decision. There is a preponderance of evidence to show that the Facility correctly issued the July 10, 2026, Pre-Transfer or Pre-Discharge 30 Day Notice due to the Appellant's repeated violations of the Facility's Smoking Policy as the violations pose a serious fire hazard to the other residents. On July 17, 2026, the Appellant was discovered to be inappropriately touching a female resident without their consent. The Appellant's behavior threatened the health and safety of the other individuals at the Facility, therefore, the Facility's decision to discharge the Appellant prior to the date shown on the July 10, 2026, Pre-Transfer or Pre-Discharge 30 Day Notice is permissible. Ombudsman Mentia failed to cite any regulation that states that the EOHHS Appeals Office has any jurisdiction over admissions or readmissions to nursing facilities. Therefore, there is not a preponderance of evidence to show that the EOHHS Appeals Office has jurisdiction over the Facility's decision not to readmit the Appellant.

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 a preponderance of evidence to show that the Facility properly issued the July 10, 2026, Pre-Transfer or Pre-Discharge 30 Day Notice because the Appellant's repeated Smoking Policy violations posed a danger to the safety of the other individuals in the long-term care facility.
2. There is a preponderance of evidence to show the Facility properly discharged the Appellant without thirty days advance notice of pre-transfer or discharge because the Appellant's behavior on July 17, 2026, posed a danger to the safety or health of the individuals in the long-term care facility.
3. There is not a preponderance of evidence to show that the EOHHS Appeals Office has jurisdiction over the Facility's decision not to readmit the Appellant.

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 and that there is insufficient evidence to show that the EOHHS Appeals Office has jurisdiction over the Facility's decision not to readmit the Appellant.

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], [REDACTED], and to Beth Mantia at C/O Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, RI 02888; copies were sent, via email, to [REDACTED] @ [REDACTED] and to Beth Mantia at beth@alliancebltc.org on this 4th day of August, 2026.

