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

[redacted]

V. Docket #: 26-4991

[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 September 8, 2026, at 9:00 AM. The Appellant did not elect the option of a video hearing. For the reasons discussed in more details below, the Appellant's appeal is granted.

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 involuntary transfers and discharges of assisted living residents regardless of 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.).

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 he proven, the factfinder must helieve 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:

- The Appellant
- Renee Miller from the Rhode Island State Ombudsman's Office

[redacted] failed to send a representative to the hearing. After waiting 10 minutes past the start time for a representative to attend, the hearing proceeded without the facility.

The following exhibits were presented as evidence:

- The Pre-Transfer or Pre-Discharge 30 Day Notice with accompanying 30-Day Notice of Move-Out letter

- The Appellant's appeal request

RELEVANT LAW/REGULATIONS

Under 210-RICR-50-00-7, there is a set of requirements, both procedural and substantive, an assisted living facility must take to involuntarily discharge a resident. This process is not limited to Medicaid residents. Facilities are not allowed to discharge residents involuntarily, except in certain cases. 210-RICR-50-00-7.4 (A). This includes when the health and safety of the other residents at the facility are endangered.

Furthermore, 210-RICR-50-00-7.6 lays out several procedural requirements to discharge a resident from an assisted living facility involuntarily. These include:

1. Written notice being given to the resident and any representative they have. 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. contains 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.

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 resident also needs to receive a notice of appeal rights at the time of the discharge notice.

For assisted living facilities, the facility must provide reasonable accommodations before discharging the resident due to health and/or safety reasons. These accommodations must fail in avoiding the need for the discharge and these accommodations are charted in the resident's file prior to discharge. R.I.G.L. § 23-17.4-16 (a)(2)(xviii)(C) & 216-RICR-40-10-2 (B)(5)(c).

FINDINGS OF FACT

The Appellant has been a resident of [redacted] for three years. The Appellant does not wish to move from [redacted]. The discharge notice lists that the Appellant is being discharged as they are endangering the health and or safter of other individuals at the facility. This included yelling, use of foul language, and interfering with the care of the Appellant's boyfriend/fiancé who also resides at [redacted]. The Appellant stated that they have been improving their behavior following the issuance of the discharge notice.

DISCUSSION

For [redacted], to discharge the Appellant for health and/or safety reasons, they need to first make and document reasonable accommodations for the Appellant and those accommodations fail before proceeding with the involuntary discharge. R.I.G.L. § 23-17.4-16 (a)(2)(xviii)(C) & 216-RICR-40-10-2 (B)(5)(c). Here there is no evidence that any accommodation was attempted, let alone the documentation showing the required charting was

done of these accommodations. Without the necessary accommodations attempted and documented, the requirements to involuntarily discharge the Appellant have not been met.

CONCLUSION OF LAW

After careful review of the testimony and evidence present at the administrative hearing:

1. There is no evidence that [redacted] attempted to make any reasonable accommodations of the Appellant's behavior and documented such accommodations as is required under R.I.G.L. § 23-17.4-16 (a)(2)(xviii)(C) & 216-RICR-40-10-2 (B)(5)(e).

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 involuntary discharge of the Appellant

FOLLOW UP ACTIONS

Appellant is permitted to remain at [redacted]. If [redacted] still wishes to involuntarily discharge the Appellant, they would need to show that reasonable accommodations were attempted, failed, and documented. In addition, a new 30-day discharge notice with appeal rights will need to be issued.

APPEAL GRANTED

/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] Renee Miller, Alliance for Better Long Term Care, 422 Post Road, Suite 204, Warwick, RI 02888, and to [redacted] copies were sent, via email, to [redacted] at [redacted] on this 9th day of September, 2026.

[redacted]