STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

[redacted] Docket: 26-5433

V.

[redacted]

ADMINISTRATIVE HEARING DECISION

I. INTRODUCTION

On September 8, 2026, the Executive Hearing Office ("EHO") received a DHS-121NF REQUEST FOR A HEARING FORM from [redacted] ("the Appellant") to dispute a 30-DAY NOTICE OF DISCHARGE ("30-day Notice") issued from [redacted] ("the ALR") on September 4, 2026.

An administrative hearing was conducted on October 5, 2026, telephonically, as the Appellant did not request a video hearing. The hearing was held in accordance with the Administrative Procedures Act R.I. Gen. Laws §42-35.1 and the Rhode Island Code of Regulations ("RICR") 210-RICR-10-05-2. For the reasons detailed below, the appeal is granted.

II. JURISDICTION

The Executive Office of Health and Human Services ("EOHHS") is the appeal entity for involuntary discharges from licensed assisted living residences.

III. ISSUE

The issue is whether the ALR has met the requirements of an involuntary discharge.

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. (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. Narragansett Electric Co. vs. Carbone, 898 A.2d 87 (R.I. 2006).

V. PARTIES AND EXHIBITS

Administrator [redacted] represented the ALR.

The Appellant represented himself with Renee Miller of the RI State Office of Long-Term Care Ombudsman.

The Appellant submitted as evidence the DHS-121NF request for a hearing form, marked as exhibit 1.

The ALR submitted as evidence the DHS-200NF Pre-Transfer/Pre-Discharge 30-day notice, marked as exhibit 2 and the letter attached to the 30-day Notice, marked as exhibit 3.

VI. RELEVANT LAW/REGULATIONS

Residents are informed of services, fees, residents' rights, discharge criteria and discharge policies, along with their responsibilities and house rules in a residency agreement which must be signed prior to admission by the ALR and the resident.

210-RICR-10-05-2.4.8(C)(2) states in accordance with applicable regulations and rules, an ALR involuntary discharge may be initiated by a licensed entity in accordance with the regulations set forth by the RI Department of Health (RIDOH).

"If a resident is a danger to self or the welfare of others; and the residence has attempted to make a reasonable accommodation without success to address resident behavior in ways that would make termination of residency agreement or change unnecessary; which would be documented in the resident's records." The ALR must give a resident 30 days' advance written notice of termination of the residency agreement with a statement containing the reason, effective date of termination, the resident's right to appeal under State law and the contact information of the State Ombudsperson's office. (216-RICR-40-10-2.4.19(B)(5)).

An ALR administrator is responsible for investigating and documenting incidents that directly or indirectly jeopardize the health and safety of residents. The documentation shall include the date and time of the incident, reporters name, name of the residents involved or affected, any injuries incurred and the action taken by the ALR in response to the incident. (216-RICR-40-10-2.4.18(K)).

VII. FINDINGS OF FACTS

1. The Appellant entered the ALR on March 7, 2024.
2. The 30-day Notice issued on September 4, 2026, stated:
    i. The reason selected is that the health and/or safety of other individuals in the ALR is endangered as the Appellant continues to violate the marijuana policy.
    ii. The effective date is October 4, 2026.
    iii. The right to appeal, the Appeals Office, and Ombudsperson's contact information is included.
    iv. It is signed by the ALR Administrator.
3. The ALR testified:

i. The Appellant is in violation of the signed residency and substance use agreements.

ii. There have been interactions by both RIDOH and the fire department.

iii. They have issued several warnings, had resident complaints and property destroyed.

4. The Appellant admits when he is out of the ALR, he does use marijuana but does not bring it into the ALR.

5. The Appellant disputes the ALR's claims and challenges their evidence.

VIII. DISCUSSION

The ALR took this action to discharge the Appellant because his continued use of marijuana is endangering the welfare of others. They claim he has sold marijuana to others, burned holes in the sheets and there is often a marijuana odor coming from his room. They are taking this action against him because although he has been made aware of the marijuana policy, has agreed to comply, he allegedly fails to do so.

The parties agree, the Appellant does use marijuana when he is out of the residence. He denies all other accusations and argues that the ALR's claims are not supported by evidence. The desired outcome of this appeal is for the 30-day Notice to be rescinded, and he be allowed to remain at the ALR.

In review, the only documentary evidence submitted by the ALR is the 30-day notice and accompanying letter. ALR's are required to document incidents which directly or indirectly jeopardize the health and safety of residents, but no documentation was submitted as evidence in support of the discharge. While the ALR claims that they are discharging the Appellant based on recommendation of the RIDOH, there is no documentation explaining the recommendation.

They testified "several" warnings have been given to the Appellant, and interactions by the fire department, but no documentation of either was submitted into evidence. It is unclear what the RIDOH and the Fire Department's specific recommendation was or what it was based on.

210-RICR-10-05-2.4.8(C)(2) clearly outlines that a resident can be discharged if they are a danger to the welfare of others, there is no documentation of this. There is also no documentation that the ALR has attempted to make any reasonable accommodation to address the Appellant's behavior that is allegedly endangering others, which is required by regulations. The evidence in the record does not satisfy the requirements of this discharge as it does not support the ALR's position or that the Appellant poses a risk to the welfare of others.

IX. CONCLUSION OF LAW

After a review of the administrative record, the ALR failed to present sufficient evidence, by a preponderance of the evidence standard, to support the discharge of the Appellant for being a danger to the welfare of others, in accordance with 216-RICR-40-10-2.4.19(B)(5).

X. DECISION

Based on the foregoing Findings of Facts, Conclusion of Law, and testimony, it is ordered that the Appellant's request for relief and appeal is granted.

X. ACTION

The ALR is to rescind the 30-day Notice dated September 4, 2026, without prejudice, and cease the intended October 4, 2026, discharge.

APPEAL GRANTED

/s/Holly Young

EOHHS 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, c/o Alliance for a Better Long Term Care, 422 Post Road, Suite 204, Warwick RI 02888 and via email to [redacted] and to [redacted], on this 15th day of October, 2026.

Robin L Orr