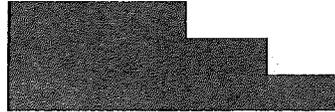




Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Building, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax: 401.462.0458

May 12, 2015

Docket # 15-393
Hearing Date: April 8, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s), rules(s), and regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE of HEALTH and HUMAN SERVICES (EOHHS)
RHODE ISLAND DEPARTMENT OF HEALTH (DOH)
Rules and Regulations for Licensing Assisted Living Residences
Section 14.0 Rights of Residents**

The facts of your case, the Department rules and regulation(s); and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You, [REDACTED] (R.I. State Ombudsman Office), and [REDACTED] (Administrator of [REDACTED] Assisted Living).

Present at the hearing were: You, [REDACTED] (R.I. State Ombudsman's Office), [REDACTED] (Administrator of [REDACTED] Assisted Living), and Karen Walsh (EOHHS Appeals Officer in training).

ISSUE: Can the appellant be discharged from the Assisted Living Facility where he currently resides?

Department of Health (DOH) Rules and Regulations:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Health's (DOH) rules and regulations for Licensing Assisted Living Residences.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF EVIDENCE:

The Administrator of the Assisted Living Facility testified:

- The Facility issued a 30-day discharge notice because the appellant put his hands on a member of the housekeeping staff.
- The Facility does not tolerate any kind of assaultive behavior.
- The appellant wanted the housekeeper out of his room, and she is not saying that he was wrong in that part, but the Facility does have a problem with him physically pushing her out of the room.
- The appellant does not seem to agree that pushing the housekeeper out of the room was wrong.
- There is a concern that he might have the same reaction with someone else and she does not want to put the other residents at risk.
- Attached to the Request for Hearing form with the Facility's written response was a page of the Residency Disclosure Agreement with the pertinent passage relative to discharge for assaultive behavior.
- The appellant entered the Facility on March 28, 2012 and was given the Residency Disclosure Agreement and the Resident's Rights.
- The incident with the housekeeper occurred on February 11, 2015 and the 30-day notice was issued on February 12, 2015.
- The housekeeper came down to speak to her and then she went up and spoke to the appellant and asked for his side of the story as to what happened.
- He said to me and I quote "I had to get her out of my room. How else was I supposed to get her out of my room?"
- She called the police and they came out to the Facility the day of the incident. They talked to the appellant and took him to the hospital to be evaluated. The police also met with the housekeeping person.
- No police report was filed because the housekeeper did not want to press charges.
- The appellant also met with his psychiatrist a few days after the incident to be evaluated to make sure nothing else was going on psychiatrically that needed to be addressed.

- The housekeepers are supposed to knock on the door to make their presence known and then walk in. All the residents know which day their room is going to be cleaned, so the appellant was aware that his room was going to be cleaned that day.
- She was told that staff had helped him to clean his room prior so he thought it did not need to be cleaned again.
- It is okay if he did not want the housekeeper in his room; it is the way he handled the situation that was wrong.
- Today is the first time she is hearing that the housekeeper pushed herself onto the appellant.
- The appellant has exhibited inappropriate verbal behaviors towards staff in the past but this is the first physical incident that resulted in a report.
- She does not disagree that the housekeeper should have left the room when the appellant asked her to leave and then gotten a facility staff member to help with the situation and because of this incident she requested that the cleaning company no longer send that housekeeper to the Facility.

The appellant testified:

- He has had trouble with this cleaning lady in the past. Previously she had knocked and then walked in on him while he was using the bathroom and when he told her she had to wait she got mad.
- On the day of this incident, she just walked into his room without knocking or asking to come in.
- He could not understand what she was saying to him due to a language difference so he went down to the administrator and told her he did not know what she was saying.
- When he went back to his room she was washing the floor in his room and he told her to get out.
- He told her again to leave the room and she refused. She then put a shoulder right up to his chest and started pushing on him so he pushed back on her.
- The cleaning lady went and spoke to the administrator. The administrator listened to what she said and never asked him what happened.

- He does not recall speaking to the Administrator the day of the incident.
- The Administrator asked him to come down to the office the following day and that is when she gave him the 30 day notice.
- He is 75 years old and has been on his own since he was 16. He knows right from wrong but cannot help it if he gets upset. It is just the way he is and they need to accept that.
- He did not hit the cleaning lady. He did push her away but she pushed herself on him first and he was just protecting himself.
- The Administrator was aware that the cleaning lady had pushed against him because the day after she said to him that she should not have done that.
- He pays \$1,260.00 a month to live there and that gives him a right to say who he wants in his room and who he does not.
- He only has a problem with one other staff member at the Facility because she lies.
- Instead of giving him 30 days to get out they should have found out what happened.
- He appealed the discharge because he wants to remain at this facility.

FINDINGS OF FACT:

- The appellant is a resident of an Assisted Living Facility.
- The appellant became a resident of the Facility on March 28, 2012.
- On March 28, 2012, the appellant signed a document titled Residency Disclosure and Residency Agreement.
- On March 28, 2012, the appellant signed a document confirming that he had been advised of and received a copy of the "Rights of Residents".
- On February 11, 2015 the appellant physically pushed a housekeeper out of his room and slammed the door on her fingers.
- The Facility reported the incident to the Department of Health on February 11, 2015.

- The appellant received a psychiatric and safety evaluation at a local hospital emergency room after the incident on February 11, 2015
- The Facility gave the appellant a 30-day discharge notice dated February 12, 2015.
- The appellant filed a timely request for hearing received in the Executive Office of Health and Human Services (EOHHS) Appeals Office on February 13, 2015.
- The appellant was evaluated by his treating psychiatrist on February 18, 2015.
- An Administrative Hearing was convened on April 8, 2015.

CONCLUSION:

The issue to be decided is whether the appellant can be discharged from the Assisted Living Facility where he currently resides.

The Facility testifies that the appellant was issued a 30-day notice of discharge on February 12, 2015 because on February 11, 2015 he physically assaulted a member of the housekeeping staff. The Facility argues that physical violence is not tolerated by the facility and that the appellant's behavior was in violation of program rules.

The appellant testifies that he did not hit the cleaning person but did physically push her out of his room when she refused to leave when he asked her to. He argues that he has a right to ask someone to leave his room, that the housekeeper pushed on him first, that the Facility Administrator listened to the housekeeper and did not allow him to tell his side of what happened, and he cannot help it if he gets upset.

The Facility Administrator testifies that she did discuss the incident with the appellant on February 11, 2015 and he admitted pushing the housekeeper out of his room. She further testifies that prior to the appellant's testimony at hearing, she had never heard that the housekeeper had pushed on the appellant. While the Facility Administrator agrees that the housekeeper should have left the room when asked to by the appellant, she argues that the manner in which the appellant responded was inappropriate and the Facility is concerned that he may react with physical violence if presented with a similar situation in the future. She further testifies that while this is the first time that the appellant was involved in a physical altercation resulting in an incident report, he has engaged in inappropriate verbal behavior towards staff in the past. The Facility Administrator further testifies that she contacted the police after speaking to the appellant about the incident, though no police report was filed because the housekeeper did not want to press charges. The appellant was then taken to the local hospital emergency room for a psychiatric evaluation and safety assessment and had a

follow-up evaluation on February 18, 2015 with his treating psychiatrist.

The Facility submits the following evidence into the record:

- A Residency Disclosure and Residency Agreement signed by the appellant and the Facility Administrator on March 28, 2012.
- A document confirming receipt of the "Rights of Residents" signed by the appellant and the Facility Administrator on March 28, 2012.
- A Department of Health, Office of Facilities Regulation incident and investigation report signed by the Facility Administrator on February 11, 2015.
- A Hospital Emergency Room record dated February 11, 2015.
- A February 18, 2015 exam report signed by the appellant's psychiatrist.

A review of the R.I. Department of Health's Rules and Regulations for Licensing Assisted Living Facilities, and specifically Section 14.0 titled Rights of Residents, finds that an assisted living resident may be discharged if the Facility provides the resident with 30 days advance written notification that the residency agreement is being terminated with an explanation as to why and the effective date of the termination, along with the resident's appeal rights. A review of the February 12, 2015 notice under appeal finds that the Facility has met the notification criteria.

Further review of the Department's regulations finds that upon admission to an Assisted Living Facility, a resident must be informed in writing as to the Facility's criteria for occupancy and termination of residency agreements. The evidence record establishes that the appellant received and signed a Residency Disclosure and Residency Agreement on March 28, 2012, which in part stated that to be eligible for admission there had to be no recent history of violence and assault and any behavior problems had to be controllable so as not to pose a risk to other residents or staff. The Residency Agreement further stipulated that all House Rules must be followed to ensure continued residency. The evidence record also establishes that the appellant was provided with a copy of the Department's regulation Section 14.0 titled Rights of Residents.

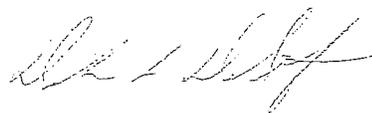
It should be noted, while there was no testimony offered at hearing relative to any injuries resulting from the incident, the Facility's written report of the incident states that after pushing the housekeeper out of his room, the appellant slammed his door shut on the housekeeper's fingers. Further review of the psychiatrist's report finds that the appellant did not dispute the Facility's version of the incident, expressed that he felt justified in his actions towards the housekeeper, and felt no remorse for any injury he may have caused by shutting the door on her fingers. While the appellant testifies at hearing that the housekeeper pushed him first, a review of all the documents submitted at hearing finds no evidence that he informed anyone of that prior to the hearing.

The appellant argues at hearing that while he knows right from wrong, he cannot help it if he gets upset and that the Facility needs to understand and accept that. The evidence record establishes that the Facility waited for the results of a hospital emergency room evaluation to determine if there was a psychiatric reason for the appellant's behavior before issuing the discharge notice. Only when no psychiatric reason was evident and no change of medication was deemed necessary did the Facility find that the appellant's physical actions/behavior towards the housekeeper warranted his discharge from the Facility. The appellant's psychiatrist also concluded upon an evaluation one week after the incident that any risk of harm to self or others was not due to the appellant's psychiatric illness.

Further review of the Residency Agreement finds that it contains a paragraph informing the appellant of his right to report and/or file a formal grievance with the Facility and/or contact any of the available resident advocacy groups if he was unsatisfied with any service he was receiving in the Facility. The appellant affixed his initials next to that paragraph to indicate he was informed and aware of this information. As evidenced by the psychiatrist's report as well as the appellant's testimony at hearing, the appellant continues to feel he was justified in physically pushing the housekeeper when she refused to leave his room. He has failed to voice any understanding of any alternative means by which he could have dealt with the situation and has provided no indication that he would use the proper grievance procedure if a similar situation were to occur in the future.

In conclusion, the record establishes by a preponderance of the evidence that on February 11, 2015 the appellant physically pushed a member of the housekeeping staff out of his room and slammed a door on her fingers. While there is no dispute that the appellant had the right to request that the housekeeper leave his room, and that she was wrong for not doing so, such inappropriate behavior on the part of the housekeeper does not justify physical contact from the appellant. The physical actions/behavior of the appellant violates the Residency Agreement and his continued lack of remorse and continued justification of his actions indicate that further opposition to the Residency Agreement may occur if he remained in the Facility, thereby placing other residents and staff at risk.

After careful and considerate review of the Department's rules and regulations, as well as the evidence and testimony submitted, this Appeals Officer finds that the appellant can be discharged from the Assisted Living Facility where he currently resides. The appellant's request for relief is denied.



Debra L. DeStefano
Appeals Officer

APPENDIX

R.I. DEPARTMENT OF HEALTH

RULES AND REGULATIONS for LICENSING ASSISTED LIVING RESIDENCES [R23-17.4-ALR]

Section 14.0 Rights of Residents

14.1 In accordance with section 23-17.4-16 of the Rhode Island General Laws, as amended, "Rights of Residents", every assisted living residence for adults licensed hereunder shall observe the following standards and such other appropriate standards as may be prescribed in rules and regulations promulgated by the licensing agency with respect to each resident of the residence: For purposes of sections (2)(b), (d), (k), (m), (n), (q) and (r)(i), the term "resident" shall also mean the resident's agent as designated in writing or legal guardian.

(1) Residents are entitled to all rights recognized by state and federal law with respect to discrimination, service decisions (including the right to refuse services), freedom from abuse and neglect, privacy, association, and other areas of fundamental rights including the right to freedom of religious practice. Some of these basic rights include:

(a) To be offered services without discrimination as to sex, race, color, religion, national origin, or source of payment.

(b) To be free from verbal, sexual, physical, emotional and mental abuse, corporal punishment and involuntary seclusion;

(c) To be free from a physical or chemical restraints for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms. No chemical or physical restraints will be used except on order of a physician;

(d) To have their medical information protected by applicable state confidentiality laws.

(e) To have a service animal, consistent with the "reasonable accommodations" clause of the fair housing act (such as seeing eye dog); and

(2) In addition to these basic rights enjoyed by other adults, the residents of assisted living also have the right to:

(a) Be treated as individuals and with dignity, be assured choice and privacy and the opportunity to act autonomously;

(b) Upon request have access to all records pertaining to the resident, including clinical records, within the next business day or immediately in emergency situations;

(c) Arrange for services not available through the setting at their own expense as long as the resident remains in compliance with the resident contract and applicable state law and regulations;

(d) Upon admission and during the resident's stay be fully informed in a language the resident understands, of all resident rights and rules governing resident conduct and responsibilities;

(i) Each resident shall receive a copy of their rights.

(ii) Each resident shall acknowledge receipt in writing; and

(iii) Each resident shall be informed promptly of any changes.

- (e) Remain in their room or apartment unless a change in room or apartment is related to resident preference or to transfer conditions stipulated in their contract;
- (f) Consistent with the terms of the resident contract, furnish their own rooms and maintain personal clothing and possessions as space permits, consistent with applicable life safety, fire or similar laws, regulations and ordinances;
- (g) Be encouraged and assisted to exercise rights as a citizen; to voice grievances through a documented grievance mechanism and suggest changes in policies and services to either employees or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal;
- (h) Have visitors of their choice without restrictions so long as those visitors do not pose a health or safety risk to other residents, employees or visitors, or a risk to property, and comply with reasonable hours and security procedures;
- (i) Have personal privacy in their medical treatment, written communications and telephone communications, and to the fullest extent possible, in accommodation, personal care, visits, and meetings;
- (j) Have prominently displayed a posting of the residence's grievance procedure, the names, addresses and telephone numbers of all pertinent resident advocacy groups, the state ombudsperson and the state licensing agency;
- (k) Choose his or her own physician(s) and to have ready access to the name, specialty and way of contacting the physician(s) responsible for the resident's care;
- (l) Have the residence record and periodically update the address and telephone number of the resident's legal representative or responsible party;
- (m) Manage his or her financial affairs. The residence may not require residents to deposit their personal funds with the residence. Upon written authorization of a resident and with the agreement of the residence, the residence holds, safeguards, manages and accounts for personal funds of the resident as follows:
 - (i) Funds in excess of three hundred dollars (\$300) must be in an interest bearing account, separate from any residence operating account, that credits all interest on the resident's funds to that account and the residence shall purchase a surety bond on this account;
 - (ii) A full and separate accounting of each resident's personal funds maintained must be available through quarterly statements and on request of the resident;
 - (iii) Resident funds shall not be commingled with residence funds or with funds of any person other than another resident;
 - (iv) Upon the death of a resident, the residence must convey within thirty (30) days the resident's funds deposited with the residence, and a full accounting of those funds to the resident's responsible party, or the administrator of the resident's estate;
- (n) Have access to representatives of the state ombudsperson and to allow the ombudsperson to examine a resident's records with the permission of the resident and consistent with state law;

- (o) Be informed in writing, prior to, or at the time of admission or at the signing of a residential contract or agreement of:
- (i) the scope of the services available through the residence's service program, including health services, and of all related fees and charges, including charges not covered either under federal and/or state programs by other third party payors or by the residence's basic rate;
 - (ii) the residence's policies regarding overdue payment including notice provisions and a schedule for late fee charges;
 - (iii) the residence's policy regarding acceptance of state and federal government reimbursement for care in the residence both at time of admission and during the course of residency if the resident depletes his or her own private resources;
 - (iv) the residence's criteria for occupancy and termination of residency agreements;
 - (v) the residence's capacity to serve residents with physical and cognitive impairments;
 - (vi) support any health services that the residence includes in its service package or will make appropriate arrangements to provide therefor;
 - (p) To be encouraged to meet with and participate in activities of social, religious, and community groups at the resident's discretion;
 - (q) Upon provision of at least thirty (30) days notice, if a resident chooses to leave a residence, the resident shall be refunded any advanced payment made provided that the resident is current in all payments;
 - (r) The residence can discharge a resident only for the following reasons and within the following guidelines:
 - (i) except in life-threatening emergencies and for nonpayment of fees and costs, the residence gives thirty (30) days' advance written notice of termination of residency agreement with a statement containing the reason, the effective date of termination, the resident's right to an appeal under state law, and the name/address of the state ombudsperson's office;
 - (ii) if resident does not meet the requirements for residency criteria stated in the residency agreement or requirements of state or local laws or regulations;
 - (iii) if 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;
 - (iv) for failure to pay all fees and costs stated in the contract, resulting in bills more than thirty (30) days outstanding. A resident who has been given notice to vacate for nonpayment of rent has the right to retain possession of the premises, up to any time prior to eviction from the premises, by tendering to the provider the entire amount of fees for services, rent, interest, and costs then due. The provider may impose reasonable late fees for overdue payment; provided that the resident has received due notice of such charges in accordance with the residence's policies. Chronic and repeated failure to pay rent is a violation of the lease covenant. However the residence must make reasonable efforts to

accommodate temporary financial hardship and provide information on government or private subsidies available that may be available to help with costs; and

- (v) the residence makes a good faith effort to counsel the resident if the resident shows indications of no longer meeting residence criteria or if service with a termination notice is anticipated;
- (s) The residence provides for a safe and orderly move out, including assistance with identifying a resource to help locate another setting, regardless of reason for move-out;
- (t) To have the resident's responsible person, and physician notified when there is:
 - (i) an accident involving the resident which results in injury and required physician intervention;
 - (ii) a significant change in the resident's physical, mental or psychosocial status or treatment;
- (u) To be able to share a room or unit with a spouse or other consenting resident of the residence in accordance with terms of the resident contract;
- (v) To live in a safe and clean environment;
- (w) To have and use his or her own possessions where reasonable and have an accessible lockable space provided for security of small personal valuables;
- (x) To receive a nourishing, palatable, well-balanced diet that meets his or her daily nutritional and special medical dietary needs;
- (y) To attain or maintain the highest practicable physical, mental, and psychosocial wellbeing; and
- (z) To be allowed to maintain an amount of money to cover reasonable monthly personal expenses the amount of which shall be at least equal to that amount required for individuals on SSI as provided under Rhode Island General Laws section 40-6-27(a)(3).
- (aa) The residence must implement written policies and procedures to ensure that all residence employees are aware of and protect the resident's rights contained herein.
- (ab) Each resident shall be given, in writing, the names, addresses, and telephone numbers of: the Department; the Medicaid Fraud and Patient Abuse Unit of the Department of Attorney General; the state ombudsperson; and local police offices.
- (ac) Upon request, the resident shall have the right to receive information concerning hospice care, including the benefits of hospice care, the cost, and how to enroll in hospice care. (The provisions of this subsection ac) shall take effect on July 1, 2004).

14.2 Each residence shall provide each resident or his or her representative upon admission, a copy of the provisions of section 23-17.4-16 "Rights of Residents," and shall display in a conspicuous place on the premises a copy of the "Rights of Residents."

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior 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.