

STATE OF NORTH CAROLINA
COUNTY OF COLUMBUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 00361

Jerri Long,)
Petitioner,)
)
vs.)
)
North Carolina Department of Health and)
Human Services, Division of Health Service)
Regulation, Health Care Personnel Registry,)
Respondent.)

DECISION

THIS MATTER came on for hearing before the undersigned, Beecher R. Gray, Administrative Law Judge, on June 11, 2012, in Bolivia, North Carolina.

APPEARANCES

Petitioner: Jerri Long, appearing pro se
P.O. Box 807,
Elizabethtown, North Carolina 28337

For Respondent: Josephine N. Tetteh
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether Respondent otherwise substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner misappropriated a resident's property in Wilmington, North Carolina and entered findings of misappropriation by Petitioner's name in the Health Care Personnel Registry.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-255
N.C. Gen. Stat. § 131E-256
N.C. Gen. Stat. §150B-23
42 CFR § 488.301
10A N.C.A.C. 13O.0101

EXHIBITS

Petitioner's exhibit 1 was admitted into the record.
Respondent's exhibits 1- 15 were admitted into the record.

WITNESSES

Jerri Long (Petitioner)
Minnie Weaver (niece of Resident)
Amanda Scott (supervisor)
Melissa Tan (office assistant)
Scott Hyatt (Chief of Police, Lake Waccamaw)
Margaret Martin (HCPR Nurse Investigator)
Johnathan Guiza (son of Petitioner)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than fifteen (15) days prior to the hearing and each stipulated on the record that notice was proper.
2. At all times relevant to this matter, Petitioner Jerri Long was a certified nursing assistant and In-home Aide at Assured Care ("Assured") in Wilmington, North Carolina. Assured Care is a home care agency and therefore subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. pp. 6, 47; R. Exs. 1 & 7)
3. Petitioner was trained on residents' rights, including abuse, neglect, and misappropriation of residents' property. Petitioner was aware that she was not to take money from residents. (T. p. 7; R. Ex. 4)
4. Petitioner was assigned to take care of Resident JC. As Resident JC's in-home aide, Petitioner was supposed to help Resident JC with his needs, including bathing and cleaning. (T. pp. 8-9; R. Ex. 4)

5. At all times relevant to this proceeding, Resident JC has been a client of Assured. Resident JC is an eighty-seven (87) year old client who is alert to person and place. (R. Ex. 12)
6. On or between August 8 and August 25, 2011, Resident JC discovered that approximately \$3,000 had been stolen from his home. Resident JC alerted his niece, Minnie Weaver, and indicated that Petitioner was the only person with access to Resident JC's home. Petitioner was the only aide working for Resident JC at the time. (T. pp. 9, 19-20; R. Ex. 6)
7. Minnie Weaver and Resident JC went to the police station and reported their suspicions to Chief Scott Hyatt ("Chief Hyatt"). At all times relevant to this proceeding, Chief Hyatt was the Chief of Police at Lake Waccamaw Police Department. Minnie Weaver notified Chief Hyatt when Petitioner was en route to Resident JC's home. (T. pp. 19, 37-39; R. Ex. 11)
8. On August 26, 2011, Chief Hyatt and another officer went to Resident JC's home to interview Petitioner. Initially, Petitioner told Chief Hyatt she believed someone may have broken into Resident JC's home. After being told there were no signs of forced entry, Petitioner admitted to taking Resident JC's money. Petitioner however, stated that she only took half of the missing money, about \$1500. (T. pp. 39-40; R. Exs. 11 & 12)
9. Resident JC decided not to press charges against Petitioner with the understanding that Petitioner would repay the money she had taken, and Petitioner no longer would come to Resident JC's home. (T. pp. 20, 27-28, 41; R. Exs. 11 & 12)
10. Subsequently, Petitioner called Assured on the same day to inform the agency that she no longer would be working for Resident JC. Melissa Tan answered the call at Assured's office. At all times relevant to this proceeding, Melissa Tan was the office assistant at Assured. (T. pp. 9, 23-24, 34; R. Ex. 8)
11. Melissa Tan called Resident JC's home to find out why JC no longer wanted services. She was told about the missing money. Melissa Tan documented the information she received and notified her supervisor, Amanda Scott. At all times relevant to this proceeding, Amanda Scott was a service supervisor at Assured. Amanda Scott notified the Health Care Personnel Registry ("HCPR") and began an investigation. (T. pp. 22-24, 34-36; R. Exs. 7 & 8)
12. Amanda Scott's investigation included talking to Petitioner and obtaining a statement. Petitioner admitted to Amanda Scott that she had been borrowing money from Resident JC. Amanda Scott immediately terminated Petitioner's employment with Assured for a violation of Assured's policy. (T. pp. 25-26; R. Ex. 8)
13. At all times relevant to this matter, Margaret Martin was an investigator with the Health Care Personnel Registry. Investigator Martin is charged with investigating allegations against health care personnel in the southeastern counties of North Carolina.

Accordingly, she received and investigated the allegation that Petitioner had misappropriated money from Resident JC. (T. pp. 44-45; R. Ex. 14)

14. Investigator Martin reviewed the facility documents and conducted her own investigation. She interviewed various individuals, including Petitioner. (T. pp. 15, 47-48; R. Exs. 5, 13, & 14)
15. At the conclusion of her investigation, Investigator Martin substantiated the allegation of misappropriation of resident property. She documented her findings in an investigation conclusion report. (T. pp. 50-51; R. Ex. 14)
16. Following the conclusions of her investigation, Investigator Martin notified Petitioner of her decision to substantiate the allegation of misappropriation. (T. p. 52; R. Ex. 15).
17. Misappropriation of resident property is “the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident’s belongings or money without the resident’s consent.” (T. p. 51; R. Ex. 14)

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to chapters 131E and 150B of the North Carolina General Statutes.
2. All parties correctly have been designated and there is no question as to misjoinder or nonjoinder.
3. As an in-home aide working in a home care agency, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.
4. On or between August 8 and August 25, 2011 Jerri Levette Long, a Health Care Personnel, misappropriated Resident JC’s property by wrongfully taking for her own use more than \$250.00 in cash belonging to the resident without the resident’s consent.
5. Respondent did not act erroneously because there is sufficient evidence to support Respondent’s conclusion that Petitioner misappropriated Resident JC’s property.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent’s decision to place a finding of misappropriation of a resident’s property by Petitioner’s name on the Nurse Aide Registry and the Health Care Personnel Registry is supported by a preponderance of the evidence and is **AFFIRMED**.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 6th day of July, 2012.

Beecher R. Gray
Administrative Law Judge