

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF PITT

12 DHR 0642

ANGELA MOYE,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DIVISION OF HEALTH SERVICE
REGULATION, HEALTH CARE
PERSONNEL REGISTRY,

DECISION

Respondent

THIS MATTER came on for hearing before the undersigned, Joe Webster,
Administrative Law Judge, on June 19, 2012, in Halifax, North Carolina.

APPEARANCES

Petitioner: Angela Moye, pro se
1315 Ellison Court
Greenville, NC 27858

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

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner abused a resident of Edwards Group Home 2 in Hookerton, NC and entered findings of abuse 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

EXHIBITS

Respondent's exhibits 1-16 were admitted into the record. Exhibit 17 (video) has been admitted into evidence after the undersigned took it under advisement.

WITNESSES

Angela Moye (petitioner)
Danny Taylor (neighbor)
Alexine McCollum (supervisor)
Labeebah Pridgen (DSS worker)
Gina Boccetti (facility survey consultant)
Nancy Gregory (HCPR Nurse Investigator)

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. At all times relevant to this matter Petitioner, Angela Moye, was a habilitation technician at Edwards Group Home #2 (Edwards Group Home) in Hookerton, North Carolina. Edwards Group Home is a group home and residential care facility. It is therefore subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. pp. 7, 25, 64; Resp't Ex. 2)
2. Petitioner was trained for her position at Edwards Group Home. Petitioner's training included abuse, neglect and consumers' goals. Petitioner was also trained on mental illness, and restrictive interventions including interventions for out of control consumers. Based on Edwards Group Home training, it is never appropriate to push a resident as part of de-escalation. (T. pp. 7-8, 26, 28; Resp't Exs. 1, 3-4)
3. Petitioner's job responsibilities included providing safety for clients, ensuring caring therapeutic relationships with consumers and providing appropriate treatment. (T. pp. 7, 9; Resp't Ex. 1)

4. Petitioner was working at Edwards Group Home on May 19, 2011. Petitioner was assigned to take care of Resident SB. (T. p. 10; Resp't Exs. 5-6)

5. At all times relevant to this proceeding, Resident SB was a resident of Edwards Group Home. Resident SB's diagnoses include: schizo-affective disorder, and borderline personality disorder. Petitioner had taken care of Resident SB previously and was familiar with Resident SB's care. (T. pp. 11, 25; Resp't Exs. 6, 8, 9)

6. At some point during the day, Petitioner took Resident SB outside and interacted with her. According to Petitioner, Resident SB indicated she wanted to kill herself because her family had not visited and Petitioner restrained Resident SB. Resident SB's care plan provides that staff is to provide verbal prompts and redirection to Resident SB if Resident SB attempts to walk away. (T. p. 11; Resp't Ex. 8)

7. Danny Taylor ("Taylor") was outside his home on May 19, 2011 when he heard a commotion. At all times relevant to this proceeding, Taylor was a resident of Hookerton and lived directly across the street from Edwards Group Home. Resident SB was shouting during her interaction with Petitioner. (T. p. 17; Resp't Exs. 6, 7)

8. After hearing the noise, Taylor walked around to the edge of his home and saw a confrontation between an employee and a consumer in the yard of Edwards Group Home. Taylor ran into his home and watched his wife record the confrontation. Taylor observed the employee push the consumer on the ground with both hands. Taylor observed the consumer lying on the ground crying after the push. (T. p. 18; Resp't Ex. 7)

9. Following the incident, Petitioner contacted her supervisor, Alexine McCollum ("McCollum") and documented the incident. At all times relevant to this proceeding, McCollum was the co-owner of Edwards Group Home. Petitioner told McCollum there had been a verbal and physical altercation between her (Petitioner) and Resident SB and that Resident SB had fallen. (T. pp. 23, 25; Resp't. Ex. 5).

10. The undersigned finds the hearing testimony of Petitioner that she tried to employ a "therapeutic hold" on SB not credible in light of the other credible evidence in the record. Specifically the video does not support Petitioner's version of the event that she attempted to do a therapeutic hold by grabbing SB's arm when she lost her balance. The undersigned has considered the statement of SB taken during the investigation and also finds it not credible. When interviewed, SB stated that she wanted to make this quick and simple; that she did this to herself (apparently referring to her black eye). SB stated Ms. Moye tried to restrain her. All the credible testimony demonstrated SB had a reputation of not telling the truth. The only indisputable proof is that of the video, which I have admitted as Respondent's Exhibit 17 after taking its admissibility under advisement at the hearing.

11. McCollum made a report to the Health Care Personnel Registry. McCollum also conducted a facility investigation and reviewed video footage of the incident. After reviewing the video footage of the incident, McCollum understood why Petitioner's

actions could be characterized as abuse. McCollum terminated Petitioner from the facility. (T. pp. 29-31; Resp't Ex. 10)

12. Following the incident, Taylor called the DHHS complaint line and made a report which notified various DHHS agencies of his observations. Taylor also sent a recording of the incident to the state agencies. (T. p. 19; Resp't Ex. 15)

13. At all times relevant to this proceeding, Labeebah Pridgen ("Pridgen") was employed at Greene County DSS as an Adult Protective Services worker. Pridgen received a report about the incident. On May 20, 2011 Pridgen made an unannounced visit to the facility and interviewed Petitioner, McCollum, residents, and reviewed the video footage of the incident. Petitioner told Pridgen there was no reason for Resident SB's upset behavior. Based on her investigation, Pridgen requested protective steps be taken to ensure Resident SB's safety. (T. pp. 32-37; Resp't Ex. 11)

14. At all times relevant to this proceeding, Gina Boccetti ("Boccetti") was a Facility Survey Consultant for the Mental Health Licensure and Certification Division. Edwards Group Home falls within Boccetti's region. Boccetti also received a report about the incident and conducted an investigation. Boccetti's investigation included interviewing clients, staff, Taylor, and reviewing the physical site. Petitioner told Boccetti Resident SB suddenly started throwing blows on the day in question, and following the incident Resident SB was crying. Boccetti determined that Resident SB's movements had been restricted inappropriately by pushing her to the ground. (T. pp. 41-45, 54; Resp't Ex. 12)

15. At all times relevant to this matter, Nancy Gregory ("Nurse Investigator Gregory") was an investigator with the Health Care Personnel Registry. Nurse Investigator Gregory is charged with investigating allegations against health care personnel in the Pitt, Greene and Lenoir counties of North Carolina. Accordingly, she received the allegation that Petitioner had abused Resident SB at Edwards Group Home. (T. pp. 60-62; Resp't. Ex. 9)

16. Nurse Investigator Gregory independently reviewed the facility documents and conducted her own investigation. As part of her investigation, Nurse Investigator Gregory interviewed people involved with the incident. Nurse Investigator Gregory also reviewed the facility investigation and the video footage of the incident. At the conclusion of her investigation Nurse Investigator Gregory substantiated the allegation of abuse. (T. pp. 28, 64-68, 70; Resp't. Exs. 6, 10, 13-14)

17. Following the conclusions of her investigation, Nurse Investigator Gregory notified Petitioner of her decision to substantiate the allegation of abuse. (T. p. 71; Resp't Ex. 16).

18. "Abuse" is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish." (T. p. 70; Resp't. Ex. 15)

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 have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. As a habilitation technician working in a residential treatment and group home facility, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.
4. “Abuse” is defined as the “willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.”
5. On or about May 19, 2011, Angela Moye, a Health Care Personnel, abused a resident, SB, by willfully and forcefully pushing the resident, resulting in a fall to the ground and mental anguish.
6. Respondent did not act erroneously because there is sufficient evidence to support Respondent’s conclusion that Petitioner abused Resident SB.

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 abuse by Petitioner’s name on the Nurse Aide Registry and the Health Care Personnel Registry should be **UPHELD**.

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 23rd day of August, 2012.

Joe Webster
Administrative Law Judge