

STATE OF NORTH CAROLINA
COUNTY OF PENDER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR08257

JANNETT E. MYERS, Petitioner, v. NORTH CAROLINA DEPARTMENT OF HEALTH & HUMAN SERVICES DIVISION OF HEALTH SERVICE REGULATION, Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before Beecher R. Gray, Administrative Law Judge, on June 10, 2013, in the Brunswick County Courthouse in Bolivia, North Carolina.

APPEARANCES

For Petitioner:	Jannett Myers, <i>pro se</i> 25880 NC Hwy 210 Currie, NC 28435
For Respondent:	Thomas E. Kelly Assistant Attorney General North Carolina Department of Justice P.O. Box 629 Raleigh, North Carolina 27602

ISSUE

Whether Respondent otherwise substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner neglected a resident of Universal MH/DD/SAS (located in Wilmington, North Carolina) while the resident was in Willard, North Carolina and entered findings of neglect by Petitioner's name in the Health Care Personnel Registry.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-256
N.C. Gen. Stat. § 150B-2
42 CFR § 488.301
10A N.C.A.C. 130.0101

EXHIBITS

Petitioner offered no exhibits.

Respondent's exhibits ("R. Exs.") 7 – 17, 19 – 22, 24, 25, and A-E were admitted into the record.

WITNESSES

Joe Pridgen (Resident's Grandfather & Legal Guardian)
Agnes Pridgen (Resident's Grandmother & Legal Guardian)
Rachel Donovan (QP and Facility Investigator, Universal MH/DD/SAS)
Margaret Martin (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 and conclusions of law. 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 witnesses to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witnesses 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 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. At the time of the incident giving rise to this contested case, Petitioner was employed as a Community Services Technician ("CST") with Universal MH/DD/SAS ("Universal") in Wilmington, North Carolina.
3. As a CST, Petitioner's duties primarily involved providing direct care to patients in their homes, including assistance with personal hygiene and dressing. (R. Ex. 7)

4. Petitioner completed all required training related to her job responsibilities, including instruction on abuse, neglect, residents' rights, working with resident's specific needs, and proper carrying techniques. (Tr. pp. 41-42, 53-55; R. Exs. 7, 19, 24)
5. Z.B. is a resident living at his grandparent's home ("the Pridgen Residence"). At the time of the incident, Z.B. was approximately eleven (11) years old and suffered from epilepsy, severe mental retardation, cerebral palsy, asthma, legal blindness, and seizures. Because of his condition, Z.B. requires assistance with all daily living needs. (Tr. pp. 23, 61-63; R. Ex. 21)
6. Petitioner reported for work at Z.B.'s residence at approximately 5PM on May 1, 2012, and left at approximately 7PM, the relevant time period for this action. (R. Ex. 8)
7. Joe Pridgen ("J. Pridgen"), Z.B.'s grandfather and legal guardian, was at his residence during the relevant time period. J. Pridgen observed Petitioner carry Z.B. from the bathtub to the bed, without anything obstructing his view, which was confirmed by Petitioner. Petitioner carried Z.B. from the bathtub to the bed, a distance of approximately twelve (12) feet, by holding only one of Z.B.'s arms and one of his legs. (Tr. pp. 8, 11, 66-67; R. Ex. 24)
8. Immediately after observing the incident, J. Pridgen instructed Petitioner to leave the property and not return. He also reported the incident to his wife, Agnes Pridgen ("A. Pridgen"). (Tr. pp. 15; R. Ex. 24)
 - a. J. Pridgen was watching Petitioner because he unexpectedly had seen Petitioner carry Z.B. in this manner a few days prior to the incident. The Pridgens had seen Petitioner carry Z.B. in a proper manner numerous times before. (Tr. pp. 8-9; R. Ex. 24)
9. During the evening of May 1, 2012, both A. Pridgen and J. Pridgen discovered bruises on Z.B.'s right arm and leg, in the same spots by which Petitioner had carried Z.B. earlier in the day. The bruises were in the shape of fingerprints, although the Pridgens decided that immediate medical care was not necessary. (Tr. pp. 12-14, 16-19; R. Exs. 16, 17, 24, A, B)
10. On May 1, 2012, A. Pridgen called Rachel Donovan ("Supervisor Donovan"), Petitioner's supervisor, to report the incident. (Tr. pp. 26-27, 37; R. Ex. 24)
11. On May 3, 2012, Supervisor Donovan went to the Pridgen Residence to interview A. Pridgen and J. Pridgen about the incident. During this visit, she observed the bruises on Z.B. and confirmed that they were in the shape of fingerprints. (Tr. pp. 37-39; R. Exs. 19, 24)
12. Around the time of May 3, 2012, Supervisor Donovan received a statement from Petitioner confirming that she had carried Z.B. by an arm and a leg. (R. Exs. 19, 24)

13. On May 5, 2012, Petitioner's employment with Universal was terminated as a result of the incident with Z.B. (Tr. pp. 43-44; R. Exs. 14, 24)
14. Supervisor Donovan submitted a 24-Hour Report to the Health Care Personnel Registry ("HCPR"). Tracy Frye, QI Specialist with Universal, submitted a 5-Working Day Report to the HCPR. These reports documented the details of the allegation and the facility response. (Tr. pp. 45-49; R. Exs. 12, 13)
15. At all times relevant to this action, Margaret D. Martin ("Investigator Martin") was employed as a Nurse Investigator with the HCPR. Investigator Martin was charged with investigating allegations against health care personnel in Pender County where the Pridgens and Z.B. lived. Universal was part of the territory covered by Investigator Martin. (Tr. pp. 56-57; R. Ex. 24)
16. After receipt of the 24-Hour and 5-Working Day Reports from Universal, the case was "screened in" by HCPR staff on August 8, 2012, for further investigation. (Tr. pp. 57-60)
17. Investigator Martin conducted her investigation on-site at the Pridgen residence on January 8, 2013. (Resp. Ex. 24)
18. Investigator Martin reviewed Petitioner's personnel file from Universal and determined that Petitioner had received all the training necessary to properly perform her duties. (Tr. pp. 76-78; R. Exs. 14, 24)
19. Investigator Martin reviewed Z.B.'s Person-Centered-Plan. In addition, she met with the Pridgens at their home on January 25, 2013, and observed Z.B. (Tr. pp. 61-63; R. Exs. 20-22, 24)
20. During the January 25th visit, she interviewed A. Pridgen and J. Pridgen. The statements provided to Investigator Martin by the Pridgens were consistent with their testimony at trial. (Tr. pp. 75-76; R. Exs. 19, 24)
21. Investigator Martin interviewed Petitioner on January 14, 2013. Petitioner's account of the May 1, 2012, incident was consistent with the statements and testimony of J. Pridgen. In addition, Petitioner's account was consistent with her own statement to the Universal investigator. Petitioner's account was that she did indeed carry Z.B. by one arm and one leg, acknowledging that this was an improper way to carry a child. (Tr. pp. 78-85; R. Exs. 10, 24)
22. Petitioner was aware that it was inappropriate to carry a child by one arm and one leg. (Tr. pp. 82-83; R. Exs. 10, 24)
 - a. Investigator Martin assessed all the information obtained through her investigation, including information obtained by the Universal investigation. She substantiated neglect, but not abuse, for the May 1, 2012, incident with Z.B. She wrote an investigation conclusion report that documented her determination. (Tr.

pp. 85-88; R. Ex. 24)

23. Petitioner was notified by letter that a finding of neglect would be listed against her name in the HCPR. Petitioner was notified of her right to appeal. (Tr. pp. 88-89; R. Ex. 25)
24. Petitioner is not disabled and has the ability to work. The listing on the HCPR limits her ability to work in the health care field. Petitioner is able to work in other fields.
25. "Neglect" is defined as "the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness." 10A N.C.A.C. 13O.0101, 42 C.F.R. § 488.301.

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 in this contested case under N.C. Gen. Stat. §§ 131E and 150B *et seq.*
2. All parties correctly have been designated, and there is no question as to misjoinder or nonjoinder.
3. The North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section is required by N.C. Gen. Stat. § 131E-256 to maintain a Registry that contains the names of all health care personnel and nurse aides working in health care facilities who are subject to a finding by the Department that they abused or neglected a resident in a health care facility or who have been accused of abusing or neglecting a resident if the Department has screened the allegation and determined that an investigation is warranted.
4. As a Community Services Technician, Petitioner is considered a "health care personnel" subject to the provisions of N.C. Gen. Stat. § 131E-256.
5. Universal MH/DD/SAS in Wilmington, North Carolina is a health care facility as defined in N.C. Gen. Stat. § 131E-256(b).
6. On or about May 1, 2012, Petitioner neglected a resident (Z.B.) by transferring him in an improper manner, resulting in physical harm.
7. Respondent's decision to substantiate this allegation of neglect against Petitioner is supported by a preponderance of the evidence. Respondent did not substantially prejudice Petitioner's rights, act erroneously, arbitrarily, or capriciously by placing a substantiated finding of neglect against Petitioner's name on the Health Care Personnel Registry.

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

FINAL 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 neglect at Petitioner's name on the Health Care Personnel Registry is supported by 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 7th day of August, 2013.

Beecher R. Gray
Administrative Law Judge