

STATE OF NORTH CAROLINA

COUNTY OF BURKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 10795

Tammi D Nichols,)
Petitioner,)
v.)
Dept of Health and Human Services, division)
of Health Service Regulation,)
Respondent.)

FINAL DECISION

THIS MATTER came on for hearing before the Undersigned, Selina M. Brooks, Administrative Law Judge, on September 4, 2013, in Rutherfordton, North Carolina.

APPEARANCES

Petitioner: Tammi D. Nichols, appearing *pro se*
5225 Mt. View Boulevard
Morganton, NC 28655

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 neglected a resident of ComServ-Creekside Group Home in Lenoir, NC and entered a finding of neglect 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. 130.0101

EXHIBITS

Respondent's exhibits 1-4, 6-20 were admitted into the record.

WITNESSES

Tammi D. Nichols (Petitioner)
Carol S. Sides (Resident's Mother)
Jerri M. Henline (Supervisor)
Debra Talent Smith (Registered Nurse)
Stephanie Paige Anderson (Director)
Barbara Powell (HCPR 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, Tammi D. Nichols, was employed as a Direct Care Staff Member at ComServ-Creekside Group Home ("Creekside") in Lenoir, North Carolina. Creekside is a group home facility subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. p. 9; Resp. Ex. 18)
2. Petitioner was trained for her position and received an orientation at Creekside concerning facility policy on neglect; specifically, to report all changes in a resident's condition, any requests from guardians or family, and any staff concerns with respect to medical conditions to the nurse as soon as practicable. (T. p. 36; Resp. Ex. 4)
3. Petitioner's job responsibilities included communicating information between services rendered to a resident to ensure continuity within programs; reporting relevant information to a supervisor; and ensuring the health and safety of residents at all times. (Resp. Ex. 1)
4. At all times relevant to this proceeding, Resident DS was a resident of Creekside. Petitioner had taken care of Resident DS before and was familiar with his care. (T. p. 15; Resp. Ex. 17)
5. Petitioner was working at Creekside on October 18, 2012. Resident DS was returned to Creekside by his parents after he went on a home visit. Upon Resident DS' return, his mother, Carol Sides ("Sides"), voiced a concern to Petitioner regarding and injury and the condition of Resident DS' knee. (T. pp. 23-24; Resp. Ex. 18)

6. After hearing Sides' concern about Resident DS' knee, Petitioner spoke with Latonya Johnson ("Johnson"), another Direct Care Staff Member. Petitioner did not notify the nurse on duty. (T. pp. 16-17)

7. On October 30, 2012, Resident DS was taken to the hospital where the physician drained the site on his knee. Again on November 1, 2012, Resident DS was admitted to the hospital for IV antibiotics. Creekside conducted an investigation into why Resident DS' knee condition was not reported. The facility investigation revealed that contrary to policy, Petitioner failed to report the incident to the supervisor or the nurse. (Resp. Exs. 16, 19)

8. At all times relevant to this matter, Barbara Powell ("Powell") was an investigator with the Health Care Personnel Registry. Powell is charged with investigating allegations against health care personnel in the western region of North Carolina, including Burke County. Accordingly, she received the report that Petitioner had abused and neglected Resident DS at Creekside. (T. p. 45)

9. Powell conducted an independent investigation. As part of her investigation, Powell interviewed Johnson, Sides, and Petitioner. She also reviewed Creekside's internal investigation and policies; Petitioner's personnel file; and Resident DS' medical records. (T. pp. 46-47; Resp. Exs. 10-16, 18-19)

10. In the interview with Powell, Petitioner admitted that she was properly trained to report anything unusual to a supervisor or someone above that position, fill out an incident report and call a nurse. Petitioner did not do any of those required tasks when Sides notified her about the condition of Resident DS' knee. (T. pp. 19-20)

11. Following the conclusions of her investigation, Powell notified Petitioner of her decision to substantiate an allegation of neglect. Powell found that Petitioner failed to report the incident in a timely manner. (T. pp. 49-50; Resp. Ex. 19)

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 Direct Care staff working in a 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. “Neglect” is defined as “the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental abuse.” 10A NCAC 130.0101.

5. Petitioner has the burden of proving Respondent otherwise substantially prejudiced Petitioner’s rights and failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner neglected Resident DS of Creekside in Lenoir, NC and entered a finding of neglect by Petitioner’s name in the Health Care Personnel Registry. Overcash v. N.C. Dep’t of Env’t & Natural Res., 179 N.C. App. 697, 704 (N.C. Ct. App. 2006).

6. Petitioner did not carry her burden of proof. Petitioner failed to adequately explain why she did not report Sides’ concern to the nurse on duty. As a trained staff member of Creekside, Petitioner had a duty to report any incident or family concern in a timely manner.

7. On or about October 18, 2012, Tammi D. Nichols, a Direct Care Staff Member, neglected Resident DS by failing to notify the supervisor or nurse when the Resident’s parents reported concerns over an injured knee.

8. Respondent did not act erroneously because there is sufficient evidence to support Respondent’s conclusion that Petitioner neglected Resident DS.

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 by Petitioner’s name on 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 25th day of October, 2013.

Selina M. Brooks
Administrative Law Judge