

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DHR12033

Veronica Janae McLemore, Petitioner,  v.  NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH SERVICE REGULATION, HEALTH CARE PERSONNEL REGISTRY, Respondent.	<b>FINAL DECISION</b>
---	-----------------------

THIS MATTER came on for hearing before Beecher R. Gray, Administrative Law Judge, on October 4, 2013, in High Point, North Carolina. Respondent filed a proposed decision on November 6, 2013.

#### **APPEARANCES**

Petitioner: Veronica Janae McLemore, appearing *pro se*  
1417 Johnson St.  
High Point, NC 27262

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 Genesis Triad Care and Rehabilitation in High Point, NC and entered a finding 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  
N.C. Gen. Stat. §150B-23  
42 CFR § 488.301  
10A N.C.A.C. 130.0101

### **EXHIBITS**

Petitioner offered no exhibits.

Respondent's exhibits (hereinafter "R. Exs.") 1-17 were admitted into the record.

### **WITNESSES**

Veronica McLemore (Petitioner)  
Kristen Blakeley (Staff Certified Nursing Assistant)  
Sandra Dowe (Licensed Practical Nurse, Charge Nurse)  
Angela Cheviron (Director of Nursing, Registered Nurse, Facility Investigator)  
Jeanne Goss (RN, MSN, HPCR 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.

### **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 all times relevant to this matter, Petitioner, Veronica Janae McLemore, was employed as a Certified Nursing Assistant ("CNA") at Genesis Triad Care and Rehabilitation Center ("Genesis") in High Point, North Carolina. Genesis is a group home facility. It is subject to regulation under N.C. Gen. Stats. §131E-255 and §131E-256. (R. Ex. 1)
3. Petitioner was trained for her position and received an orientation at Genesis. Petitioner's training included patients' rights relating to abuse and behavior management. (R. Ex. 3)

4. Petitioner's job duties included, but were not limited to, assisting residents with Activities of Daily Living ("ADL") based on their individualized plan of care and Genesis' policies and procedures. Assistance with client ADLs includes serving food trays and assisting with feeding, specifically, among other duties, cutting food, feeding, and assisting in dining room supervision. (R. Ex. 1)
5. At all times relevant to this proceeding, resident J.H. was a resident of Genesis. Petitioner had taken care of resident J.H. before and was familiar with J.H.'s care. Resident J.H.'s medical diagnoses include: dementia, behavior disturbance, and expressive aphasia. (T. pp. 32-33; R. Ex. 10)
6. Petitioner was working with resident J.H. at Genesis on January 20, 2013. Resident J.H. and Petitioner were in the upstairs dining room with two (2) other residents and Petitioner's co-worker, CNA Kristen Blakeley ("CNA Blakeley"). While Petitioner was feeding resident J.H. breakfast, J.H. put her hands in her mouth. Petitioner slapped J.H.'s hands downward out of her mouth while yelling at J.H. to stop putting her hands in her mouth, and loudly asked J.H. why she could not eat like a regular adult. This hand slap occurred two times and was loud enough that it was heard by CNA Blakeley, who also was in the room. (T. pp. 7-9; R. Ex. 7)
7. As soon as Petitioner left the room, CNA Blakeley consoled resident J.H., who was crying, and immediately reported the incident to her supervisor, Director of Nursing Angela Cheviron, RN ("DON Cheviron"). (T. pp. 9-10)
8. Based on facility training and expectation, Petitioner was supposed to redirect resident J.H. when she observed resident J.H. putting her fingers into her mouth. At no point in time is a staff member allowed to slap a resident's hand. (T. pp. 10-11; R. Ex. 7)
9. In the days following the incident, resident J.H. refrained from eating breakfast and lost weight. (T. pp. 33-34)
10. At all times relevant to this matter, Jeanne Goss, RN, MSN ("Investigator Goss") was an investigator with the Health Care Personnel Registry. Investigator Goss is charged with investigating allegations against unlicensed health care personnel. Accordingly, she received the report that Petitioner had abused resident J.H. at Genesis. (T. pp. 27-28; R. Exs. 8 & 9)
11. Investigator Goss independently reviewed the facility documents and conducted an investigation. As part of her investigation, she interviewed CNA Blakeley, DON Cheviron, and Petitioner. (T. p. 31; R. Exs. 4, 5, 7, 9, & 12-17)
12. Following the conclusion of her investigation, Investigator Goss notified Petitioner of her decision to substantiate the allegation of abuse. Investigator Goss found that Petitioner verbally and physically abused resident J.H. (T. pp. 32-34; R. Ex. 17)

13. "Abuse" is defined as the "willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish." 10A N.C.A.C. 130.0101, 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 parties properly are before the Office of Administrative Hearings.
2. As a Certified Nursing Assistant 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.
3. Petitioner has the burden of proving that Respondent substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner abused Resident J.H. of Genesis Triad Care and Rehab Center in High Point, N.C. and entered a finding of abuse 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). Petitioner did not meet her burden of proof on this issue.
4. On January 20, 2013, Petitioner Veronica Janae McLemore, a Certified Nursing Assistant, abused resident J.H. by speaking harshly and loudly to the resident saying, "Stop putting your hands in your mouth, can't you eat like a regular adult?" and twice slapping resident J.H.'s hands out of J.H.'s mouth and down to the table, resulting in pain and mental anguish.
5. Respondent's decision to substantiate the allegation of abuse against Petitioner is supported by a preponderance of the evidence. Therefore, Respondent did not substantially prejudice Petitioner's rights, act erroneously, arbitrarily or capriciously by placing a substantiated finding of abuse against Petitioner's name on the Health Care Personnel Registry.

### **FINAL DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, I find that Respondent's decision to substantiate the allegation of abuse by Petitioner against resident J.H. on or about January 20, 2013 is supported by a preponderance of substantial evidence and is **AFFIRMED**.

## NOTICE

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 2nd day of December, 2013.

---

Beecher R. Gray  
Administrative Law Judge