

STATE OF NORTH CAROLINA

COUNTY OF PERSON

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 20318**

LEISA LENORA DOCKERY,

Petitioner,

v.

NC DEPARTMENT OF HEALTH AND

HUMAN SERVICES, DIVISION OF

HEALTH SERVICE REGULATION,

HEALTH CARE

PERSONNEL REGISTRY,

Respondent.

FINAL DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on May 12, 2014 in Hillsborough, North Carolina. After presentation of testimony and exhibits, the record was left open for the receipt of the official transcript and the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. The transcript was received on June 6, 2014. The Respondent submitted timely proposals and argument on July 7, 2014 which was received by the Undersigned on July 11, 2014. The record was held open for an additional 12 business days for submission by Petitioner, and receiving no further proposal or other materials, the record was closed on July 30, 2014.

APPEARANCES

For Petitioner:

Leisa Dockery
Pro Se
590 Rudy's Farm Road
Hurdle Mills, NC 27541

For Respondent:

Bethany A. Burgon
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

ISSUE

Whether Respondent deprived Petitioner of property; otherwise substantially prejudiced

Petitioner's rights; exceeded its authority or jurisdiction; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law when Respondent substantiated the allegation that on or about October 23, 2013, Leisa Lenora Dockery, a Health Care Personnel, neglected a resident (E.S.) when (E.S.) was found living in an unclean and unsafe environment.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-256
N.C. Gen. Stat. §150B-23

EXHIBITS

Respondent's Exhibits 1-27 were introduced and admitted into the record.

WITNESSES

For Respondent: Leisa Dockery
Carolyn Swann
Debbie Shields
Amy McCluskey
Shelley Thomas
Kathryne Hoffman
Linda Faye Waugh

For Petitioner: Candace Smith

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, Leisa Lenora Dockery, was employed as a Certified Nursing Assistant working for Champion Home Care ("Champion"), a Home Care Company in Winston-Salem, North Carolina.

2. Petitioner completed all required training related to her job responsibilities. She

received instruction on the importance of maintaining a clean and safe home environment. Further, Petitioner initialed and signed Champion's Client's Rights form.

3. Petitioner signed a job description form for a CNA employed with Champion, which states that Petitioner is responsible for providing personal assistance with tasks that include bathing, toileting, skin and mouth care, and dressing. Petitioner was required by the policy to have knowledge of home management, including housekeeping methods and household budgeting. Petitioner also signed the Orientation Checklist for Employee, and a new employee exam labeled "In the Know." In the exam Petitioner correctly answered that ignoring a client's request to go to the bathroom would constitute neglect

4. Petitioner received in service fire training, and acknowledged that a clear pathway must be kept for the client to exit the home. Petitioner also agreed that there is a potential for harm to the resident if the resident cannot exit the home in the event of a fire.

5. On or about October 23, 2013, Petitioner failed to maintain a clean and safe environment for Resident E.S. of Champion. Resident E.S. is Petitioner's mother, and resides in Petitioner's home. E.S. was 71 years old at the time and suffers from dementia. She is unable to ambulate or communicate verbally. E.S. is incontinent of both bowel and bladder, and is listed as total care.

6. On October 22, 2013 Debbie Shields, social worker for Department of Social Services in Person County, received an Adult Protective Services Report of Care Taker Neglect for E.S.

7. On October 23, 2013 at 10:15 in the morning Shields along with Amy McCluskey, a CAP worker, visited E.S.'s residence to investigate the report. The Petitioner answered the door, and upon entering the living room the social workers saw the entire room was cluttered with piles of boxes, and garbage bags. Shields and McCluskey described the house as reeking with the odor of urine. The kitchen was full of old garbage bags, and a dog was in the process of going through the garbage bags. The bottom and the inside of the refrigerator were covered in black mold, and food covered the countertops.

8. Petitioner took Shields and McCluskey to E.S.'s bedroom, where she had to move a box out of the way that was partially blocking the door. E.S. was in a small closed bedroom off of the master bedroom. E.S.'s bedroom was cluttered with garbage bags, dirty diapers and trash. E.S. was lying on a hospital bed that was pushed up against the wall. A portable potty was located next to the bed, filled with feces. Shields and McCluskey reported that the room smelled like feces and urine.

9. Shields examined E.S. and found her skin was dirty, hair matted, and black matter was lodged under her fingernails. E.S. was unclothed except for an adult diaper. Shields also noted what looked like feces were smeared on the wall around waist height. Shields and McCluskey talked with Petitioner after inspecting the house and told her this was an unsafe living environment for E.S. Petitioner told Shields and McCluskey that she was planning on moving E.S. into a different bedroom, which they inspected and found to be clean.

10. Petitioner testified that she was having a rough time after her divorce, and slowly became a pack rat. She stated that when the individuals from Social Services came, that the piles in the living room were temporary.

11. After leaving the residence Shields and McCluskey contacted their supervisor and the county EMS. McCluskey also contacted Carolyn Swann, a coordinator at Champion, and reported concerns about E.S.'s living conditions. Shields, McCluskey and the EMS returned to the residence the afternoon of October 23, 2013. When they arrived at the house E.S. had been moved to the new bedroom and had been washed and clothed. EMS checked E.S.'s vitals and determined she was not in danger. EMS did not think it was necessary to remove E.S. from the house at that time.

12. On October 24, 2013 Swann made a visit to E.S.'s residence. Swann examined E.S. in the new bedroom, which she found to be clean and safe. Swann noted that the kitchen was clean, but the living room was still cluttered. Swann asked to see the bedroom where E.S. was living the day before. The bedroom was still cluttered and unsanitary, but the smell of urine and feces was gone. Swann reviewed Champion's policies about keeping the home clean and safe with Petitioner. Petitioner told Swann she was working on cleaning up the home.

13. On October 24, 2013 Shields and McCluskey made an unannounced visit to the residence. They found that E.S. was clothed and in the new bedroom. Petitioner admitted she had been cleaning since their visit on the previous day, and the house was cleaner.

14. On October 30, 2013 at 9:30 am Shields, McCluskey and CPS employee Shelley Thompson visited the residence. There were no cars in the driveway and no one would answer the door. The three social workers walked around the house knocking and yelling, but received no response. After waiting for an hour Petitioner drove up to the house and let the social workers in. They asked if E.S. was in the house, and if they could see her to make sure she was ok. Petitioner had to unlock E.S.'s bedroom door with a key. At that time Petitioner did not mention that anyone else besides E.S. was in the home, and the social workers did not see or hear any evidence that anyone else was present in the home. Petitioner broke down and said she was overwhelmed and was considering putting E.S. in a facility.

15. On October 31, 2013 E.S. was removed from the home and placed in the extended care unit at Person Memorial Hospital. Champion was notified that E.S. had been moved to the ECU unit, and her services through Champion were terminated.

16. On November 1, 2013 there was a guardianship hearing for E.S., and at that time Person County Social Services was named Interim Guardian of E.S. On November 11, 2013 Person County Social Services was named legal guardian of E.S.

17. Champion sent a report to the Health Care Personnel Registry Section Investigations Branch on November 26, 2013, detailing the incident on October 23, 2013. The Health Care Personnel Registry (HCPR) Section investigates allegations of abuse, neglect and other allegations against health care personnel in health care facilities and home health care

agencies. If the allegation is substantiated, the employee will be listed on the Registry. The HCPR covers most licensed facility and home health care agencies in North Carolina that provide patient care. Health care personnel at Champion are covered by the Registry.

18. At all times relevant to this incident Kathryn Hoffman was employed as an investigator for the HCPR. She is charged with investigating allegations against health care personnel in the north central region of North Carolina. Champion was in her region and she received and investigated the complaint that Petitioner had neglected Resident E.S..

19. After the complaint against Petitioner was received, the determination was made that it needed further investigation. As part of the investigation, Hoffman interviewed Petitioner, Smith, McCluskey, Shields and Swann. She also reviewed the resident's records and took into account the internal investigation conducted by Champion.

20. In January 2014, Hoffman interviewed Petitioner at the Roxboro County Library. Petitioner stated that she cleaned the house after the first visit from Social Services on October 23, 2013. Petitioner admitted to Hoffman that she was a "pack rat," and she was tired of the clutter. Petitioner told Hoffman that she stuck her key in between the door and the door frame to pry open the door on October 30, 2013 when the three social workers asked to see her mother. This statement is inconsistent with the statements of Shields, McCluskey and Thompson, who all assert that Petitioner put the key directly into the door knob to unlock the door.

21. Petitioner maintains that E.S. was not alone in the home during the October 30th visit, but that her sister was in the bathroom. Petitioner stated that she did not tell the social workers that her sister was in the house on October 30, 2013 because she didn't want it to seem like she was making excuses.

22. Candace Smith testified that she was in the home with E.S. on October 30th but as far as she knew "it was strangers trying to break in and [she] almost called 911." (Tr. 91) She went on to state she heard Petitioner come in but that she (C. Smith) went into the bathroom and stayed in. Ms. Smith was not seen by anyone and her account is inconsistent with all other evidence.

23. On February 2, 2013 Hoffman interviewed Swann over the phone. Swann informed Hoffman that the Petitioner called her after McCluskey, Shields and Thompson visited on October 30th, 2013, and told Swann she would be putting E.S. into an Adult Care Facility. Petitioner did not mention to Swann anything about a sister being in the residence during the visit by Shields, McCluskey and Thompson.

24. Hoffman took Petitioner's statement into consideration and viewed all the information together. Hoffman found the McCluskey and Shields accounts and statements to be credible and consistent with each other supporting the allegation that Petitioner failed to provide a clean and safe environment for E.S. Hoffman concluded that Petitioner neglected Resident E.S. Hoffman wrote an investigation report which documented the conclusion.

25. Petitioner was notified by letter that a finding of neglect would be listed against her name in the Health Care Personnel Registry. Petitioner was further notified of her right to appeal. Ms. Hoffman testified that neglect is a removable offense from the Health Care Personnel Registry. Petitioner can petition for removal after one year of the neglect listing as substantiated on the Registry.

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. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.

2. 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 neglected a resident in a home health care setting or who have been accused of neglecting a resident if the Department has screened the allegation and determined that an investigation is warranted.

3. Champion of Lexington is a health care facility as defined in N.C. Gen. Stat. § 131E-255(c) and N.C. Gen. Stat. § 131E-256(b). Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-256.

4. “Neglect” means a failure to provide goods or services necessary to avoid physical harm, mental anguish or mental illness. 42 CFR § 488.301.

5. On or about October 23, 2013, Petitioner neglected a resident E.S. when E.S. was found living in an unclean and unsafe environment.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

FINAL DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following

Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency.

Based on those conclusions and the facts in this case, the Undersigned holds that Respondent's decision to substantiate an allegation of neglect against the Petitioner is supported by a preponderance of the evidence. Respondent did not exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act arbitrarily or capriciously; or fail to act as required by law or rule by placing a substantiated finding of neglect against Petitioner's name on the Health Care Personnel Registry.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, 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 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. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. In conformity with the Office of Administrative Hearings' Rules, 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.

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.

IT IS SO ORDERED.

This is the 16th day of September, 2014.

Augustus B. Elkins II
Administrative Law Judge