

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DHR 01051

## FINAL DECISION

## APPEARANCES

For Petitioner: Rhamia Machae Robinson  
2420 Bellmeade Street, Apt. 1E  
High Point, NC 27262

For Respondent: W. Thomas Royer  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
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## ISSUE

Whether Respondent substantially prejudiced Petitioner's rights, acted erroneously, or acted arbitrarily or capriciously when Respondent substantiated the allegation that Petitioner abused and neglected a resident (C.P.) of Meadowood Group Home in Greensboro, North Carolina, by not allowing C.P. to use the restroom and not following C.P.'s behavior plan, provoking him by telling C.P. to "hold his piss like a grown ass man," resulting in pain and mental anguish, and entered said finding on the Health Care Personnel Registry.

## **APPLICABLE STATUTES AND RULES**

N.C. Gen. Stat. § 131E-256  
N.C. Gen. Stat. § 150B-1, *et seq.*  
42 CFR § 488.301  
10A N.C.A.C. 130.0101(1)

## **EXHIBITS**

Respondent's Exhibits 1 – 27 were admitted into the record.

## **WITNESSES**

Shane Ferguson (Executive Director, ResCare Community Alternatives of North Carolina)  
Steven Gilbert (Behaviorist, ResCare Community Alternatives of North Carolina, Northwest  
Region)

Jennifer Baxter, RN (Investigator, Health Care Personnel Registry)  
Rhamia Robinson (Petitioner)

**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 witnesses may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses 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 the witnesses, the undersigned makes the following:

## **FINDINGS OF FACT**

1. At all times relevant to this matter, Rhamia Machae Robinson ("Petitioner") was employed as a health care personnel—namely, a Support Specialist—at Meadowood Group Home in Greensboro, North Carolina.
2. Meadowood Group Home is a residential facility, as defined by N.C.G.S. § 122C-3(14)e, and is therefore subject to N.C.G.S. § 131E-256.
3. Petitioner's duties as a Support Specialist included, among other things, assisting residents with activities of daily living (ADLs), interact frequently and positively with residents to promote an enhanced quality of life for residents, and promote behavioral support for residents using agency procedures and plans.

4. Petitioner received training in abuse, neglect, and behavior management, among other areas. (T. p 33)

5. C. P., a resident of Meadowood, is a 33 year old with Mental Retardation, Bipolar Disorder, and episodic mania.

6. C.P. has a Behavioral Support Plan, the most current version was implemented on February 1, 2013 and was in place on September 12, 2013. (Exh. 13)

7. The Behavioral Support Plan for C.P. identifies targeted behaviors that the Behavioral Support Plan seeks to address, including physical aggression, cooperation difficulties, elopement, and tantrums. Along with identifying targeted behaviors the Behavioral Support Plan provides strategies and guidelines for preventing or intervening in these targeted behaviors.

8. The Behavioral Support Plan for C.P. directs staff to not provide negative attention to C.P., not to badger him, to avoid power struggles, and cautions staff to always be respectful and kind. Steven Gilbert, Behavioralist for ResCare and author of C. P.'s Behavioral Support Plan explained during testimony that negative attention and rude behavior is seen by C. P. as being confrontational and tends to exacerbate his negative behaviors and make him more confused. (Exh. 13; T. pp 27-30)

9. All staff of Meadowood Group Home, including Petitioner, was made aware of residents' behavior plans, given copies of the behavior plans in the program books and clinical book for their reference, and expected to know the behavior plan of the resident they are working with. (T. pp 32, 52)

10. On September 12, 2013 Petitioner and employees Theo Givens and Tomonika Harvey took C.P. and five other residents on an outing to Burlington Coat Factory. Mr. Givens and Ms. Harvey left the van to shop while Petitioner remained on the van to be in charge of six residents. C.P. was one of the residents. Next, these same employees were instructed by William Lofton to stop at Walmart to pick up supplies for the group home on the way back from the outing. Mr. Givens and Ms. Harvey once again left the van to shop while Petitioner remained on the van to be in charge of six residents. Again, C.P. was one of the residents. (T. p 86)

11. After completing the trip to Burlington Coat Factory C.P. asked to go to the bathroom while the group was en route to Walmart. (Exh. 17-21)

12. At Meadowood at intervals of one to three times per month, C.P. would engage in physical altercations and assaults on Petitioner. This activity and frequency were known to the Meadowood management. During these times, C.P. engaged in heated arguments with Petitioner, stuck Petitioner in the face, and tackled Petitioner to the floor. Because of these incidents, Petitioner was relieved of her care for C.P. and was instructed not to interact with C.P.

On the day in question, according to statements attributed to Mr. Givens and Ms. Harvey, Petitioner told C.P. to “hold his piss like a grown ass man.” Petitioner denies making this statement to C.P. Mr. Givens and Ms. Harvey were not present to testify. (Exh. 5;17-21 and T. pp 97-98; 102-105)

13. According to statements attributed to Theo Givens, Mr. Givens offered to take C.P. to the restroom inside the Walmart to which Petitioner responded that C.P. was “not going anywhere.” Mr. Givens did not testify. Petitioner declares in Exhibit #9 the following: One staff was to go inside, but both staff went inside, leaving her with six clients alone in the van. Ms. Robinson stated once the staff were off the van, C.P. stated he had to use the restroom.” (Exh. 9,17-19)(T. p 100)

14. C.P. became agitated and pushed Petitioner to the floor. Petitioner attempted to prevent C.P. from leaving the van by holding onto the door handle but C.P. pushed past Petitioner and exited the van. This physical altercation between Petitioner and C.P. continued outside the van. C.P. pushed Petitioner against the van then shoved Petitioner to the pavement. C.P. was yelling obscenities at Petitioner. Bystanders called the Greensboro police for emergency police intervention. C.P. entered Walmart. (T. pp 87-88).

15. Prior to Greensboro Police arriving, C.P. went into Walmart in search of the bathroom where an off duty employee of Meadowood encountered C.P. and noticed his ear was bleeding and that he had scratches on his face. (Exh. 22)

16. According to out of court statements attributed to Theo Givens, Mr. Givens encountered C.P. inside of Walmart, where he also noted the blood on C.P.’s ear and the scratches on his face. Mr. Givens asked C.P. what happened to him to which C.P. responded that Petitioner beat him up and that he was “not getting back on the van.” Neither Mr. Givens nor C.P. testified. (Exh. 17)

17. Petitioner reported the incident to William Lofton and filled out an incident report on September 12, 2013. Nycole Mumford, Operations Manager for ResCare Community Alternatives of North Carolina, informed Petitioner that she had been placed on Administrative Leave pending the outcome of an internal investigation into the allegation of abuse and neglect due to Petitioner violating company policy. (Exh. 6)

18. On September 18, 2013, Mumford notified North Carolina Health Care Personnel Registry (“HCPR”) of the allegation of abuse against Petitioner by submitting a 24-Hour Initial Report.

19. Shane Ferguson terminated Petitioner’s employment at Meadowood Group Home as a result of the internal investigation.

20. Petitioner testified that she was not to be left alone with C.P. as a result of prior incidents between her and C.P.; however, statements attributed to Theo Givens indicated that Petitioner would not let C.P. off of the van when other staff members offered to take him with them into Walmart. Mr. Givens exited the van leaving Petitioner with C.P. and a total of six residents.

21. Petitioner, when filling out the incident report following the altercation at Walmart, noted that a body check had been completed but did not mark that there was an injury. (Exh. 9) Written statements provided by Theo Givens, Tomonika Harvey, and Whitney Nicholson, all present at Walmart when the incident took place, noted scratches to C.P.'s face and a cut on C.P.'s ear.

22. The HCPR investigates allegations against unlicensed health care personnel working in health care facilities in North Carolina. The allegations investigated by HCPR include, but are not limited to, abuse and neglect. With the exception of a finding of a single instance of neglect, substantiated findings against health care personnel are permanently listed on the HCPR. N.C.G.S. § 131E-256.

23. Upon receipt of the allegation against Petitioner, Jennifer Baxter, RN ("Baxter"), Investigator for HCPR, determined that the matter required further investigation.

24. At all times relevant to this incident, Baxter was employed as an Investigator for the HCPR. She is charged with investigating allegations of abuse and neglect, among others, against unlicensed health care personnel in Guilford County, North Carolina, and was assigned to conduct the investigation into the allegation against Petitioner.

25. As a part of her investigation, Petitioner visited ResCare Community Alternatives of North Carolina's facility and reviewed C.P.'s medical records, Petitioner's personnel file, and ResCare's documentation regarding this incident. Baxter also interviewed Theo Givens, Tomonika Harvey, Steven Gilbert, and C.P. Petitioner was not interviewed during the investigation but later gave a statement to Baxter regarding what happened on September 12, 2013.

26. Based on her investigation, Baxter determined that Petitioner neglected and abused C.P. on September 12, 2013, by not following C.P.'s behavior plan by cursing at C.P. and by not allowing C.P. to use the restroom and, accordingly, substantiated the allegations against Petitioner.

27. By certified letter dated December 31, 2013, Baxter notified Petitioner that the allegation that Petitioner had abused and neglected C.P. had been substantiated and said finding would be listed on the Health Care Personnel Registry. Petitioner was further notified of her right to appeal.

28. Steven Gilbert conducted an internal investigation regarding the allegation of abuse by interviewing Whitney Nicholson, Theo Givens, Tomonika Harvey, Petitioner, Abijah Shealy, William Lofton, LaChell Gentle, and C.P. But at the hearing Mr. Gilbert testified on behalf of Respondent's as Respondent's witness both in the case in chief and on rebuttal. Mr. Gilbert's testimony and opinion in rebuttal, in part, appears verbatim below.

**TESTIMONY OF STEVEN GILBERT (Returns to witness stand)**

A. The entire circumstances of a six-to-one ratio is absurd. That's something that none of the staff should have allowed. All three staff that were on board that van knew that. So for that circumstance to create itself, in itself is a violation of what we would do. That would be the first thing that would be wrong. There is no way that you're going to leave me on a van with six clients, and there is two other staff, in other words.

Q. Okay. Fair enough. Now, in this instance, was there any report Made that there were six consumers to only one employee?

A. Not clearly to me, no. I was not aware of that. That would have been – I couldn't understand why somebody would even go in to Walmart without a client. Our protocol is that if you go into a store to make a purchase, the client goes with you. We don't leave people on the van to go make purchases. That's what they do. That's (inaudible).

In other words, if one of our staff were to take a client into – or not take a client into Walmart, that would be a writeup. Why was that client not going into Walmart, not doing their shopping, no doing the things that they need to do for their home. We don't go into – staff don't go into stores and make purchases without clients.

Just like at Burlington Coat Factory, what in the world was somebody doing at Burlington Coat Factory without staff accompanying or clients with them? That's ridiculous. We don't do that.

Q. Okay. Was it unrealistic to expect Ms. Robinson to take all staff members – or – excuse me – all clients inside?

A. That would be a situation that is difficult for me to address. I probably would have if somebody had to use the bathroom myself. I can't stay what's correct about that because the entire scenario is a no-win scenario. We would not be in that circumstance with that – in that circumstance. (Tr. pp. 108-110)

Based upon the foregoing Findings of Fact, the undersigned 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. Pursuant to N.C.G.S. § 131E-256, the North Carolina Department of Health and Human Services (“Department”) is required to establish and maintain a health care personnel registry that contains the names of all unlicensed health care personnel working in health care facilities in North Carolina who are subject to a finding by the Department that they, among other things, abused or neglected a resident in a health care facility, or have been accused of such an act if the Department has screened the allegation and determined that an investigation is warranted.

4. Meadowood Group Home is a residential facility, as defined by N.C.G.S. § 122C-3(14)e, and is therefore subject to N.C.G.S. § 131E-256.

5. As a health care personnel working in a residential facility, Petitioner is subject to the provisions of N.C.G.S. § 131E-256.

6. “Abuse” is 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(1); 42 CFR § 488.301.

7. “Neglect” is the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

8. The preponderance of the admissible evidence in the record shows that on September 12, 2013, Petitioner did not neglect C.P. by telling him to “hold his piss like a grown ass man,” in direct violation of C.P.’s Behavioral Support Plan, which explicitly discusses avoiding confrontational situations such as this due to C.P.’s illness and the target behaviors that these confrontations trigger. Petitioner’s testimony as the only witness to testify as to the events in question is found to be credible.

9. The preponderance of the admissible evidence in the record shows that on September 12, 2013, Petitioner did not verbally and physically abuse C.P. by telling him to “hold his piss like a grown ass man,” and by actively preventing C.P. from going to the bathroom by telling other care staff that C.P. could not go with them so that he could be taken to the bathroom. Petitioner’s testimony as the only witness to testify as to the events in question is found to be credible.

10. Respondent's action to substantiate the allegation of neglect against C.P. is not supported by a preponderance of the evidence.

11. Respondent's action to substantiate the allegation of abuse against C.P. is not supported by a preponderance of the evidence.

12. Petitioner carried her burden of proof by the preponderance of the evidence through Petitioner's credible in court testimony that conflicted with the out of court statements made by those who did not testify that Respondent substantially prejudiced Petitioner's rights, acted erroneously, or acted arbitrarily or capriciously when Respondent substantiated the allegation that Petitioner abused a resident (C.P.) of Meadowood Group Home in Greensboro, North Carolina. Meadowood management permitted Petitioner to be repeatedly assaulted by C.P. which was a situation well known and within the knowledge of Meadowood management. In spite of this knowledge, Meadowood management allowed Petitioner to remain in close proximity to C.P. on numerous occasions in a small van which could at any time erupt in violence causing Petitioner to defend herself from an assault and which finally did erupt in a violent assault to such an extent that bystanders had to summon the police. Furthermore, Meadowood management either condoned or was not aware of (and should have been aware of by imputed knowledge) that on at least two occasions Meadowood employees were allowed to leave the van without a client educational purpose to engage in a personal shopping experience. When doing so, the departing employees abandoned their responsibility to Meadowood's clients who were left on the van in order to engage in a personal pursuit and left residents to the charge of a single employee who then became responsible for the safety of six residents. The ratio was to be 1:2 (employee to clients). Petitioner when left as custodian for six residents on a small van. Petitioner made the best decision she could make when a sudden emergency arose under the facts and circumstances found herein. Petitioner cannot be found to have either abused or neglected C.P. in an attempt to defend herself from an assault or making verbal statements to C.P. during the altercation.

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 abuse against Petitioner on the Health Care Personnel Registry should be **REVERSED**.

### **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 23<sup>rd</sup> day of December, 2014.

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Julian Mann, III  
Chief      Administrative      Law      Judge

