




FILED  
OSAH

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

FEB 27 2014

UNISEX XTENDED LIVING,  
Petitioner,  
v.  
DEPARTMENT OF COMMUNITY  
HEALTH, HEALTHCARE  
FACILITY REGULATION  
DIVISION,  
Respondent.

  
Kevin Westray, Legal Assistant

Docket No.:  
OSAH-DCH-HFR-PCH-1421814-25-Miller

INITIAL DECISION

I. Introduction

The Petitioner seeks review of the Respondent's decision to impose a \$601.00 fine based on an alleged violation of the Rules and Regulations for Personal Care Homes. The hearing took place on February 7, 2014, before the undersigned administrative law judge of the Office of State Administrative Hearings ("OSAH"). After considering all of the admissible evidence, the Respondent's action is **AFFIRMED**.

II. Findings of Fact

1.

The Petitioner, Unisex Xtended Living ("Unisex"), is a personal care home that provides residential and personal services to adults who require assistance with activities of daily living. The facility presently has three residents, each of whom is mentally ill. (Testimony of Rachel Barevich.)

2.

On March 21, 2013, Rachel Barevich, a surveyor for the Respondent's personal care home program, visited Unisex to conduct an inspection of the premises. The facility is located in a rural area and consists of a double-wide trailer with two exterior doors. Unisex's owner, Pamela Walker, and its employee, Shirley Brown, reside in homes in close proximity to the facility, on the same parcel of real property. Ms. Walker works the daytime shift, from 7:00 a.m. to 7:00 p.m., while Ms. Brown works the overnight shift, from 7:00 p.m. to 7:00 a.m. (Testimony of Ms. Barevich and Shirley Brown.)

3.

At the time of the inspection, both of the facility's exterior doors were equipped with deadbolt locks that required keys to open them from the inside. The doors were routinely locked from 8:00 p.m. to 6:00 a.m., and the residents did not have access to the keys, although Ms. Brown was nearby at all

times that the doors were locked. (Testimony of Ms. Barevich and Ms. Brown; Exhibits R-1, R-2, R-4.)

4.

Immediately following the inspection, Ms. Brown submitted a written plan of correction to Ms. Barevich. As required under the plan of correction, Ms. Brown removed the locks the next morning and replaced them with locks that did not require keys. (Testimony of Ms. Brown.)

5.

By letter dated May 13, 2013, the Respondent notified Unisex that it intended to impose a \$601.00 fine based on an initial Category I violation of the rules governing personal care homes. Unisex timely appealed. At the hearing, Unisex requested a waiver of the fine on the grounds that it had passed the Respondent's previous inspections, even though the keyed locks had been in place since the facility opened. (Testimony of Ms. Barevich, Ms. Brown, and Elaine Wright; Exhibits R-1, R-3.)

### **III. Conclusions of Law**

1.

The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.7(1). The burden of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The Respondent met its burden.

2.

The rules governing personal care homes require that “[p]rivate quarters must be maintained in such a manner as to comply with fire safety codes and not threaten the health or safety of residents.” Ga. Comp. R. & Regs. 111-8-62-.13(2). Specifically, “[e]xterior doors must be equipped with locks which do not require keys to open them from the inside.” Ga. Comp. R. & Regs. 111-8-62-.13(2)(h).

3.

Pursuant to Ga. Comp. R. & Regs. 111-8-62-.33 and 111-8-25-.05, the Respondent is authorized to enforce its rules, subject to notice and opportunity for a hearing, through an array of sanctions, including fines. When the Respondent decides to impose a fine, it applies an enforcement matrix based on the severity and frequency of the rule violation. Ga. Comp. R. & Regs. 111-8-25-.05(e)(2); see Exhibit R-3. The most serious violations are designated “Category I.” Ga. Comp. R. & Regs. 111-8-25-.05(e)(1)(i).

4.

A Category I violation is defined as “[a] violation or combination of violations of licensing requirements which has caused death or serious physical or emotional harm to a person or persons in

care or poses an imminent and serious threat or hazard to the physical or emotional health and safety of one or more persons in care.” Ga. Comp. R. & Regs. 111-8-25-.05(1)I(1)(i) (emphasis added). In this case, Unisex committed a Category I violation by locking its residents inside the facility at night, using exterior locks that required keys to unlock the doors from the inside. This posed an imminent and serious threat and/or hazard to Unisex residents, as they would have been unable to exit the facility quickly in the event of a fire or other emergency. Ga. Comp. R. & Regs. 111-8-62-.13(2), 111-8-25-.05(1)I(1)(i) .

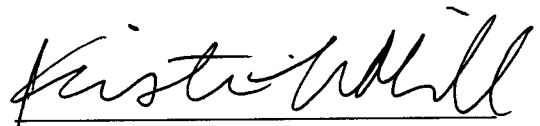
5.

The Respondent is authorized to impose a fine ranging from \$601.00 to \$1,000.00 for each Category I violation, depending on whether the violation is an “initial,” “subsequent,” or “repeat” violation. *Id.*; Ga. Comp. R. & Regs. 111-8-25-.05(1)(e)(2). A violation is considered an initial violation only if “the same or a substantially similar violation has not been cited previously by the department within the past twenty-four (24) months against the facility.” Ga. Comp. R. & Regs. 111-8-25-.05(1)(e)(2). Here, the Respondent correctly determined that Unisex had committed an initial Category I violation and imposed the minimum fine of \$601.00.<sup>1</sup>

#### IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent’s decision to impose a \$601.00 fine against the Petitioner for an initial Category I violation is hereby **AFFIRMED**.

SO ORDERED, this 27<sup>th</sup> day of February, 2014.

  
**KRISTIN L. MILLER**  
Administrative Law Judge

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<sup>1</sup> Due to the severity of the violation, which could have resulted in grave harm to one or more residents, it would be inappropriate to waive the fine, as Unisex suggests. Whether or not the violation was detected by the Respondent during prior inspections, it was Unisex’s obligation to ensure the safety of its residents during an emergency.