



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH

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OLIVIA'S PLACE,
Petitioner,
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:
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v. :
:
DEPARTMENT OF COMMUNITY :
HEALTH, :
Respondent. :

Docket No.:
OSAH-DCH-HFR-PCH-1433337-44-Miller

K. Westray
Kevin Westray, Legal Assistant

INITIAL DECISION

I. Introduction

The Petitioner, Olivia's Place, seeks review of a decision by the Respondent, the Department of Community Health ("Department"), to impose a \$601.00 fine against its facility based on an alleged violation of the regulations governing personal care homes. The evidentiary hearing took place on March 31, 2014, before the undersigned administrative law judge. After considering all of the admissible evidence, the Department's action is **AFFIRMED**.

II. Findings of Fact

1.

The Petitioner, Olivia's Place, is a personal care home located in Decatur, Georgia, that has been in operation for approximately five years. The facility provides personal services to adult residents who require assistance with activities of daily living. (Testimony of Elaine Wright and Eric West; Exhibit R-1.)

2.

The Department requires all personal care homes to maintain individual files for each resident. Resident files must contain specific information regarding the health and personal needs of the resident, including the resident's medical diagnoses, medications, and tuberculosis screening results. This information helps ensure that the personal care home is able to meet each resident's individual needs without endangering the health or safety of others. (Testimony of Ms. Wright.)

3.

On March 14 and 15, 2013, Jacqueta Farrell, a surveyor for the Department's personal care home program, visited Olivia's Place to conduct an inspection of the premises. As part of her inspection, she reviewed the facility's records and determined that the Olivia's Place lacked resident files for

two of its four residents, who were identified as Resident #1 and Resident #4.¹ (Testimony of Jacqueta Farrell; Exhibit R-2.)

4.

Ms. Farrell spoke with Eric West, the administrator of Olivia's Place, regarding the whereabouts of the missing resident files. Mr. West stated that Resident #1 lacked a file because Adult Protective Services did not provide one when Resident #1 was placed at the facility, approximately four weeks earlier. He further stated that he had not created a file for Resident #4 because Resident #4 had expected to stay at Olivia's Place for only two weeks.² (Testimony of Ms. Farrell and Eric West; Exhibits R-2 at 12, P-1 at 12.)

5.

By letter dated August 1, 2013, the Department notified Olivia's Place that it intended to impose a \$601.00 fine based on an initial Category I violation of the rules governing personal care homes. Olivia's Place timely appealed. (Testimony of Ms. Wright; Exhibits R-1, R-3.)

6.

At the hearing, Mr. West testified that Olivia's Place did not complete files for new residents until a thirty-day trial period had elapsed. Prior to Ms. Farrell's inspection, he believed that this procedure was permissible under the Department's rules. Therefore, because both Resident #1 and Resident #4 had resided at Olivia's Place for less than thirty days as of the date of the inspection, he believed that he was not required to maintain files for them. (Testimony of Mr. West; Exhibit R-3.)

7.

Mr. West also testified that the facility had obtained the necessary medical information regarding Resident #1 and Resident #4 from their hospital discharge summaries. However, the Court declines to rely on this testimony, as Mr. West did not bring these documents to the hearing or offer any other corroborating evidence. (Testimony of Mr. West.)

III. Conclusions of Law

1.

The Department 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 Department met its burden.

¹ Although Ms. Farrell documented sixteen other deficiencies in her report, the Department determined that these alleged violations did not warrant the imposition of a fine or other sanction. (Testimony of Ms. Wright; Exhibit R-2.)

² As of the date of the inspection, Resident #4 had lived at Olivia's Place for approximately three weeks. (Exhibits R-2 at 12, P-1 at 12.)

2.

The Department's rules governing personal care homes require that "[a]n individual resident file must be maintained by the administrator or on-site manager for each resident in the home." Ga. Comp. R. & Regs. 111-8-62-.24(1). Additionally, each resident file must contain:

- (a) Identifying information including name, social security number, veteran status and number, age, sex, and previous address.
- (b) Name, address and telephone number of next of kin, legal guardian and/or representative or legal surrogate, if any, or representative payee and any court order or written document designating the resident's representative or legal surrogate, if any.
- (c) Name, address and telephone number of any person or agency providing additional services to the resident. This information must include the name of the agency personnel primarily responsible, (i.e. the caseworker, case manager, or therapist).
- (d) An admission and discharge log to include the date of admission, prior residence of resident, referral source, agency-contact and telephone number of referral source.
- (e) Date of discharge, facility or residence discharged to and telephone number.
- (f) The name, address and telephone number of a physician, hospital and pharmacy of the resident's choice.
- (g) A record of all monetary transactions conducted on behalf of the resident with itemized receipts of all disbursements and deposits.
- (h) A record of all monies and other valuables entrusted to the home for safekeeping; a receipt for same shall be provided to the resident or representative or legal surrogate, if any, at the time of admission and at anytime thereafter when the resident acquires additional property and wishes to entrust such property to the home for safekeeping.
- (i) Health information including all health appraisals, diagnoses, prescribed diets, medications, and physician's instructions.
- (j) An inventory of all personal items brought to the home by the resident to be updated at anytime after admission if a resident or representative or legal surrogate, if any, submits to the home a new inventory of the resident's personal items.
- (k) A signed copy of the Resident's Rights form.

- (l) A signed copy of the admission agreement.
- (m) Any power of attorney or document issued by a court or by the Social Security Administration or any other governmental authority which designates another person as responsible for management of the resident's finances.
- (n) A copy of a living will and/or durable power of attorney for health care if executed prior to 2007 or a copy of the Georgia advance directive for health care and a physician's order for life-sustaining treatment, if any. At least the advance directive for health care form must be made available at the time of admission and shall remain available to the resident.
- (o) A copy of the resident's written waiver of the personal needs allowance charge pursuant to the provisions of Rule 111-8-62-.26(p)1.
- (p) Any signed medical orders impacting end of life care, e.g. do not resuscitate, physician's orders for life sustaining treatment.
- (q) All individual written care plans required by these rules and the rules for proxy caregivers, Chapter 111-8-100 if applicable.
- (r) Any informed written consents signed by the resident or resident's representative, designating and delegating to any trained proxy caregiver, whether employed by the home or not, the performance of identified health maintenance activities.
- (s) A copy of the search results obtained from the National Sex Offender Registry website maintained through the Department of Justice and any resulting safety plan for residents, staff and visitors.

Ga. Comp. R. & Regs. 111-8-62-.24(2). Nothing in the rule suggests that a thirty-day trial period may elapse before a new resident file is created. See also Ga. Comp. R. & Regs. 111-8-62-.15. Accordingly, the Court concludes that personal care homes are required to create files for new residents at the time of admission.

3.

Pursuant to Ga. Comp. R. & Regs. 111-8-62-.33 and 111-8-25-.04, the Department is authorized to enforce its rules, subject to notice and opportunity for a hearing, through an array of sanctions, including fines. When the Department 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(1)(e); see Exhibit R-6. The most serious violations are designated "Category I." Ga. Comp. R. & Regs. 111-8-25-.05(1)(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)(e)(1.)(i) (emphasis added). In this case, Olivia’s Place committed a Category I violation by failing to maintain individual resident files for Resident #1 and Resident #4. This posed an imminent and serious threat and/or hazard to all of the facility’s residents, as Olivia’s Place lacked information crucial to ensure that Resident #1’s and Resident #4’s needs could be met and that their presence would not endanger the health or safety of other residents. Ga. Comp. R. & Regs. 111-8-62-.24, 111-8-25-.05(1)(e)(1.)(i).

5.

The Department 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 “[i]f the same or a substantially similar violation has not been cited previously by the [D]epartment within the past twenty-four (24) months against the facility.” Ga. Comp. R. & Regs. 111-8-25-.05(1)(e)(2.) (i). Here, the Department correctly determined that Olivia’s Place had committed an initial Category I violation and imposed the minimum fine of \$601.00.

IV. Decision

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

SO ORDERED, this 16th day of April, 2014.



KRISTIN L. MILLER
Administrative Law Judge