



FILED  
OSAH

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

SEP 30 2014

HOME INSTEAD SENIOR CARE, :  
Petitioner, :  
 :  
v. :  
 :  
DEPARTMENT OF COMMUNITY :  
HEALTH, HEALTHCARE FACILITY :  
REGULATION DIVISION, :  
Respondent. :

*K. Westray*

Kevin Westray, Legal Assistant

Docket No.:  
OSAH-DCH-HFR-PHCH-1501919-56-  
Walker

**INITIAL DECISION**

Petitioner, Home Instead Senior Care (also the “facility”), appeals a determination by Respondent, the Department of Community Health, Healthcare Facility Regulation Division, (hereinafter the “Department”), to impose a fine of \$150.00. An administrative hearing was held on September 18, 2014. For the reasons given below, the action of the Department is **AFFIRMED**.

**I. FINDINGS OF FACT**

1.

The Department conducts annual, unannounced inspections of state-licensed Private Home Care Providers. On October 16, 2013, staff from the Department completed an on-site follow up survey at Home Instead Senior Care located at 2011 Commerce Drive Suite D-104, Peachtree City, Georgia. *Testimony of Nancy Holt-Scott; Exhibit R-1.*

2.

The Department’s inspection report identified a violation of the Rules and Regulations for Private Home Care Providers, Ga. Comp. R. & Regs. r. 111-8-65. Finding that the facility was not in substantial compliance with the Rules and Regulations, the Department sought to impose a

fine on the facility for a Category III rule violation. A Category III rule violation is a violation or combination of violations of licensing requirements which indirectly or over a period of time has or is likely to have an adverse effect on the physical or emotional health and safety of one or more person in care, or a violation or violations of administrative, reporting or notice requirements. In response to the Department's proposed action, the facility requested an administrative hearing. *Testimony of Nancy Holt Scott; Testimony of Iggy Gomes; Exhibit R-1.*

3.

On April 29, 2013, surveyor Dianne Barrow attempted to conduct a periodic licensure survey. When she was unable to find the location of the facility, Ms. Barrow called the facility for additional directions. A facility employee told her that no one was available to assist the Department with the survey until later in the day. When Ms. Barrow explained access needed to be provided within an hour, she was given a variety of reasons as to why no one was available, and then informed that the facility needed notice of a few days prior to a survey. *Testimony of Dianne Barrow; Exhibit R-6.*

4.

Mr. Gomes is the facility's owner. He explained that in April of 2013 the facility was moving to a new location, and its files were therefore at his home until the new location was ready. Following the attempted inspection, he submitted a plan of correction to the Department, indicating he would be available in the case of another inspection. The plan of correction was accepted by the Department. The Department told Mr. Gomes it would conduct a follow-up survey to check on the plan's implementation. *Testimony of Nancy Holt-Scott; Testimony of Iggy Gomes; Exhibits R-6; R-7.*

5.

On October 16, 2013, Department surveyor Dianne Barrow again attempted to conduct an unannounced follow up licensure survey. At approximately 9:00 a.m., she called the facility for directions and told the administrator that access must be provided within the hour. The administrator told Ms. Barrow that he would be unable to meet with her until later that day due to meetings with prospective clients. *Testimony of Dianne Barrow; Exhibit R-2.*

6.

Mr. Gomes again submitted a plan of correction, stating that should he be unavailable when a surveyor arrives, he has made arrangements with his building's management to allow the surveyor full access to all relevant records. He submitted the building manager's name, telephone number and hours that she is on the premises. *Testimony of Iggy Gomes; Exhibit R-7.*

7.

Mr. Gomes acknowledged and apologized for both incidents, stating that they were two "crazy coincidences" and that he is not hiding anything from the Department. As to the first incident, he was visiting an ill member of his family. As to the second incident, he was with a client and just missed the surveyor. Mr. Gomes noted that he had submitted an acceptable plan of correction and that his previous inspections over the years had all been "pretty good." *Testimony of Iggy Gomes.*

## II. CONCLUSIONS OF LAW

1.

The Department bears the burden of proof to show that its proposed imposition of sanctions is appropriate. The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.07, -.21(4).

2.

In the instant case, the Department notified Petitioner that it intended to impose a \$150.00 fine for a violation of the Rules and Regulations for Private Home Care Providers, Chapter 111-8-65. Petitioner filed for an administrative hearing, but at the hearing did not appear to contest this proposed action. The administrative hearing is *de novo* and the undersigned must make an independent determination on the basis of the evidence presented at the hearing. Ga. Comp. R. & Regs. r. 616-1-2-.21(1), (3).

3.

Georgia Rule 111-8-65-.08(2)(a) provides in relevant part:

Department representatives shall be allowed reasonable and meaningful access to the provider's premises, all records relevant to licensure and all provider staff. Providers shall assist and cooperate in arranging for department representatives to have meaningful access to provider's clients who consent to be interviewed by department representatives in connection with any licensure activity.

Pursuant to Georgia Code Section 31-2-8(b), the Department may sanction a licensee who has violated Department rules, regulations, or formal orders related to the continued licensing of the facility. O.C.G.A. § 31-2-8(b); Ga. Comp. R. & Regs. r. 111-8-25-.04.

4.

The Department may sanction a licensee by administering a public reprimand, suspending any license for a definite or indefinite period, revoking a license, or imposing a fine of up to \$25,000 as a sanction against a licensee. Ga. Comp. R. & Regs. r. 111-8-25-.05. The statute provides that in taking any of these actions, "the [D]epartment shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public." O.C.G.A. § 31-2-8(c); Ga. Comp. R. & Regs. r. 111-8-25-.05(4).

5.

The Department categorized the incident as a Category III violation. A Category III violation is a violation or combination of violations of licensing requirements which indirectly, or over a period of time, has or is likely to have adverse effect on the physical or emotional health and safety of a person or persons in care, or a violation or violations of administrative, reporting or notice requirements. Ga. Comp. R. & Regs. r. 111-8-25-.05(1)(e)(iii).

6.

Petitioner failed on two occasions to provide meaningful access to the surveyor in a reasonable manner. While Petitioner is apologetic, and has submitted a plan of correction, in the instant case, the Department has proven the violation and a \$150.00 fine is appropriate.

**III. DECISION**

**IT IS HEREBY ORDERED THAT** the Department's proposed action is **AFFIRMED**.

**SO ORDERED**, this 29<sup>th</sup> day of September, 2014.



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**RONIT WALKER, ALJ**