



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH

OCT 24 2014

LOVELACE LIVING CENTER,
Petitioner,

:
:

K. Westray

Kevin Westray, Legal Assistant

v.

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:

Docket No.:
OSAH-DCH-PCH-1456804-33-Woodard

GEORGIA DEPARTMENT OF
COMMUNITY HEALTH, HEALTHCARE
FACILITY REGULATION DIVISION,
Respondent.

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INITIAL DECISION

I. Introduction

Petitioner, House of Angels, appeals the decision of Respondent, the Department of Community Health, Healthcare Facility Regulation Division, to impose a fine of \$601.00 for violating Respondent's rules regarding hot water temperature. A hearing was held on September 12, 2014, by telephone. Petitioner was represented by George Lovelace, the facility's owner. Respondent was represented by Mr. Shariyf Muhammad, Attorney at Law, Department of Community Health, Atlanta. For the reasons indicated below, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1. Respondent is the state entity responsible for the regulation of Personal Care Homes in Georgia. As part of that responsibility, it has promulgated the Rules and Regulations for Home Care Providers (hereinafter "PCH Rules"). *Exhibit R-12*.

2. Personal Care Homes are subject to inspections, which may be announced or unannounced. Inspections are conducted by surveyors, whom Respondent dispatches to determine whether the facility is in compliance with PCH Rules. If during one of these inspections the surveyor discovers violations of PCH Rules, the licensee is required to submit a plan of correction to Respondent. Respondent has the authority to impose sanctions on a Personal Care Home for violations of PCH Rules pursuant to its General Licensing and Enforcement Requirements. Such sanctions may include fines, public reprimands, or suspension of the PCH license. *Exhibits R-12 and R-13*.

3. Respondent updated the PCH Rules in 2013, when it promulgated additional rules governing training and ongoing evaluation of PCH staff, health and hygiene, quality assurance and peer

review, use of volunteers, use of proxy caregivers, safety precautions, and staffing plans. The additional rules went into effect on January 8, 2013.¹ *Testimony of Elaine Wright.*

4. Petitioner holds a license to operate a personal care home at 4870 Farm Valley Drive, NE, Woodstock, Georgia... *Testimony of George Lovelace; testimony of Elaine Wright.*

5. On November 13, 2013, Karen Brown, a surveyor with Respondent's Healthcare Facility Regulation Division visited Petitioner's facility for a routine annual inspection. Using a portable thermometer, Ms. Brown found that the water temperature in the hall bath was 144 degrees Fahrenheit, and the water temperature in the residents' bathroom was 143 degrees Fahrenheit. Ms. Brown calibrated the thermometer before she arrived at the facility. *Testimony of Karen Brown.*

6. Ms. Brown relayed her findings to Respondent. On December 27, 2013, Respondent issued a "Notice of Intent to Impose Fine" against Petitioner for allowing water temperature in its facility to exceed the maximum of 120 degrees Fahrenheit allowed under Personal Care Home Rule 111-8-62,13(12). Respondent imposed a fine of \$601.00 for this violation. *Testimony of Elaine Wright; Respondent Exhibit 1.*

7. Petitioner appealed, and this matter was referred to the Office of State Administrative Hearings for adjudication.

8. A follow-up inspection was conducted in January 2014, and the water temperature at the facility was found to be less than 120 degrees F. *Testimony of Elaine Wright.*

9. Respondent acknowledges that, under certain circumstances, water temperatures in excess of 120 degrees F will not lead to a fine. However, those cases usually involve temperatures between 121 and 125 degrees F, while temperatures over 140 degrees F would cause such serious physical injury that a facility will always be cited. *Testimony of Elaine Wright.*

III. Conclusions of Law

1. Because Respondent seeks to impose a fine on Petitioner, Respondent bears the burden of proof. GA. COMP. R. & REGS. R. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. GA. COMP. R. & REGS. R. 616-1-2-.21(4).

2. All persons operating personal care homes in Georgia must be licensed by the Respondent, which is authorized to promulgate rules to protect the health, safety, and welfare of occupants of such facilities. O.C.G.A. § 31-7-3 (2013); O.C.G.A. § 31-7-12 (2013). The rules which

¹ See Ga. Comp. R. & Regs. 111-8-62-.07 (2013).

Respondent has promulgated for personal care homes are found in Chapter 111-8-62 of the *Official Compilation, Rules and Regulations for the State of Georgia*. GA. COMP. R. & REGS. 111-8-62-.01 et seq. [hereinafter "PCH RULES"]. Respondent enforces the rules governing PCHs through its General Licensing and Enforcement Requirements, which are found in Chapter 111-8-25 of the *Official Compilation, Rules and Regulations for the State of Georgia*. GA. COMP. R. & REGS. 111-8-25-.01 et seq. [hereinafter "ENFORCEMENT RULES"].

3. Section 111-8-25-.04 of the Enforcement Rules provides that Respondent "shall have the authority to impose [sanctions] . . . upon a finding that an applicant or licensee has . . . [f]ailed to comply with the . . . provisions of [the PCH Rules]." ENFORCEMENT RULES § 111-8-25-.04. Respondent may impose any one or more of the following sanctions:

- (a) Administer a Public Reprimand,
- (b) Suspend any License,
- (c) Prohibit Persons in Management or Control,
- (d) Revoke any License,
- (e) Impose a Civil Penalty Fine, or
- (f) Limit or Restrict any License.

ENFORCEMENT RULES § 111-8-25-.05(1) (a)-(f). In determining the appropriate sanction, Respondent "shall consider the seriousness of the violation or violations, including the circumstances, extent and gravity of the prohibited act or acts or failure to act, and the hazard or potential hazard created to the physical or emotional health and safety of the public." ENFORCEMENT RULES § 111-8-25-.05(4).

4. Respondent categorizes rule violations based upon the significance of the harm they cause or the threat they pose. *See* ENFORCEMENT RULES § 111-8-25-.05(1)(e)1.(i)-(iii). Respondent classified Petitioner's rule violations as "Category III Violations" inasmuch as they "indirectly or over a period of time [have] or [are] likely to have an adverse effect on the physical or emotional health and safety of a person or persons in care, or [are] violations of administrative, reporting, or notice requirements." ENFORCEMENT RULES § 111-8-25-.05(1)(e)1.(iii). *Id.*

5. The specific amount of the fine for each violation in each category is based upon the seriousness of the violation, and whether the violation giving rise to the adverse action ("the present violation") had been previously cited against the facility. ENFORCEMENT RULES § 111-8-25-.05(1)(e)2.(i)-(iii).

6. A "Category I" Violation is one "which has caused death or serious physical or emotional harm or poses an imminent and serious threat to the physical or emotional health and safety of one or more persons in care." PCH Rule 111-8-25. The minimum fine for a Category I Violation is \$601.00. *Id.*

7. PCH Rule 111-8-62-.13(12) states that a PCH "must have an adequate hot water system that supplies heated water, comfortable to the touch but not exceeding 120 degrees Fahrenheit (F.) to the residents for their usage."


8. Because of the serious risk of harm to a resident if water temperatures in a PCH exceed 120 degrees F, PCH Rule 111-8-62.-13(12) violations are considered Category I violations.

9. In this case, a routine annual inspection found that two separate bathrooms had maximum hot water temperatures of 143 and 144 degrees F, nearly 20 degrees F over the maximum allowed by PCH Rules. There is no provision in the Respondent's rules, the enabling statute, or any other law that would force Respondent to wait to issue a fine for such a violation until a second violation was found. Respondent may exercise some discretion to not issue a fine where water temperatures are only a few degrees over the allowable limit of 120 degrees F, but such discretion was properly not exercised in this situation.

IV. Decision

For the foregoing reasons, Respondent's decision to impose a fine of \$601.00 is **AFFIRMED**.

SO ORDERED, this 24th day of October, 2014.


M. PATRICK WOODARD
Administrative Law Judge