BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

PEGGY HALEY,	:	
Petitioner,	:	
	:	**Docket No.: OSAH-DCH-HFR-PCH-**
v.	:	**1531201-48-Schroer**
	:	
DEPARTMENT OF COMMUNITY	:	
HEALTH, HEALTHCARE FACILITY	:	
REGULATION DIVISION,	:	
Respondent.	:	
	:	

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Kevin Westray, Legal Assistant

INITIAL DECISION

Petitioner Peggy Haley appeals a determination by Respondent, the Department of Community Health, Healthcare Facility Regulation Division (the "Department"), to impose a fine of $36,400.00 on Petitioner for the operation of an unlicensed personal care home. An administrative hearing was held on February 18, 2015. Petitioner appeared *pro se*. Respondent was represented by Shariyf Muhammad. For the reasons given below, the action of the Department is **AFFIRMED**.

I. Findings of Fact

1.

For several years, Petitioner's mother, Peggy Hunter, operated a personal care home located at 6865 West Strickland Street, Douglasville, Georgia ("the Facility"). In the past, Ms. Hunter had a Department-issued personal care home license to operate the Facility. In 2011 or 2012, Ms. Hunter's health began deteriorating as a result of Alzheimer's disease, and another daughter (Petitioner's sister), became primarily responsible for the operation of the Facility. According to Petitioner, her sister neglected many aspects of the business, including the renewal of the personal care home license. When Petitioner discovered her sister's mismanagement,

Petitioner and her fiancé, Charles Willoughby, stepped in and took over the day-to-day operation of the Facility. (Testimony of Petitioner, Willoughby, Wright.)

2.

Sometime prior to April 16, 2014, the Department received a complaint about the Facility and assigned a surveyor, Leonard Luza, to conduct an inspection. At the time of the inspection, the Facility did not have an active license to operate a personal care home. On April 16, Mr. Luza toured the Facility, spoke to Petitioner, and interviewed some of the residents. During his inspection, Mr. Luza determined that the Facility provided housing and meals for ten residents. In addition, six of the ten residents informed Mr. Luza that the Facility kept their medications locked away and that they were distributed by Petitioner or Mr Willoughby when it was time to take them.[1] (Exhibit R-3(B); Testimony of Luza).

3.

Personal care homes, defined as dwellings which provide housing, food, and one or more personal services to two or more unrelated adults, are required to obtain a valid permit from the Department prior to operating as a personal care home. Supervision of self-administration of medication is considered a personal service. (Testimony of Wright).

4.

On May 7, 2014, the Department sent notice to Petitioner that she was operating a personal care home without a license and must cease operating immediately. The notification included a warning that should she continue to operate without a license "after receipt, actual or

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[1] Mr. Willoughby confirmed this at the administrative hearing, testifying that residents' medications were kept locked away for "safety reasons," including the propensity of one of the residents to steal from the others. When it was time to dispense medicine, Mr. Willoughby would unlock the medicine cabinet and give each resident their "box." After the residents took their medication, they would return their box of medications, and Mr. Willoughby would lock all the boxes back in the cabinet. (Testimony of Willoughby).

constructive, of the notice," the Department would impose a fine of $100 per bed, per day of operation. (Exhibit R-1).[2] The notice was delivered on May 13, 2014. (Exhibit R-2).

5.

On June 6, 2014, Luza returned to the Facility for a follow-up visit. At that time, seven residents continued to reside at the Facility, although Mr. Willoughby and Petitioner were actively attempting to find alternative arrangements for these residents and expected to have new placements for them in the next few days.[3] (Exhibit R-3(A); Testimony of Luza, Willoughby).

6.

On July 16, 2014, the Department sent notice to Petitioner that it intended to impose a civil penalty of $100.00 per bed, per day for each day that Petitioner had operated an unlicensed personal care home. In the letter, the Department concluded that Petitioner had operated seven beds from April 10, 2014 to June 6, 2014 (52 days). The total fine due was $36,400.00. (Exhibit R-3).

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).

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[2] The form used to create the May 7th letter has since been revised. The Department contended that it did not intend for the fine to accrue only after receipt of the notice, despite the plain language of the letter. (Testimony of Wright).

[3] The remaining seven residents were relocated by June 10, 2014. (Testimony of Willoughby).

2.

In Georgia, all personal care homes must be licensed through the Department. O.C.G.A. §§ 31-7-3 and 31-7-12(b).

3.

A "personal care home" means "any dwelling...which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults..." O.C.G.A. § 31-7-12(a)(1).

4.

As used in the definition of personal care home, "personal services" includes "individual assistance with or supervision of self-administered medication." O.C.G.A. § 31-7-12(a)(2).

5.

Georgia law requires the imposition of a civil penalty in the amount of $100.00 per bed per day for operation of an unlicensed personal care home. O.C.G.A. § 31-7-12.1(b). Specifically, Code Section 31-7-12.1(b) provides that "[a]ny unlicensed personal care home shall be assessed by the department, after opportunity for hearing in accordance with the provisions of ... the 'Georgia Administrative Procedure Act,' a civil penalty in the amount of $100.00 per bed per day for each day of violation of subsection (b) of Code section 31-7-12." Upon consideration of the plain language of this provision, the Court concludes that the civil penalty is mandatory for each day of unlicensed operation, and that this Court does not have discretion to reduce or modify the amount of the fine.[4]

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[4] The civil penalty provision in Code Section 31-7-12.1(b) does not give the Department discretion to modify or reduce the amount of the fine, and this tribunal has only the power of the referring agency with respect to a contested case under the Administrative Procedures Act. O.C.G.A. 50-13-41(b). Compare O.C.G.A. § 20-1A-12(c)(6)(department "may" take enforcement actions for violation of licensing provisions relating to daycares, including a fine of

6.

The Department's presentation in this case established that Petitioner, by providing housing, food, and supervision of self-administered medication, was operating a personal care home as defined by the statute. Under O.C.G.A. § 31-7-12.1(b), Petitioner is therefore subject to a fine for each day of unlicensed operation.

7.

Notwithstanding the language in the Department's May 7, 2014 Notice to Cease and Desist, which indicated that the Department intended to impose a fine for each day of unlicensed operation after receipt of the notice, the Court concludes that the statute mandates a civil penalty for each day of unlicensed operation, whether before the notice or after. The Department proved by a preponderance of the evidence that Petitioner operated an unlicensed personal care home for at least 52 days, from April 10, 2014 to June 6, 2014, and that the Facility offered personal services to at least seven residents per day during this time period. Accordingly, the Department's assessment of a civil penalty of $36,400.00 was proper under the statute, and the Department is not estopped from assessing the mandatory civil penalty.[5]

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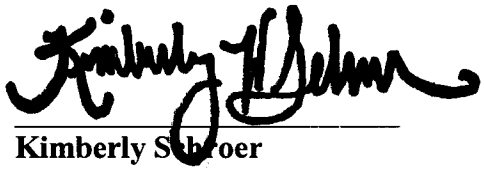
up to $500.00 per day per violation not to exceed $25,000.00 total); O.C.G.A. § 20-1A-10(t)(); O.C.G.A. § 49-5-12(p)(upon conviction of misdemeanor for operation of unlicensed child welfare agency, fine shall be imposed of not less than $50.00 nor more than $200.00 for each day of unlicensed operation); O.C.G.A. § 31-7-158 (penalty for operation of unlicensed home health agency not to exceed $500.00 or imprisonment for less than six month, or both); O.C.G.A. § 7-1-1018(c)(for violation of order under mortgage lender licensing laws, civil penalty "not to exceed $1,000.00 per violation per day unless otherwise agreed to by the department").

[5] As the Georgia Supreme Court explained, quoting the United States Supreme Court in *Heckler v. Community Health Services of Crawford County*, "[w]hen the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant.'" Roberts v. State, 278 Ga. . 610, 613 (2004) (quoting Heckler, 467 U.S. 51, 60 (1984). But see Southern Crescent Rehab. and Ret. Center v. Ga. Dept. of Cmty. Health, 290 Ga. App.

III. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department's decision to impose a fine against Petitioner is hereby **AFFIRMED**.

SO ORDERED, this 20th day of March, 2015.



Kimberly Schroer
Administrative Law Judge

863, 868 (2008) ("If the application of the doctrine does not thwart public policy, equitable estoppel can be applied against [a state agency] as long as its acts were not ultra vires.").