

between 1993 and 1997, as well as three 1994 arrests for hit and run, forgery, and driving on a suspended license,³ the Petitioner admitted that she had also been convicted of two misdemeanor shoplifting offenses. In addition, she recalled her arrests for hit and run and driving on a suspended license. She explained that the hit and run charge had arisen from a parking dispute, but that she did not leave the scene. She did not recall the 1994 forgery arrest. (Testimony of Petitioner.)

4. After the Petitioner explained these prior arrests and convictions, counsel for the Respondent asked, "Have you had any more recent arrests?" The Petitioner responded, "No, ma'am." However, in December 2014, less than one year ago, the Petitioner was arrested on four counts of financial transaction card fraud. These charges remain pending. The Petitioner explained that the charges arose when an acquaintance called and asked her for cash. In exchange, the acquaintance paid some of the Petitioner's bills with credit cards. The Petitioner testified that she did not think this request was unusual, and she was surprised to discover that the credit cards were stolen. The Petitioner's testimony in this regard was not credible. Moreover, the Petitioner's testimony as a whole regarding her post-conviction interactions with law enforcement was inaccurate and evasive. (Testimony of Petitioner.)
5. After considering all of the admissible evidence, including witness testimony and certified records of the offenses, the undersigned finds that the Petitioner's crimes did not cause physical harm to a victim and that the Petitioner has no propensity for cruel behavior. However, the Petitioner's hearing testimony was unreliable and lacked credibility in some respects. Consequently, the undersigned is unable to find that the Petitioner does not have a propensity for behavior involving moral turpitude.

II. CONCLUSIONS OF LAW

1. Under Georgia law, any adult who seeks employment at a personal care home must submit to a fingerprint records check. O.C.G.A. § 31-7-259(b). If the fingerprint records check reveals that the individual has a "criminal record" as defined in O.C.G.A. § 31-7-250(3), a preliminary determination of "unsatisfactory" is entered, and the individual is disqualified from working and/or residing at the facility unless the determination is reversed by an administrative law judge. O.C.G.A. § 31-7-259(b), (l).
2. The term "criminal record" is defined by statute to mean:
 - (A) Conviction⁴ of a crime;
 - (B) Arrest, charge, and sentencing for a crime where:
 - (i) A plea of nolo contendere was entered to the charge;

³ Because these arrests were for non-covered crimes, did not result in convictions, and/or were not offered as a basis for the unsatisfactory fingerprint records check, they have been considered only for the purpose of assessing the Petitioner's credibility as part of the mitigation determination.

⁴ As defined in O.C.G.A. § 31-7-250, "'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought."

- (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or
 - (iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or
- (C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

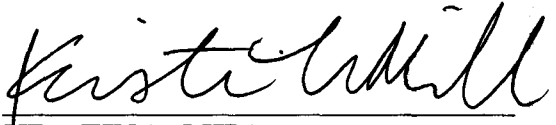
O.C.G.A. § 31-7-250(3). Disqualifying crimes include a felony violation of O.C.G.A. § 16-9-1, relating to forgery, and “[a]ny other criminal offense as determined by the [D]epartment [of Community Health] and established by rule . . . that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility,” among other enumerated offenses. O.C.G.A. § 31-7-250(2)(G), (Q).

3. Notwithstanding the existence of a criminal record, “upon motion from any party, the [administrative law judge] may, in [her] discretion, consider matters in mitigation of any conviction, provided the [administrative law judge] examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude. . . .” O.C.G.A. § 31-7-263.
4. The Respondent met its burden and proved, by a preponderance of the evidence, that the Petitioner has a criminal record within the meaning of O.C.G.A. § 31-7-250(3). The Petitioner did not present sufficient evidence to establish mitigation in accordance with O.C.G.A. § 31-7-263.

III. DECISION

For the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Respondent’s preliminary determination that the Petitioner has an unsatisfactory criminal record is **AFFIRMED**. The Petitioner’s application for authorization to work at a personal care home licensed by the Respondent, despite her criminal record, is **DENIED**.

SO ORDERED, this 4th day of November, 2015.


KRISTIN L. MILLER
Administrative Law Judge

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

CINDY KENDRICK,	:	
Petitioner,	:	
	:	
v.	:	Docket No.: OSAH-DCH-HFR-CRC-1616599-106-Miller
	:	
DCH, HEALTHCARE FACILITY REGULATION	:	Agency Reference No.: 1616599
DIVISION,	:	
	:	
Respondent.		

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Kevin Westray, kwestray@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Georgia Department of Community Health
Healthcare Facility Regulation Division
Legal Unit, Suite 32-415
2 Peachtree Street NW
Atlanta, Georgia 30303.

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).