

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

██████████,

**Petitioner,**

v.

**SCENIC VIEW PERSONAL CARE  
HOME,**

**Respondent.**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No.:**  
**OSAH-DCH-HFR-LTCPCH** ██████████  
**Miller**



JUN 06 2016

**FINAL DECISION**

**I. Introduction**

*Janet J. Ford*  
Janet J. Ford, Legal Assistant

The Petitioner in this matter has appealed his proposed involuntary discharge from the Respondent’s personal care home. The evidentiary hearing took place on May 5, 2016,<sup>1</sup> before the undersigned administrative law judge of the Office of State Administrative Hearings. Wendy Glasbrenner, Esq., represented the Petitioner. Stacy Davis, the Respondent’s administrator, appeared as the Respondent’s representative.

After consideration of the evidence and the parties’ arguments, and for the reasons stated below, the Respondent is authorized to discharge the Petitioner from its facility.

**II. Findings of Fact**

1.

The Petitioner, ██████████, is a resident of the Respondent’s facility, Scenic View Personal Care Home (“Scenic View”), where he has lived for almost one year. Scenic View is owned by Carol Seay, and its administrator is Stacy Davis. The Petitioner was placed at Scenic View with the assistance of Adult Protective Services. (Testimony of Carol Seay and Petitioner.)

2.

When the Petitioner was admitted to Scenic View, on June 16, 2015, he signed an Admission Agreement providing that “this agreement may be terminated by either party, only by 30 day written notice, except in the event the resident develops a communicable disease or a change in condition of the resident requires continuous medical or nursing care.” Both the Petitioner and Ms. Davis initialed this provision of the agreement. (Exhibit R-1.)

<sup>1</sup> The record was held open until May 19, 2016, for the parties to submit legal arguments regarding the applicability of O.C.G.A. § 13-4-4. The Petitioner filed a post-hearing legal argument. The Respondent did not.

3.

By the terms of the Admission Agreement, the Petitioner agreed that in exchange for the personal care services provided by Scenic View, he would pay \$1,200.00 per month for the first three months and \$1,500.00 per month thereafter. Although the standard rate for residents of Scenic View is \$1,500.00 per month, the facility agreed to a temporary reduction of the rate to allow the Petitioner to pay for car repairs and eliminate expenses associated with a storage unit. (Testimony of Ms. Seay and Petitioner; Exhibit R-1.)

4.

The Petitioner paid \$1,200.00, as agreed, during the first three months that he resided at Scenic View. After that, he was unable to pay the full \$1,500.00 that he owed under the terms of the Admission Agreement. He frequently paid amounts of \$800.00 or \$1,000.00 and told Ms. Seay that he would catch up his payments in the future. He has not done so. However, Ms. Seay was sympathetic regarding his financial difficulties, and she did not wish to discharge him for nonpayment. She also expected the Petitioner to leave Scenic View voluntarily, as he frequently expressed a desire to live elsewhere. Although the Petitioner never received a statement of past due fees, Ms. Seay did not tell him that he owed anything less than the full amount due under the terms of the Admission Agreement. (Testimony of Ms. Seay and Petitioner.)

5.

On several occasions, the Petitioner has run out of money before the end of the month and has been unable to refill one or more of his prescribed medications. This has caused Ms. Seay to become concerned regarding the facility's compliance with state regulations. (Testimony of Ms. Seay and Petitioner.)

6.

The Petitioner's lifestyle is different from that of the facility's other residents. The Petitioner prefers to stay out late, which can cause him to miss scheduled meal times and/or medication administrations. (Testimony of Ms. Seay.)

7.

Scenic View staff has also had concerns regarding the Petitioner's interactions with other residents. The Petitioner often displays an abrasive manner, which is of particular concern as it relates to a resident who has been diagnosed with post-traumatic stress disorder. This resident appears to become anxious and fearful in the Petitioner's presence. (Testimony of Ms. Seay, Stacy Davis, and Latrice Bartholomew.)

8.

On March 6, 2016, Ms. Seay and Ms. Davis observed the Petitioner speak in a "gruff" and "rude" tone to the resident with post-traumatic stress disorder. At that time, Ms. Davis gave the Petitioner a

hand-written note stating that he would be required to move out of the facility within thirty days. One day later, on March 7, 2016, she provided him with a typed thirty-day discharge notice and notified Adult Protective Services. The Petitioner timely appealed the proposed discharge. (Testimony of Ms. Seay, Ms. Davis, and Petitioner; Exhibits ALJ-1, ALJ-2, ALJ-3.)

### III. Conclusions of Law

1.

The Respondent, as a facility regulated by the Department of Community Health, stands in the shoes of the agency for the purpose of allocating the burden of proof at the hearing. Accordingly, the Respondent bears the burden to prove, by a preponderance of the evidence, that its proposed discharge of the Petitioner is permissible under Georgia law. Ga. Comp. R. & Regs. 616-1-2-.07(1), -.21(4). The Respondent met its burden.

2.

Prior to an involuntary discharge, a personal care home resident is entitled to a hearing to determine whether the proposed discharge violates the resident's rights under the Remedies for Residents of Personal Care Homes Act ("Act"), O.C.G.A. §§ 31-8-130 to -139.<sup>2</sup> O.C.G.A. § 31-8-135(a). In accordance with the Act, the Department of Community Health has promulgated regulations enumerating the rights of personal care home residents. These rights include, *inter alia*, the rights to privacy, to receive appropriate care, and to be free from harassment. Ga. Comp. R. & Regs. 111-8-62-.25. Here, there is no evidence that the Respondent has violated any of the Petitioner's rights as a resident of a personal care home.

3.

The Petitioner argues that involuntary discharge is not authorized because he has complied with the terms of the Admission Agreement, which he believes was revised by mutual consent. More specifically, the Petitioner contends that by accepting less than full payment for its services, Scenic View agreed to a departure from the written terms of the Admission Agreement. Therefore, according to the Petitioner, the facility was required to provide "reasonable notice . . . of intention to rely on the exact terms of the agreement" before discharging him. O.C.G.A. § 13-4-4. The Petitioner's argument is not persuasive.

4.

First, neither the Admission Agreement nor the governing statutes and regulations require the Respondent to show cause for an involuntary discharge. Rather, when a personal care home proposes to discharge a resident, "[t]he home must provide 30 days' written notice of its intent to

---

<sup>2</sup> The Petitioner asserts that the Respondent was further required to comply with the Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. §§ 31-8-100 to -127. However, because a personal care home is not a "long-term care facility" as that term is defined in O.C.G.A. § 31-8-102(3), the Bill of Rights for Residents of Long-term Care Facilities does not apply.

discharge or transfer the resident unless an immediate transfer is required. The written notice must be issued to both the resident and the representative or legal surrogate, if any.” Ga. Comp. R. & Regs. 111-8-62-29(1). The Respondent complied with this requirement,<sup>3</sup> and nothing more is required. See O.C.G.A. § 31-8-135.

5.

Further, the parties in this case did not alter the terms of the Admission Agreement. Georgia law labels a departure from the terms of a contract under which money has been paid or received a “quasi new agreement.” Circle K Stores, Inc. v. T.O.H. Assocs., 318 Ga. App. 753, 754-55 (2012); see also National Serv. Indus., Inc. v. Vafla Corp., 694 F.2d 246, 249 (11th Cir. 1982). To effectuate such a “quasi new agreement,” the departure from the terms of the original agreement must be *mutual* between the parties. Crowley v. Ford Motor Credit Co., 168 Ga. App. 162 (1983). Whether there has been a mutual departure is a question for the factfinder. See Cont. Cas. Co. v. Union Camp Corp., 230 Ga. 8, 11 (1973) (stating that question is for jury); First Union Nat’l Bank of Ga. v. Davis-Elliott, Inc., 215 Ga. App. 498, 504 (1994) (same).

6.

In deciding whether the parties intended the departure from the contract to be mutual, this Court looks to the conduct of the contracting parties. See Quintanilla v. Rathur, 227 Ga. App. 788, 791 (1997). (“[T]he conduct of the parties may be sufficient to alter the terms of an original agreement when there is evidence of a mutual, rather than unilateral, intention to depart from or disregard such terms.”). In particular, “[e]vidence of repeated, late, irregular payments, which are accepted by the creditor, creates a factual dispute as to whether a quasi new agreement is created under [O.C.G.A. § 13-4-4].”<sup>4</sup> Vaughan v. Wrenn Bros., 163 Ga. App. 383, 384 (1982). However, such evidence is not necessarily dispositive, and the facts surrounding these repeatedly late or irregular payments are equally relevant to the parties’ intent, or lack thereof, to change the contractual terms of such payments.

7.

In this case, the Court finds that Ms. Seay’s acceptance of partial payments from the Petitioner was not sufficient to alter the terms of the Admission Agreement. In fact, the Petitioner’s assurances that he would make up the difference at a later date indicate that neither he nor Ms. Seay intended to modify the contract terms. See Circle K, 318 Ga. App. at 755.

---

<sup>3</sup> To the extent the record is unclear as to whether Ms. Davis provided a written copy of the discharge notice to the Petitioner’s Adult Protective Services worker in addition to communicating with her verbally, the Petitioner has waived this issue by failing to raise it at the hearing. Moreover, the Petitioner was able to retain counsel to represent him at the hearing. His counsel, who acted as his legal surrogate, also received a copy of the discharge notice.

<sup>4</sup> The citation contained in the original, to “Code Ann. § 20-116,” is a reference to the predecessor of O.C.G.A. § 13-4-4.

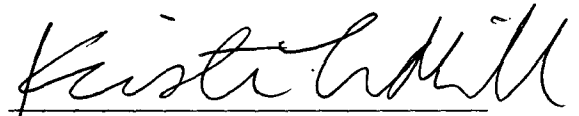
8.

The Respondent's involuntary discharge of the Petitioner from its personal care home is permissible under Georgia law.

**IV. Decision**

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent is authorized to discharge the Petitioner pursuant to O.C.G.A. § 31-8-135 and Ga. Comp. R. & Regs. 111-8-62-.29, as proposed in the written discharge notice dated March 7, 2016.

**SO ORDERED**, this 21 day of June, 2016.



**KRISTIN L. MILLER**  
**Administrative Law Judge**