



State of New Jersey

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FINAL DECISION
OAL DKT. NO. HSL 6579-13
AGENCY DKT. NO. DHU #13-005

Developmental Disabilities Licensing

Petitioner,
v.

Sylvia Hagans
Respondent.

A. INTRODUCTION

Between December 13, 2012 and March 1, 2013, the Office of Licensing (OOL) sent Sylvia Hagans three letters informing her that her Community Care Residence (CCR) license, which was then under suspension, would be reinstated when she completed a training course and passed a re-inspection of her home. The training and re-inspection were deemed a necessary requirement to ensure the safety of the home's resident. If these conditions were not met, her license would be revoked. Sylvia Hagans never scheduled any training sessions, never scheduled a home inspection, and never responded to any of these letters. On March 19, 2013, the OOL revoked Ms. Hagans' license to operate a CCR for willful non-compliance and a failure to comply with minimum licensing standards. On April 15, 2013, Ms. Hagans appealed the revocation of her license. The appeal of the revocation for willful noncompliance was transmitted to the Office of Administrative Law on April 25, 2013.

On November 5, 2014, the petitioner, the OOL, filed a motion for summary decision and on December 2, 2014 the respondent, Sylvia Hagans, filed an opposition to the motion. The petitioner asserted that there were no contested matters of fact – the respondent had not complied with the conditions of licensure. The respondent asserted a moot licensing suspension claim, contract provisions to which the OOL was not privy, and a claim that being paid to care for an individual with disabilities, removed from the premises over concerns for his safety, is a right due a CCR provider over and above the State's duty to protect an individual with developmental disabilities.

B. THE INITIAL DECISION

The initial decision is inexplicably complicated and confusing. The discussion correctly defines a Community Care Residence (CCR) and states that it must be licensed to ensure safety and well-being to its service recipients. The allegations of verbal and physical abuse that led to the suspension of Ms. Hagans' CCR license by OOL on April 27, 2012 and the removal of the service recipient by the Division of Developmental Disabilities from the household for his safety were recounted. The fact that the suspension of licensure had been superseded by the revocation of the CCR license – rendering the appeal of the suspension moot - was not discussed. The suspension's consideration two and a half years later was never successfully explained as relevant, in the initial decision.

An Office of Administrative Law case brought by the service recipient against the Division of Medical Assistance and Health Services (DMAHS) in 2012 was discussed. That case (H.D. v. Medical Assistance and Health Services, HMA 13824-12) dealt with the withholding of funding by an entity wholly unrelated to OOL. The decision in that case removed the service recipient from eligibility for payments through the Community Care Waiver program administered through DMAHS and stopped payments to Ms. Hagans in September of 2012. The OOL was not a party to the litigation and whether the suspension was litigated, dealt with, or even mentioned in the deliberations is not discussed in the initial decision relating to this CCR license revocation. The DMAHS case's relevance, or its possible excuse against the revocation, two years after it was decided, is never made clear in the initial decision.

Following the initial suspension of Ms. Hagans' license, new allegations of physical abuse and rights violations were noted to have been made by the service recipient against Ms. Hagans and investigated. The initial decision states that "Ms. Hagans had a history of unusual incident reports documenting five injuries of unknown origin between 2002 and 2004. Also, [the service recipient] consistently told investigators that respondent hit him, yelled at him, and forbid him from having bowel movements in her home." Inexplicably, the initial decision wrestles with the notion that the clause, "the Department may suspend the license, pending the outcome of an ... investigation" (N.J.A.C. 10:44B-1.6(a)) was not adopted into the Administrative Code until April 15, 2013, questioning whether a service resident could be removed from the potential danger within the household. Despite the initial decision citation of three reasons why a regulation may be applied retroactively - where the Legislature has expressed its intent either explicitly or implicitly, where the application is reasonably expected, or where it is ameliorative or curative in nature (Seashore Ambulatory Surgery Ctr., Inc. v. N.J. Dep't. of Health, 288 N.J. Super. 87, 97); the initial decision does not conclude that a vulnerable individual, housed in an accused perpetrator's private dwelling with no oversight or protection should not be removed to a place of safety. Particularly confusing in the initial decision is why removing the service recipient from the CCR during the investigation was not declared a reasonable action - having detailed the heinous allegations and mentioned the Legislative statute that granted the Commissioner of the Department of Human Services the duty and the power to regulate CCRs and create, "The regulations [that] shall assure that essential life-safety, health and comfort conditions exist in a home-like atmosphere". (N.J. Stat. § 30:11B-4).

In a footnote, the initial decision mentions that a CCR license is issued to a particular person at a unique residence. However, the initial decision fails to acknowledge that during the entire pendency of its proceedings, that Ms. Hagans did not possess a valid CCR license. Hagans' new physical plant had never been inspected by the OOL to insure the health, welfare, or safety of

any service recipient. On December 13, 2012, when the OOL notified Ms. Hagens that in order to reinstate her license she was required to take a training course, the OOL also notified her that her license was not transferrable from her old residence in Williamstown, NJ to her new residence in Sicklerville. At the time of Ms. Hagens' move, her CCR licensure became automatically invalid, even if it had not already been suspended. In addition to three reminders that she needed to go to training, the OOL implicitly reminded her with each notice that Ms. Hagan would need to also have her new residence inspected before she could be issued a CCR license. After the three notices went unanswered, the OOL sent a notification revoking Ms. Hagens' CCR license for reasons wholly unrelated to the reasons for the suspension. The initial decision needlessly prevaricates over the suspension of a non-existent licensure. The only issue to be decided is the superseding action of the revocation of the CCR license. The only issue of fact to be decided in the motion for summary decision was Ms. Hagens' failure to comply with the conditions to reinstate her CCR license.

The initial decision closes by finding that there are no disputed facts to be decided in the motion for summary decision. The OOL was authorized by law to impose conditions for the reinstatement of Ms. Hagens' CCR license. Ms. Hagens, having been given three notifications of the need to take additional trainings in order to reinstate her license, failed to take any training. There being no factual dispute that Ms. Hagens failed to attend the required training; the motion for summary decision, revoking Ms. Hagens' license, was granted.

C. EXCEPTIONS

No exceptions to the Initial Decision were received.

D. FINAL DECISION

STATEMENT OF APPLICABLE LAW

Hagens' case is almost identical to the case of Developmental Disabilities Licensing v. Lydia Anderson (OAL Docket Number HSL 037033-2012N). The Anderson case should be deemed as precedent. In that case, a CCR provider was substantiated as having medically neglected a service recipient and her license suspended. The OOL determined that the CCR provider could have her license reinstated provided that she attended training classes. The OOL sent the CCR provider a series of notifications about the trainings and also warning that failure to attend the trainings would result in the revocation of her CCR license. The CCR provider refused to attend any training and the OOL revoked her CCR license for failing to attend the training. After a thorough hearing, the Office of Administrative Law's initial decision was issued on July 23, 2012. Following several delays, extensive exceptions and comments were received by the agency; a Final Agency Decision was then issued by the Department of Human Services on January 25, 2013. The initial decision concluded that the Office of Licensing, within the Department of Human Services, is charged with the protection of individuals with developmental disabilities. The OOL is authorized by law to require training of service providers that OOL deems necessary to insure the health, safety, and welfare of its service recipients. The Administrative Law Judge (ALJ) affirmed the OOL's action concerning the willful failure of the CCR provider to take the required training and ordered the CCR's license revoked. The Final Agency Decision in the Anderson case concurred with and adopted the decision of the ALJ. The

Final Agency Decision affirmed the order to revoke the CCR license for failure to meet the terms of licensure and willful non-compliance by failing to meet the conditions for license reinstatement. The Final Agency Decision was appealed to the Appellate Division and received a hearing before three judges on May 20, 2015. In an unpublished opinion (Superior Court Appellate Division, unpublished opinion DKT. No A-4420-12T3) dated October 13, 2015, the court affirmed the Final Agency Decision to revoke the CCR license due to her failure to meet the minimum standards to protect the rights, health and welfare of a vulnerable population as described in N.J.A.C.10:44B.

N.J.S.A. 30:11B-4, in discussing licensed residences for individuals with developmental disabilities, clearly expresses the Legislature's intent that the Department of Human Services create and enforce appropriate rules, stating:

"All such residences which are operated by any individual or individuals, corporation, partnership, society or association, whether public or private, whether incorporated or unincorporated, whether for profit or nonprofit, shall be licensed by the Department of Human Services or Department of Children and Families, as applicable, under appropriate regulations promulgated by the commissioner or the Commissioner of Children and Families, as applicable. Such regulations shall govern the operation and maintenance of residences, and prescribe conditions for admission and discharge of residents. The regulations shall assure that essential life-safety, health and comfort conditions exist in a home-like atmosphere."

FINDINGS AND CONCLUSIONS OF LAW

Careful consideration was given to the entirety of the Initial Decision of the Administrative Law Judge. Because the initial decision contained errors of applicable law, the entire record was given a greater scrutiny. Upon review, several arguments and legal determinations were found to be more unsupported dicta than conclusions of fact or law. The recommended decision of the ALJ is hereby **MODIFIED** and **basically AFFIRMED** by the Office of Program Integrity and Accountability.

I find that the initial decision must be modified to state that, the suspension of Hagans' CCR license is of no consequence in this matter. The suspension was superseded by the revocation of the CCR license. The revocation was done for reasons completely unrelated to the suspension. The suspension is a moot issue and is of no moment in this proceeding. Also, this licensure revocation action is not in any way affected by the contractual payments involving the Division of Medical Assistance and Health Services and the service recipient. Further, and more importantly, the Department of Human Services has (since at least March 2, 1978, when the statute mandating the licensure of CCRs went into effect) the duty and the authority to remove service recipients from residences to ensure their health, safety, and welfare when there is a question of a potential danger facing them by their remaining in a licensed residence.

I find that Sylvia Hagans was notified repeatedly that she was required to attend training and submit to a successful inspection of her home in order to obtain a reinstatement of her Community Care Residence license. I find that the requests for training and inspection are necessary, proper, and reasonable to meet minimum licensing standards. I find that, despite being

warned repeatedly that failure to complete the requests would result in a revocation of her license, Ms. Hagans willfully refused to meet the requirements. I find that there is no evidence whatsoever that Ms. Hagans attempted to meet the requirements. I find that the willful failure of a CCR provider to take required training or to submit to an inspection of the household's physical structure is proper justification for a CCR license to be revoked.

I **FIND** that the order granting the OOL a summary decision affirming the revocation of Sylvia Hagans' CCR license was correct. I further **CONCLUDE** and **ORDER** that Ms. Hagans' license be revoked for the reasons stated above and that order is hereby **AFFIRMED** as the Final Agency Decision of the Department of Human Services in this matter.

Date: 1/26/14



Lauri Woodward, Director
Office of Program Integrity and Accountability
Department of Human Services