



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON, NJ 08625-0700

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

ELIZABETH CONNOLLY
COMMISSIONER

FINAL DECISION
OAL DKT. NO. HSL 6699-16
AGENCY DKT. NO. DHU# 16-003

AGATHA WALTER,

Petitioner,

v.

**OFFICE OF LICENSING,
DEPARTMENT OF HUMAN SERVICES,**

Respondent.

A. INTRODUCTION

On April 28, 2016, Agatha Walter filed an appeal disputing the revocation of her license to operate a Community Care Residence (CCR). The revocation was based upon substantiated allegations that, in violation of N.J.A.C. 10:44B et. al., she neglected B.P., a Division of Developmental Disabilities service recipient who resided in her home. The matter was transmitted to the Office of Administrative Law ("OAL") and filed there on May 3, 2016. On August 21, 2017, the Office of Licensing filed a motion for summary decision. On October 12, 2017, Ms. Walter filed a letter in opposition to respondent's motion, and on October 30, 2017, respondent filed its reply.

The Office of Licensing (OOL) argued that its decision on March 31, 2016, to revoke petitioner's CCR license should be affirmed due to petitioner's medical neglect of a person served. She was instructed on multiple consecutive visits by B.P.'s case manager, to take B.P. to have a medically prescribed blood evaluation done, but she failed to do so. Ms. Walter received training and was paid by the Department of Human Services (DHS) to take B.P. to get her blood work done; Ms. Walter failed to do so despite repeated requests. Withholding medical treatment is a form of neglect, and neglect is one of the reasons to revoke a CCR license. Ms. Walter admitted that she was told to obtain the blood work, admitted that she lost a prescription, and failed to take B.P. to the doctor to obtain blood work. The Administrative Law Judge determined there was no dispute of material fact in the matter, and that DHS must prevail as a matter of law.

The petitioner recounted having personal problems during this period and that loss of her license would be a hardship. However, she did not deny that she lost B.P.'s prescription, that she neglected to obtain another copy of B.P.'s paperwork, or that she did not obtain the prescribed blood work.

B. THE INITIAL DECISION

1. ALJ's Findings

Based upon a review of the documentary evidence attached as exhibits to the Certification in Support of respondent's Motion for Summary Decision Pursuant to N.J.A.C. 1:1-12.5, submitted with the respondent's letter brief, the ALJ found the following to be the undisputed facts:

(1). The Department of Human Services licensed Ms. Walter to operate a CCR. A CCR is a private home, owned by a licensee, who resides in their own home with family and one or more consumers. An individual seeking to provide care to a DDD consumer in their home must maintain a license from the Department's OOL to ensure the safety and well-being of individuals with developmental disabilities entrusted to their care. On July 9, 2015, B.P.'s guardian requested to have B.P.'s medication changed. Petitioner admits that she was charged with obtaining the medication change from B.P.'s rheumatologist. On or around October 14, 2015, the rheumatologist gave petitioner a prescription to get B.P.'s blood work done before switching medication. On October 19, 2015, the DDD Case Manager followed up with petitioner about B.P.'s medication change and the status of the blood work. Petitioner admitted that she had not yet taken B.P. for her blood work. At that time, the DDD case manager directed petitioner to take B.P. for the blood work immediately.

(2). On November 18, 2015, petitioner told the DDD case manager that she was waiting for B.P.'s blood work results from the rheumatologist. Concerned with the delay, the DDD case manager contacted the rheumatologist's office directly to inquire about the status of B.P.'s blood work. The doctor told the DDD case manager that B.P.'s blood work had never been completed. Ms. Walter admitted through discovery that as of November 23, 2015, she had in fact not taken B.P. for blood work. When the Ms. Walter was confronted by the DDD case manager, she claimed to have lost B.P.'s prescription for the blood work. The DDD case manager had to obtain a new prescription directly from the rheumatologist's office. As a result, the DDD case manager filed an Unusual Incident Report alleging neglect, which DHS subsequently investigated.

(3). On December 9, 2015, a DDD interviewed Ms. Walter about the incident of neglect. Ms. Walter handwrote her response to the DDD Investigator's interview questions. She has certified that her handwritten responses were truthful and accurate.

(4). On January 18, 2016, the DDD Investigator completed his investigation and determined that the allegations of neglect were substantiated. On March 31, 2016, DHS revoked petitioner's license to operate a CCR.

The ALJ stated: "N.J.A.C. 1:1-12-5 governs motions for summary decisions. The provisions of N.J.A.C. 1:1-12-5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. Pursuant to these rules, a case may be dismissed before it is

heard if, based on the papers and discovery which have been filed, it can be decided “that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12-5(b). To survive summary decision, the opposing party must show that “there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. Failure to do so entitles the moving party to summary judgment. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995).” Brill, supra, 142 N.J. at 533.

The ALJ then analyzed whether there were any material facts in dispute; that would disallow the matter to be decided by way of summary decision. “An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submissions of the issues to the trier of fact.” R.4:46-2. While it is true that a judge is not to “weigh evidence and determine the truth of the matter,” Brill, supra at 540, “there is in this process a kind of weighing that involves a type of evaluation, analysis and sifting of evidential materials.” Id. at 536. Thus, a judge is to scrutinize the competent evidential materials presented, in a light most favorable to the non-moving party, and consider whether a rational fact-finder could resolve the disputed issue in favor of the non-moving party. Id. at 540.

When a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth, by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing a summary judgment motion “who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant’s papers.” Burlington Cnty. Welfare Bd. v. Stanley, 214 N.J. Super. 615 (App. Div. 1987). The New Jersey Supreme Court’s standard for summary judgment is thus designed to “liberalize the standards so as to permit summary judgment in a larger number of cases” due to the perception that we live in “a time of great increase in litigation and one in which many meritless cases are filed Brill, supra at 539.

The ALJ next explored whether or not the revocation of the CCR license was warranted. The overarching issue was whether the substantiated allegations that Ms. Walter neglected a service recipient justified the revocation of that license. Ms. Walter concedes that she failed to comply with the conditions. However, she asserts that she will become unemployable, if her CCR license is revoked.

CCRs for the developmentally and mentally disabled are governed under N.J.S.A. 30:11B-1 to -7. N.J.S.A. 30:11B-4 authorizes the Commissioner to promulgate regulations governing the operation and maintenance of such residences. N.J.A.C. 10:44B-1.6(a) provides that “[t]he Department may revoke a license whenever the licensee shall be found to be violating any State or Federal law pertaining to community care residences or whenever such residence shall fail to comply with the minimum standards established by the Department.” In addition, N.J.A.C. 10:44B-1.6(b) sets forth that, “if any inspection, investigation, or inquiry by the Department reveals substantial non-compliance or willful non-compliance with the rules contained in this chapter, or if any non-compliance represents a threat to the health, safety, or rights of the individuals or boarders, licensure may be denied or revoked, following 30-day notice to the provider of such intent.”

The ALJ concluded that the petitioner violated N.J.A.C. 10:44B-1.6(b) and that revocation was appropriate pursuant to N.J.A.C. 10:44B-1.6(a). The ALJ found that there were no disputed facts in the case. The ALJ cited the definition of neglect in N.J.A.C. 10:44-B-1.3 and recounted the

chronological events that showed Ms. Walter failed to obtain a prescribed medical procedure for a service recipient over the course of four months, despite numerous reminders (even lying to the case manager), and led to the proper revocation of the CCR license. The ALJ stated, "It is undisputed that petitioner neglected B.P. by failing to take her for required blood work, resulting in the revocation of her license. In addition, petitioner failed to tell the truth when confronted about the failure to obtain the blood test. Personal circumstances occurring in petitioner's personal life do not excuse her behavior, or her failure to provide honest information to her case manager. Because there is no factual dispute, the respondent's motion should be granted."

2. **ALJ's Conclusions**

From the findings listed above, the ALJ concluded that the Office of Licensing's motion for summary disposition should be granted.

3. **ALJ's Order**

The ALJ ordered that DHS's Motion for Summary Decision should be granted and that Agatha Walter's license to operate a Community Care Residence should be revoked.

EXCEPTIONS

No exceptions were filed.

C. FINAL AGENCY DECISION

Pursuant to N.J.A.C. 1:1-18.1(f) and based upon a review of the ALJ's Initial Decision and the entirety of the OAL file, I concur with the Administrative Law Judge's findings and conclusions. I **CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that Agatha Walter neglected a service recipient under her care by failing to obtain a prescribed medical procedure in a timely or reasonable period of time. I further **CONCLUDE and AFFIRM** that there is a preponderance of the evidence that the revocation of Ms. Walter's CCR license, as described in N.J.A.C. 10:44B-1.6(a), license was proper and necessary. The ALJ correctly found that there were no material facts in dispute. Therefore, the matter was correctly decided by way of summary decision because there were no relevant facts in dispute that would necessitate a hearing, as a matter of law.

Therefore, pursuant to N.J.A.C 1:1-18.6(d), it is the Final Decision of the Department of Human Services that I **ORDER** the revocation of Agatha Walter's license to operate a Community Care Residence.

Date: _____

1/9/18



Lauri Woodward, Director

Office of Program Integrity and Accountability



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING SUMMARY DECISION

OAL DKT. NO. HSL 6699-16

AGENCY DKT. NO. DHU 16-003

AGATHA WALTER,

Petitioner,

v.

OFFICE OF LICENSING, DEPARTMENT

OF HUMAN SERVICES,

Respondent.

Agatha Walter, petitioner, pro se

Ragner E. Jaeger, Deputy Attorney General, for respondent, (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: October 30, 2017

Decided: December 13, 2017

BEFORE EDWARD J. DELANOY, JR., ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On April 28, 2016, petitioner filed an appeal disputing the revocation of her license to operate a Community Care Residence ("CCR") due to substantiated allegations that petitioner neglected B.P., a DDD service recipient who resided in her

home, in violation of N.J.A.C. 10:44B et. al. The matter was transmitted to the Office of Administrative Law ("OAL") and filed there on May 3, 2016. On August 21, 2017, the respondent filed a motion for summary decision. On October 12, 2017, the petitioner filed a letter in opposition to respondent's motion, and on October 30, 2017, respondent filed its reply.

The respondent argues that the Office of Licensing's ("OOL's") decision to revoke petitioner's CCR license should be affirmed, because on March 31, 2016, petitioner's CCR license was revoked due to medical neglect. She was told on multiple consecutive visits to get B.P.'s blood work done, but she failed to do so. She received training and was paid to take B.P. to get her blood work done, but she failed to do so despite repeated requests. Withholding medical treatment is considered a form of neglect, and neglect is a reason to revoke a CCR license. Petitioner admitted that she was told to obtain the blood work and admitted that she lost a prescription and failed to take B.P. to the doctor to obtain blood work. As such, there is no dispute of material fact in this matter, and DHS must prevail as a matter of law

The petitioner maintains that she was going through a difficult divorce at the time the incident occurred, and that she lost everything as a result. She will become unemployable if her CCR license is revoked. Petitioner did not deny that she lost B.P.'s prescription or that she neglected to obtain B.P.'s paperwork.

FACTUAL DISCUSSION

The Department of Human Services licensed the respondent to operate a CCR. A CCR is a private home, owned by a licensee, who resides in their own home with family and one or more consumers. An individual seeking to provide care to a Department of Developmental Disability (DDD) consumer in their home must maintain a license from the Department's OOL to ensure the safety and well-being of individuals with developmental disabilities entrusted to their care.

On July 9, 2015, B.P.'s guardian requested to have B.P.'s medication for as needed pain changed from Tylenol to Naproxen. See Exhibit 1, Petitioner's Response to Admissions at 6.¹ Petitioner admits that she was charged with obtaining the medication change from B.P.'s rheumatologist. Ibid.

On or around October 14, 2015, the rheumatologist gave petitioner a prescription to get B.P.'s blood work done before switching medication. Id. at 5. On October 19, 2015, the DDD Case Manager, Patricia Negron, followed up with petitioner about B.P.'s medication change and the status of the blood work. Petitioner admitted that she had not yet taken B.P. for her blood work. Id. at 8. As such, the DDD case manager directed petitioner to take B.P. for the blood work immediately. Ibid.

On November 18, 2015, petitioner told the DDD case manager that she was waiting for B.P.'s blood work results from the rheumatologist. Id. at 11. Concerned with the delay, the DDD case manager contacted the rheumatologist's office directly to inquire about the status of B.P.'s blood work. The doctor told the DDD case manager that B.P.'s blood work had never been completed. Petitioner admitted through discovery that as of November 23, 2015, she had in fact not taken B.P. for blood work. Id. at 10. When the petitioner was confronted by the DDD case manager, she claimed to have lost B.P.'s prescription for the blood work. Id. at 12. The DDD case manager had to obtain a new prescription directly from the rheumatologist's office. As a result, the DDD case manager filed an Unusual Incident Report alleging neglect, which DHS subsequently investigated.

On December 9, 2015, DDD Investigator Quality Assurance Specialist, Sean O'Brien, interviewed petitioner about the incident of neglect. Exhibit 2. Petitioner handwrote her response to the DDD Investigator's interview questions. Id. Petitioner has certified that her handwritten responses were truthful and accurate. Exhibit 1 at 14-15. On January 18, 2016, the DDD Investigator completed his investigation and determined that the allegations of neglect were substantiated. On March 31, 2016, DHS revoked petitioner's license to operate a CCR.

¹ Citations are to exhibits attached to the Certification in Support of respondent's Motion for Summary Decision Pursuant to N.J.A.C. 1:1-12.5, submitted with the respondent's letter brief.

LEGAL DISCUSSION

A. Summary Decision Standard

N.J.A.C. 1:1-12-5 governs motions for summary decisions. The provisions of N.J.A.C. 1:1-12-5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. Pursuant to these rules, a case may be dismissed before it is heard if, based on the papers and discovery which have been filed, it can be decided “that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12-5(b). To survive summary decision, the opposing party must show that “there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. Failure to do so entitles the moving party to summary judgment. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995).

“An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submissions of the issues to the trier of fact.” R.4:46-2. While it is true that a judge is not to “weigh evidence and determine the truth of the matter,” Brill, supra at 540, “there is in this process a kind of weighing that involves a type of evaluation, analysis and sifting of evidential materials.” Id. at 536. Thus, a judge is to scrutinize the competent evidential materials presented, in a light most favorable to the non-moving party, and consider whether a rational fact-finder could resolve the disputed issue in favor of the non-moving party. Id. at 540.

When a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth, by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing a summary judgment motion “who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant’s papers.” Burlington Cnty. Welfare Bd. v. Stanley, 214 N.J. Super. 615 (App. Div. 1987). The New Jersey Supreme Court's

standard for summary judgment is thus designed to “liberalize the standards so as to permit summary judgment in a larger number of cases” due to the perception that we live in “a time of great increase in litigation and one in which many meritless cases are filed.” Id. at 539 (citation omitted).

B. The revocation of respondent’s CCR license was warranted.

The overarching issue to be decided is whether substantiated allegations that petitioner neglected B.P., a DDD service recipient who resided in her home, warrants the revocation of that license. Petitioner concedes that she failed to comply with the conditions. However, she asserts that she will become unemployable if her CCR license is revoked.

CCR for the developmentally and mentally disabled are governed under N.J.S.A. 30:11B-1 to -7. N.J.S.A. 30:11B-4 authorizes the Commissioner to promulgate regulations governing the operation and maintenance of such residences. A CCR is defined as “a private house or apartment in which a person 18 years or older or family contracts with the Department [of Human Services] to provide individuals with developmental disabilities or persons with traumatic brain injury with care and a level of training and supervision that is based upon the documented needs and wishes of the individuals placed in the residence.” N.J.A.C. 10:44B-1.3.

Petitioner’s license was revoked on March 31, 2016.

N.J.A.C. 10:44B-1.6(a) provides that “[t]he Department may revoke a license whenever the licensee shall be found to be violating any State or Federal law pertaining to community care residences or whenever such residence shall fail to comply with the minimum standards established by the Department.” In addition, N.J.A.C. 10:44B-1.6(b) sets forth that, “if any inspection, investigation, or inquiry by the Department reveals substantial non-compliance or willful non-compliance with the rules contained in this chapter, or if any non-compliance represents a threat to the health, safety, or rights of the individuals or boarders, licensure may be denied or revoked, following 30-day

notice to the provider of such intent.” Thus, petitioner violated N.J.A.C. 10:44B-1.6(b) and revocation is appropriate pursuant to N.J.A.C. 10:44B-1.6(a).

C. There are no genuine issues of material fact.

There are no genuine issues of material fact in the instant case that would necessitate a hearing. N.J.A.C. 10:44-B-1.3 defines “neglect” as

the failure of any person responsible for the welfare of an individual to provide the needed supports and services to ensure the health, safety, and welfare of the individual. These supports and services may or may not be defined in a plan of care for the individual, or otherwise required by law or rule. Neglect includes acts that are intentional, unintentional, or careless, regardless of the incidence of harm inflicted on the individual. Examples include, but are not limited to, the failure to provide needed care such as shelter, food, clothing, supervision, attention to personal hygiene, medical care, and protection from health and safety hazards.

Here, petitioner neglected B.P. because she failed to provide and maintain B.P.’s health care. On or around July 2015, B.P.’s guardian requested that petitioner change B.P.’s as needed pain medication in order to provide and maintain B.P.’s health care. Petitioner knew that she had to take B.P. for blood work before the doctor would change the medication as B.P.’s doctor provided a prescription requiring the same. Petitioner admits that the DDD case manager asked about the status of B.P.’s blood work on multiple occasions over the four (4) months that followed. On or around November 2015, petitioner told the DDD case manager she was waiting for the results of B.P.’s blood work. The DDD case manager inquired with B.P.’s doctor and learned that petitioner had lied to her about the blood work taking place. When confronted about the lie, petitioner claimed that she had lost B.P.’s prescription. As a result, the Division of Human Services concluded that pursuant to N.J.A.C. 10:44B-1.3, petitioner neglected B.P. as she failed to take her for the required blood work. As a result, petitioner’s license to operate a CCR was revoked.

There are no disputed facts here. It is undisputed that petitioner neglected B.P. by failing to take her for required blood work, resulting in the revocation of her license. In addition, petitioner failed to tell the truth when confronted about the failure to obtain the blood test. Personal circumstances occurring in petitioner's personal life do not excuse her behavior, or her failure to provide honest information to her case manager. Because there is no factual dispute, the respondent's motion should be granted.

CONCLUSION

Based upon the foregoing, I **CONCLUDE** the respondent's, Development Disability Licensing's, motion for summary decision should be granted.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**. Petitioner's CCR license is revoked as of March 31, 2016.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY**, who by law is authorized to make a final decision in this matter. If the Director of the Office of Program Integrity and Accountability does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the, **ADMINISTRATIVE HEARINGS COORDINATOR, OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY, 222 South Warren Street, 4th Floor, PO Box 700, Trenton, NJ 08625-0700**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



December 13, 2017

DATE

EDWARD J. DELANOY, JR., ALJ

Date Received at Agency:

Date Mailed to Parties:

mph