



RICK SNYDER
GOVERNOR

State of Michigan
DEPARTMENT OF HUMAN SERVICES
BUREAU OF CHILDREN AND ADULT LICENSING



MAURA D. CORRIGAN
DIRECTOR

December 29, 2014

Ms. Debra Kolnitys, Administrator
Rolling Acres Adult Foster Care, Inc.
11229 US 25 South
Ossineke, MI 49766

Re: **MAHS Docket No. 14-015942-DHS**
License AM350296751

Dear Ms. Kolnitys:

On or about December 11, 2014, you were mailed a copy of the Final Decision and Order upholding the agency's revocation of your license to operate an adult foster care small group home. In accordance with that Decision and Order, your license has been revoked effective December 22, 2014. It is further understood that you will not receive adults for care now, or in the future, without being properly licensed.

Sincerely,

Jerry Hendrick, Acting Director
Adult Foster Care/Homes for the Aged Licensing Division
Bureau of Children and Adult Licensing

JH:kam

cc: Betsy Montgomery, Area Manager
Bruce A. Messer, Licensing Consultant

Certified Mail- Return Receipt Requested

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Rolling Acres Adult Foster Care, Inc.,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 14-015942-DHS

Case No.: AM 350296751

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 11 day of December, 2014
by
Maura D. Corrigan, Director
Department of Human Services

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BUREAU OF CHILDREN
AND ADULT LICENSING

FINAL DECISION AND ORDER

This matter began on April 7, 2014, with Respondent's notice of intent to revoke license (Notice) regarding Petitioner's license to operate an adult foster family small group home pursuant to the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.701 *et seq.* A properly noticed hearing was held by Administrative Law Judge Christopher S. Saunders (ALJ) on September 8, 2014. Assistant Attorney General Kristin Heyse represented Respondent. Neither Petitioner nor an attorney appeared on behalf of Petitioners.

Upon Petitioner's failure to appear and at the request of Respondent, the ALJ entered a Default Judgment against Petitioner pursuant to Sections 72(1) and 78(2) of the Administrative Procedures Act of 1969, as amended, MCL 24.201 *et seq.* (APA).

The notice being incorporated into the hearing as a part of Respondent's pleadings and as a result of Petitioner's failure to appear at the hearing to contest the facts placed on the record as presented in the notice, the ALJ found the facts as alleged by Respondent to be true and accurate. Therefore, the ALJ properly concluded that Petitioner violated the rules as alleged by Respondent.

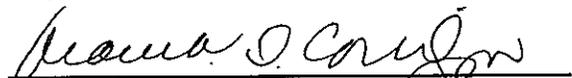
October 8, 2014, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioners willfully and substantially violated Rule 400.14315 (2), (8), & (12); Rule 400.14305 (1); Rule 400.14201 (2) & (9)(a); and Rule 400.14301 (9). No exceptions were filed.

I concur in the ALJ's findings of fact and conclusions of law.

ORDER

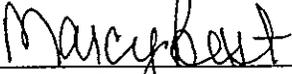
NOW THEREFORE, IT IS ORDERED:

1. That the ALJ's Proposal for Decision (PFD) is adopted in its entirety and is incorporated by reference and made a part of this Final Decision and Order (see attached PFD).
2. That the actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. That Petitioner's license is REVOKED, effective on the date this Final Decision and Order is issued and entered.


Maura D. Corrigan, Director
Department of Human Services

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 11th day of December, 2014.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 14-015942-DHS

Rolling Acres Adult Foster Care, Inc.,
Petitioner

Case No.: AM 350296751

v

Agency: Department of
Human Services

Bureau of Children and Adult Licensing,
Respondent

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 8th day of October, 2014
by: Christopher S. Saunders
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This matter commenced on April 7, 2014, with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing a Notice of Intent to Revoke License (Notice), regarding the license of Rolling Acres Adult Foster Care, Inc. (Petitioner) to operate an adult foster care small group home pursuant to the authority of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.701 *et seq.* On July 14, 2014, Respondent issued an Order of Summary Suspension and Amended Notice of Intent to Revoke License to Petitioner. Petitioner subsequently filed a request for hearing. On July 15, 2014, the request for hearing was forwarded to the Michigan Administrative Hearing System (MAHS).

On July 16, 2014, the Michigan Administrative Hearing System issued a Notice of Hearing, scheduling a hearing for September 8, 2014. The hearing commenced as scheduled on September 8, 2014.

Petitioner did not appear at the scheduled hearing. The Notice of Hearing, which scheduled the hearing for September 8, 2014 was sent to Petitioner at the last known address thereof. Petitioner did not request an adjournment of the scheduled hearing date. Petitioner did not appear for the hearing nor did an attorney appear on its behalf. Assistant Attorney General Kristin Heyse appeared on behalf of Respondent. On September 5, 2014, Respondent's attorney sent a communication to MAHS indicating that Petitioner had an attorney at some point, that she was not sure if the representation

was continuing, and that she did not think that said attorney received the Notice of Hearing as she did not think an appearance was filed with MAHS. There is no record of an attorney appearance being filed with MAHS on behalf of Petitioner, nor was there any communication received from an attorney's office on behalf of Petitioner. Ms. Heyse stated that she had been in communication with the alleged attorney's office and advised them of the date for hearing. However, even with such communication from Ms. Heyse, there was no contact or attempted contact with MAHS by an attorney on behalf of Petitioner.

Pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, the hearing proceeded in Petitioner's absence. Additionally, Respondent requested a default judgment and such was entered against Petitioner pursuant to Section 78 of the APA.

Section 72(1) of the APA provides:

If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Section 78(2) of the APA provides:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

As a result of the default, the factual allegations contained in Respondent's Amended Notice of Intent to Revoke License are deemed true. As such, no formal testimony was taken at the proceeding and no exhibits were admitted.

ISSUES AND APPLICABLE LAW

The general issue presented is whether the Petitioner's conduct provides grounds for Respondent to refuse to renew Petitioner's license. At specific issue are the alleged willful and substantial violations of Rule 400.14315(2), (8), and (12); Rule 400.14305(1); Rule 400.14201(2) and (9)(a); and Rule 400.14301(9), which provide in pertinent part:

R 400.14315 Handling of resident funds and valuables. . . .

Rule 315.

* * *

- (2) The care of any resident funds and valuables that have been accepted by a licensee for safekeeping shall be treated by the licensee as a trust obligation.

* * *

- (8) All resident fund transactions shall require the signature of the resident or the resident's designated representative and the licensee or prior written approval from the resident or the resident's designated representative.

* * *

- (12) Charges against the resident's account shall not exceed the agreed price for the services rendered and goods furnished or made available by the home to the resident.

R 400.14305 Resident protection.

Rule 305.

- (1) A resident shall be assured privacy and protection from moral, social, and financial exploitation.

R 400.14301 Resident admission criteria; resident assessment plan; emergency admission; resident care agreement; physician's instructions; health care appraisal.

Rule 301.

* * *

- (9) A licensee shall review the written resident care agreement with the resident or the resident's designated representative and responsible agency, if applicable, at least annually or more often if necessary.

R 400.14201 Qualifications of administrator, direct care staff, licensee, and members of household; provision of names of employee, volunteer, or member of household

on parole or probation or convicted of felony; food service staff.

Rule 201.

* * *

- (2) A licensee shall have the financial and administrative capability to operate a home to provide the level of care and program stipulated in the application.

* * *

- (9) A licensee and the administrator shall possess all of the following qualifications:
- (a) Be suitable to meet the physical, emotional, social, and intellectual needs of each resident.

The definitions for the words "willful and substantial" should also be noted. These definitions are provided in R400.16001(c),(d)&(e) as used in 1973 PA 116 as amended:

R400.16001

- (c) "Noncompliance" means a violation of the act or act 218, an administrative rule promulgated under the act or act 218, or the terms of a license or a certificate of registration.
- (d) "Substantial noncompliance" means repeated violations of the act or act 218 or an administrative rule promulgated under the act or act 218, or noncompliance with the act or act 218, or a rule promulgated under the act or act 218, or the terms of a license or a certificate of registration that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.
- (e) "Willful noncompliance" means, after receiving a copy of the act or act 218, the rules promulgated under the act or act 218 and, for a license, a copy of the terms of a license or a certificate of registration, an applicant or

licensee knew or had reason to know that his or her conduct was a violation of the act or act 218, rules promulgated under the act or act 218, or the terms of a license or a certificate of registration.

FINDINGS OF FACT

Based on the entire record in this matter, including the default and pleadings, the following findings of fact are established:

1. On or about September 17, 2009, Petitioner was issued a license to operate an adult foster care small group home with a licensed capacity of 12 at 751 Newman Street, East Tawas, MI 48730.
2. Debra Kolnitys is the Licensee Designee and the Administrator at Respondent facility.
3. On October 26, 2011, Ms. Kolnitys and Resident A signed a resident care agreement. Resident A is elderly and suffers from mild dementia. In said agreement, Resident A agreed to pay Licensee \$2,000.00 per month for the adult foster care services specified in his written assessment plan. There were no transportation costs or fees for additional purchases, such as incontinence products and shopping fees specified in the agreement.
4. On February 17, 2012, Resident A executed a General Durable Power of Attorney (GDPOA) authorizing Debra Kolnitys to act on his behalf in financial matters involving real property and personal property. The GDPOA did not authorize Ms. Kolnitys to act on Resident A's behalf to make care, custody, and other health care related decisions for him.
5. On April 13, 2012, Debra Kolnitys completed and signed a resident care agreement that increased the cost of Resident A's care from \$2,000.00 to \$2,100.00. There were no transportation costs or fees for additional purchases, such as incontinence products and shopping fees specified in the agreement. Ms. Kolnitys did not obtain Resident A's signature on the agreement but rather signed his name for him.
6. On April 30, 2013, Debra Kolnitys reviewed and signed Resident A's care agreement, maintaining the cost of \$2,100.00 per month for Resident A's care. There were no transportation costs or fees for additional purchases, such as incontinence products and shopping fees specified in the agreement. Ms. Kolnitys did not obtain Resident A's signature on the agreement but rather signed his name for him.

7. According to Resident A's Resident Funds Part II form, on April 1, 2012, Licensee charged Resident A \$2,100.00 for adult foster care services for the month of April 2012. The resident care agreement in effect on April 1, 2012 specified a cost of \$2,000.00 per month for services.
8. On August 19, 2013, Licensee faxed Licensing Consultant Kathleen Gutierrez a list of the fees and costs charged to Resident A from January 2013 to September 2013. The list indicated that Licensee charged Resident A \$2,200.00 for the month of May 2013 for adult foster care services. The resident care agreement in effect on May 1, 2013 specified a cost of \$2,100.00 per month for services.
9. On June 1, 2013, Debra Kolnitys completed and signed another resident care agreement that increased the cost of Resident A's care from \$2,100.00 to \$2,200.00 per month. There were no transportation costs or fees for additional purchases, including incontinence products and shopping fees specified in the agreement.
10. According to the list of fees and costs submitted by Licensee, Licensee charged Resident A \$2,300.00 for the month of July 2013 for adult foster care services. The resident care agreement in effect on July 1, 2013 specified a cost of \$2,200.00 for services.
11. According to the list of fees and costs submitted by Licensee, Resident A was charged \$130.00 a month for Depends undergarments from January 2013 through September 2013. On April 11, 2013, Licensee charged Resident A \$2,100.00, noting "dep (Depends) and misc." On July 18, 2013, Licensee charged Resident A an additional \$1,000.00 for Depends undergarments. The additional charges were not specified in any of Resident A's care agreements.
12. On August 16, 2013, Ms. Gutierrez interviewed Ms. Kolnitys about the additional charges for Depends and miscellaneous items for Resident A. Ms. Kolnitys stated that when she purchased these items for any of the residents, she rounded the actual cost up to a "round" number so she could pay herself for shopping and because she found it difficult to divide the amount if it was not "rounded up". Licensee did not specify in the resident care agreements that she would be charging the residents for her time to shop for these items.
13. Ms. Kolnitys stated that she was not very good at bookkeeping and did not have receipts for any of the Depends undergarments and miscellaneous purchases made with Resident A's money.

14. During her interview with Ms. Gutierrez on August 16, 2013, Ms. Kolnitys admitted to paying a credit card bill in a former resident's name with Resident A's money. This occurred around February 2013, and the amount paid totaled \$307.77. Licensee did not have prior written approval from Resident A to pay a former resident's bill.
15. On April 17, 2014, Debra Kolnitys was charged with Embezzlement From A Vulnerable Adult-\$1,000.00 or More but Less than \$20,000.00. Ms. Kolnitys was found guilty of this charge on July 8, 2014. She was scheduled for sentencing on August 14, 2014.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Respondent to prove, by a preponderance of the evidence that grounds exist for the decision to revoke the registration and/or imposition of other sanctions upon Petitioner. Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true *Smith v Lansing School Dist*, 428 Mich. 248 (1987).

Based upon a default being granted in this matter, the allegations cited in the Amended Notice of Intent to Revoke License are deemed true. Accordingly, Respondent has proven, by a preponderance of the evidence, that Petitioner willfully and substantially violated Rule 400.14315(2), (8), and (12); Rule 400.14305(1); Rule 400.14201(2) and (9)(a); and Rule 400.14301(9).

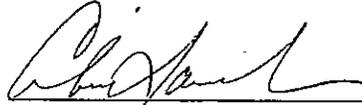
PROPOSED DECISION

This Administrative Law Judge proposes that the Director conclude that Respondent acted properly in issuing the subject Amended Notice of Intent to Revoke License for the reasons set forth above.

EXCEPTIONS

If any party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fourteen (14) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after Exceptions are filed. All Exceptions and Responses to Exceptions must be served on all parties to the proceeding and filed with the:

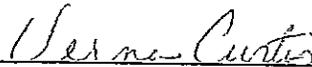
Michigan Administrative Hearing System
Ottawa State Building
611 W. Ottawa St., 2nd Floor
Lansing, MI 48909



Christopher S. Saunders
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 8th day of October, 2014.



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