



RICK SNYDER
GOVERNOR

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



MAURA D. CORRIGAN
DIRECTOR

May 14, 2014

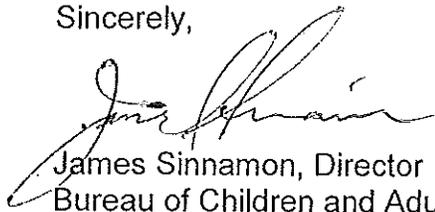
Sheila and Jeffery Yarbrough
27065 Nantucket Court
Southfield, MI 48076

RE: Docket # 14-000813-DHS
Lic # AF630245613

Dear Sheila and Jeffery Yarbrough:

On or about April 19, 2014 you were mailed a copy of the final order upholding the Agency's Notice of Intent to Refuse to Renew your license to operate an adult foster care family home. In accordance with that notice, your license has been revoked effective May 2, 2014. It is further expected that you not receive adults for care now or in the future without being licensed.

Sincerely,



James Sinnamon, Director
Bureau of Children and Adult Licensing

JS:em

cc: Denise Nunn, Area Manager

JASON

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Docket No.: 14-000813-DHS

Sheila and Jeffery Yarbrough,
Petitioners

Case No.: AF630245613

v

Agency: Department of
Human Services

Bureau of Children and Adult Licensing,
Respondent

Case Type: DHS BCAL

Issued and entered
this 19 day of April, 2014
by
Maura D. Corrigan, Director
Department of Human Services

RECEIVED
APR 25 2014
BUREAU OF CHILDREN
AND ADULT LICENSING

FINAL DECISION AND ORDER

This matter began on November 1, 2013, with Respondent's notice of intent to refuse to renew license (notice of intent) regarding Petitioners Sheila and Jeffery Yarbrough's license to operate an adult foster care family home pursuant to the Adult Foster Care Facility Licensing Act (Act), 1979 PA 218, as amended, MCL 400.701 *et seq.* A properly noticed hearing was held on March 12, 2014 by Administrative Law Judge David M. Cohen (ALJ). Present on behalf of Respondent was Departmental Analyst Joshua Hargrove. Neither Petitioners nor an attorney appeared on their behalf.

Upon Petitioners' failure to appear and at the request of Respondent, the ALJ entered a default judgment against Petitioners 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 of intent being incorporated into the record as part of Respondent's

pleadings and as the result of Petitioners' failure to appear at the hearing to contest those facts as presented in the notice of intent, the ALJ found the facts as alleged in the notice of intent to be true and accurate. Therefore, the ALJ properly concluded that Petitioners violated the rules as alleged by Respondent.

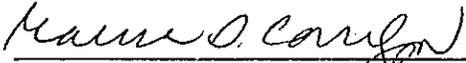
On March 13, 2014, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Respondent demonstrated by a preponderance of the evidence that Petitioner willfully and substantially violated Rule 400.1418, Rule 400.1412, Rule 400.1411, and Rule 400.1416. No exceptions were filed.

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

ORDER

NOW THEREFORE, IT IS ORDERED:

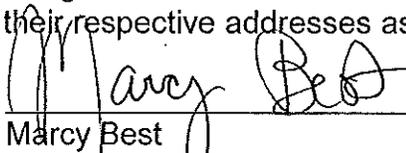
1. That the ALJ's Proposal for Decision (PFD) is adopted in its entirety and is incorporated by reference and made a part of this Final Decision and Order (see attached PFD).
2. That the actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. That Petitioners' renewal license to operate an adult foster care family home is REFUSED, 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 23 day of April, 2014.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Sheila and Jeffery Yarbrough,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 14-000813-DHS

Case No.: AF 630245613

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 2nd day of April, 2014.
by: David M. Cohen
Administrative Law Judge

ERRATA TO PROPOSAL FOR DECISION
OF THE ADMINISTRATIVE LAW JUDGE

On March 13, 2014, the Administrative Law Judge in the above entitled matter issued a proposal for decision. That proposal for decision contained an error that needs to be corrected. This Errata to Proposal for Decision is made a part of and is incorporated into the decision issued by the Administrative Law Judge on March 13, 2014.

1. The header on Pages 2 thru 8, should read: "Docket No. 14-000813-DHS".

Jurisdiction of the matter contained herein is specifically reserved together with the authority to issue such further order or orders as may be deemed just, necessary, and appropriate.



David M. Cohen
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 2nd day of April, 2014.

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 14-000813-DHS

Sheila and Jeffery Yarbrough,
Petitioner

Case No.: AF 630245613

v

Agency: Department of
Human Services

Bureau of Children and Adult Licensing,
Respondent

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 13th day of March, 2014
by: David M. Cohen
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This matter commenced on November 1, 2013, with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing a Notice of Intent to Refuse to Renew License (Notice), regarding the license of Sheila and Jeffery Yarbrough (Licensees or Petitioners) to operate an adult foster care family home pursuant to the authority of the Adult Foster Care Facility Licensing Act, 1979 PA 218 (Act), as amended, MCL 400.701 *et seq.* On or about January 9, 2014, the Licensees requested an administrative hearing to challenge the Notice.

On January 17, 2014, the Michigan Administrative Hearing System issued a Notice of Hearing, scheduling a hearing for March 12, 2014. The Licensees did not appear at the scheduled hearing. The Licensees did not present good cause for their failure to appear at the hearing. The date, time and location of the hearing were properly indicated on the Notice of Hearing issued to the parties. Respondent was represented by Departmental Analyst Joshua Hargrove. Numerous potential witnesses were present in the hearing room and prepared to testify on behalf of the Respondent.

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 Petitioners' absence. Additionally, BCAL requested a default judgment and this was entered against Petitioners 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 Notice of Intent to Refuse to Renew 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 Petitioners' conduct provides grounds for Respondent to refuse to renew the licensure. At specific issue are the alleged willful and substantial violations of Rule 400.1418(4)(a), Rule 400.1412(1), Rule 400.1411(2), and Rule 400.1416(1), which provide in pertinent part:

Rule 400.1418

(4) When a licensee or responsible person supervises the taking of medication by a resident, the licensee or responsible person shall comply with the following provisions:

- (a) Maintain a record as to the time and amount of any prescription medication given or applied. Records of prescription medication shall be maintained on file in the home for a period of not less than 2 years.

Rule 400.1412

(1) A licensee shall not mistreat or permit the mistreatment of a resident by responsible persons or other occupants of the home. Mistreatment includes any intentional action or omission which exposes a resident to a serious risk or physical or emotional harm.

Rule 400.1411

(2) Methods of behavior management shall encourage cooperation, self-esteem, self-direction, and independence, and shall be administered in accordance with a resident's written assessment plan.

Rule 400.1416

- (1) A licensee, in conjunction with a resident's cooperation, shall follow the instructions and recommendations of a resident's physician with regard to such items as medications, special diets, and other resident health care needs that can be provided in the home.

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 August 19, 2002, Licensees were issued a license to operate an adult foster care family home, with a current licensed capacity of 2, at 27065 Nantucket Ct, Southfield, MI 48076.
2. On April 14, 2008, Licensing Consultant Sharon King completed a Licensing Study Report and cited Licensees with 13 licensing rule violations, including

R 400.1418(4)(a). Resident B's medication records were not complete since two of her medications had not been recorded as having been administered on April 13, 2008, and April 14, 2008. As a result the Licensees completed a Corrective Action Plan (CAP) to show compliance with the cited licensing rule violations.

3. On August 17, 2010, Ms. King completed a Licensing Study Report and cited Licensees with 12 licensing rule violations, including R400.1418(4)(a). A resident's medication records did not accurately reflect how often a resident was receiving her medications. Medications were not administered to the resident as the medication labels instructed. Licensees completed a CAP to show compliance with the cited licensing rule violations.

4. On December 19, 2012, Ms. King completed a Licensing Study Report and cited Licensees with 5 licensing rule violations, including R400.1418(4)(a). The label on Resident B's Seroquel medication identified the dosage as 400 MG, but the medication record stated that Resident B was given 500 MG. The medication record for Resident B stated that he is being given a 500 MG tablet of Divalproex twice daily and another 500 MG tablet in the morning but the label on the bottle states that Resident B is to be given a 250 MG tablet in the morning. Licensees completed a CAP to show compliance with the cited licensing rule violations.

5. On August 9, 2013, Ms. King opened a special investigation due to complaint allegations that Resident A (F, DOB 01/21/48), who is legally blind, was struck in the face and pushed down by one of the Licensees on August 7, 2013.

6. On August 12, 2013, Ms. King, Adult Protective Services Worker Karla Okaiye and Macomb Oakland Residential Center Supports Coordinator Mary Costello interviewed Resident A at Oakwood AFC home. Resident A had been moved from Licensees' home on August 9, 2013, to Oakwood AFC home due to the complaint allegations. Resident A stated that on August 7, 2013, Licensee Sheila Yarbrough hit her on the right side of her face and stated "it hurt." Resident A said the Licensee pushed her and she fell down on the upstairs level of the home near her bedroom. During this interview, group home manager Laura Austin reported that there were several discrepancies with Resident A's medications when she arrived at Oakwood AFC. Resident was not given all of her medications today because the supply of some of her medications was depleted upon her arrival to Oakwood AFC home. Ms. Austin reported that Resident A was given her last "Nexium" tablet on August 10, 2013. Ms. Austin also reported that there was not a sufficient supply of the prednisolone acetate eye drop to administer to Resident A on August 10, 2013. Ms. King observed the medication log that Licensees sent with Resident A to her new placement on August 9, 2013. The medication log did not identify all of Resident A's medications and the log did not have the month

and year information completed to identify which timeframe the log was representing. Additionally, Ms. King was unable to find any documentation to prove that Resident A received any of her medications from August 1, 2013, to August 9, 2013, while in Licensees' care. Ms. Austin stated that an additional medication log had to be created for four of the medications prescribed to Resident A, including: aspirin, 81 MG, once per day; Ferrous sulfate, 325 MG, 1 tablet daily; Vitamin D3, 1000 units, one tablet daily; Lisinopril, 20 MG, 1 tablet daily. When Ms. King observed the Lisinopril she noticed that the prescription was filled on July 11, 2013, with a 30-day supply but there were still several pills in the container. Ms. King observed that Resident A's Lipitor was filled on June 7, 2013, for 30 tablets but several were still observed in the container.

7. On August 12, 2013, Ms. King received copies of Incident Reports completed by Ms. Austin on August 9, 2013, and staff member Jaclyn Worley on August 12, 2013. Ms. Austin wrote that when Resident A arrived at Oakwood AFC she arrived without her prescribed prednisolone acetate 1% eye drops or her glucose meter. Resident A is diabetic. Ms. Worley's Incident Report stated that when she attempted to dispense Resident A's 8 a.m. medications on August 12, 2013, she noticed that there was no supply of her 40 MG Nexium capsule or prednisolone acetate 1% eye drops.
8. On August 12, 2013, Ms. King, Ms. Okaiye and Ms. Costello interviewed Jewish Vocational Services (JVS) staff member Carmen Donehue. Ms. Donehue reported that on August 7, 2013, Resident A was at JVS and Ms. Donehue observed dried blood around the bottom of Resident A's nostrils. Ms. Donehue wiped the blood off her nose and asked her if she was okay, to which Resident A replied "no." Resident A stated that she got into an argument with a lady in her adult foster care home and the lady threatened to put her in a home. Ms. Donehue stated that Resident A arrived to JVS late on August 7, 2013, and as a result she missed the bus and was not able to go into the community.
9. On August 12, 2013, Ms. King interviewed Judy Wilson, a nurse at JVS. Nurse Wilson stated that Resident A told her that on August 7, 2013, Licensee Sheila Yarbrough slapped her face, pushed her and kicked her in the stomach.
10. On August 12, 2013, Ms. King, Ms. Okaiye and Ms. Costello interviewed Licensee Sheila Yarbrough at her home and discussed the allegations that she physically abused Resident A. Licensee admitted that at approximately 5:45 a.m. on August 7, 2013, she heard Resident A in the bathroom getting ready to go to JVS but she fell back asleep and overslept. Licensee admitted that she got into an altercation with Resident A and may have inadvertently hit Resident A on her face. Ms. King then asked Licensee to provide her with the medication records for Resident A, but the most recent medication record she

was able to provide was for February, 2013. The February, 2013, medication record did not list Vitamin D as an administered medication but when Ms. King reviewed the pharmacy records for January and February, 2013, she discovered that 30 tablets of Vitamin D3, 1000 units, were dispensed for Resident A on January 9, 2013, and again on February 5, 2013.

11. On August 12, 2013, while at the Licensee's home Ms. King reviewed Resident A's Person Centered Plan effective February 1, 2013, to January 31, 2014. The risk/safeguards while at home section states "Close monitoring/supervision within eye sight while at home ...Resident A requires enhanced support from caregivers to ensure all her personal care needs are met; bathing, toileting, dressing & tooth brushing. Direct assistance required when Resident A is going up and down the stairs ...Someone needs to spot her by walking behind her when she goes up the stairs and walk in front to guide/spot her when she goes down the stairs." Licensees violated the Person Centered Plan by allowing Resident A to bathe and dress without assistance and by directing Resident A to walk down the stairs unassisted.

12. On August 16, 2013, Ms. King interviewed Kathy Yarbrough, Licensee's sister. Ms. Yarbrough stated that she slept on the couch at Licensee's home from August 6, 2013, to August 7, 2013. Ms. Yarbrough woke up at 3:00 a.m. to use the second floor bathroom where she found Resident A, who was already bathed and dressed. Ms. Yarbrough stated that the Licensee leaves the clothing and supplies out for Resident A to bathe and dress herself. Ms. Yarbrough stated that Resident A stayed upstairs until Licensee awoke at 8 a.m. At this time Resident A had "a fit", screaming and crying due to the Licensee failing to get her to JVS on time.

13. On August 16, 2013, Ms. King interviewed JVS Case Coordinator Susan Silva who reported that Resident A is frequently late when brought to JVS. Ms. Silva stated that the Licensee is aware that JVS participants are required to be at the program by 9:30 a.m. every day but Resident A is always brought to JVS after 9:30 a.m. Ms. Silva stated that Resident A usually looks "sloppy" when brought to JVS. On August 7, 2013, when Resident A arrived her pants were twisted and her shirt looked "dirty."

14. Despite having received proper Notice of the proceeding, there was no appearance on behalf of Sheila and Jeffery Yarbrough at the March 12, 2014 hearing.

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 refuse to renew the licensure and/or imposition of sanctions upon Petitioners. 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 Notice of Intent to Refuse to Renew License are deemed true. Accordingly, Respondent has proven, by a preponderance of the evidence, that Petitioners willfully and substantially violated Rule 400.1418(4)(a), Rule 400.1412(1), Rule 400.1411(2), and Rule 400.1416(1).

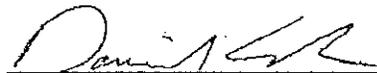
PROPOSED DECISION

This Administrative Law Judge proposes that the Director conclude that Respondent acted appropriately in issuing the subject Notice of Intent to Refuse to Renew 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 must be and served on all parties to the proceeding and filed with the:

Michigan Administrative Hearing System
Cadillac Place
3026 West Grand Blvd, Suite 2-700
Detroit, Michigan 48202



David M. Cohen
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 13th day of March, 2014.



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