

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-1953
)	
BARBARA JOHNSON, d/b/a JOHNSON)	
GROUP HOME,)	
)	
Respondent,)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 26, 2000, at Fort Pierce, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Laurel Hopper, Esquire
Department of Children and
Family Services
337 North 4th Street, Suite A
Fort Pierce, Florida 34950

For Respondent: Curtis Randolph, Sr., Esquire
850 South 21st Street
Fort Pierce, Florida 34950

STATEMENT OF THE ISSUE

Whether Petitioner should grant or deny Respondent's application for the renewal of her license to operate a group home.

PRELIMINARY STATEMENT

Respondent, the owner and operator of a group home, timely applied for the renewal of her license, which was set to expire on March 31, 2000. On March 30, 2000, employees of Petitioner made two separate inspections of the licensed premises. As a result of those inspections, Petitioner closed Respondent's group home, removed the clients from the home, and notified Respondent that her license would not be renewed. On March 31, 2000, Petitioner advised Respondent in writing why it had taken that action and why it proposed to deny the renewal of her license. Respondent timely challenged the proposed denial of the renewal of her license, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the final hearing, Petitioner presented the testimony of Nancy Combs, Robin Aleszczyk, Stephen Stoltz, and Nancy Ann Cerney. Petitioner offered four exhibits, three of which were accepted into evidence. Respondent testified on her own behalf and presented the additional testimony of Linda Dodd, Robert Rouege, Jr., and Tara Anderson. Respondent offered no exhibits.

No transcript of the proceedings was filed. Each party filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the licensing and regulatory agency of the State of Florida charged with the responsibility to license group homes pursuant to Chapter 393, Florida Statutes, and Chapter 65B-6, Florida Administrative Code.

2. Respondent was licensed annually by Petitioner (or its predecessor agency) to operate a group home for each of the 18 years preceding March 31, 2000, the date on which Respondent's most recent license was set to expire. Respondent timely applied for the renewal of her group home license. As part of the renewal process, Respondent had to pass inspections by the Indian River County Health Department, the Fire Marshall, and Petitioner. On March 29, 2000, Respondent's facility passed an inspection from the Fire Marshall and the Health Department.

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3. Robin Aleszczyk, a human services program analyst employed by Petitioner, was assigned the job of inspecting the facility on behalf of Petitioner. On March 29, 2000, Ms. Aleszczyk verified the location of the premises in preparation of an inspection of the premises to determine whether the premises continued to meet licensing criteria. Although Ms. Aleszczyk had been to the premises before, she did not recognize the premises due to its dilapidated appearance.

She drove by the premises three times before satisfying herself that it was the subject premises. On March 29, 2000, Ms. Aleszczyk observed garbage in the front of the house, an old car parked on the lawn, paint peeling off the house, and the front screen door hanging down.

4. At approximately 7:45 a.m. on March 30, 2000, Ms. Aleszczyk inspected the interior of the premises. Respondent was not present when Ms. Aleszczyk conducted her inspection on March 30, 2000, because she had been summoned to the hospital where Rodney was hospitalized.

5. Ms. Aleszczyk conducted her inspection and promptly reported her findings to her supervisor, Stephen Stoltz, the Program Supervisor for Developmental Services for Petitioner's District 15.

6. Thereafter, beginning at approximately 10:00 a.m. on March 30, 2000, Mr. Stoltz and Nancy Ann Cerney, a human services program analyst employed by Petitioner, conducted a second inspection of the premises. Respondent returned to the subject premises before Mr. Stoltz and Ms. Cerney arrived for their inspection and was present during the second inspection.

7. Ms. Aleszczyk, Mr. Stoltz, Ms. Cerney, Respondent, and Ms. Dodd (Respondent's employee) testified as to the condition of the facility on March 30, 2000. The observations by Mr. Stoltz and Ms. Cerney were similar to those made by Ms.

Aleszczyk. 2/ Respondent and Ms. Dodd disputed the condition of the facility as described by the people who inspected the facility for Petitioner. In addition, Mr. Stoltz and Ms. Cerney testified as to certain statements made to them by Respondent, which Respondent denied making. The most credible testimony 3/ established the following pertaining to the condition of the facility:

- a. The home was uncomfortably warm;
- b. No central air conditioning was operating;
- c. There was a strong odor of urine and old garbage throughout the premises;
- d. An unidentified male was lying on a bed in one bedroom with a strong odor of urine;
- e. Clothes were piled up to the height of the door and newspapers were piled up the wall to the right of the bed on which the man was lying;
- f. Clothes in one client's closet were dirty and smelled of body odor;
- g. The blanket on the bed of one client was musty smelling;
- h. Dirt could be seen on the sheets of that client's bed;
- i. One of the back bedrooms did not meet spacing requirements in that it was too small for the bunk bed and the twin bed that were in the bedroom;
- j. During Ms. Alsezczyk's inspection, a bathroom door was locked and had to be pried open with a fork; 4/
- k. The flooring throughout the house was dirty and the linoleum was chipped in places;
- l. Baseboards were scuffed and dirty;
- m. The kitchen floor was dirty with lines of dirt being visible;
- n. The kitchen counter was greasy;

- o. The oven was greasy and soiled with cooked food;
- p. Empty medicine bottles were on the kitchen floor; and
- q. Medicine containers were kept in an unlocked container.

8. Respondent apologized to Mr. Stoltz and Ms. Cerney for the unsanitary condition of the premises and asked for another chance to clean the premises.

9. At the times pertinent to this proceeding two adult male clients and two adult female clients resided in Respondent's group home.

10. Approximately two weeks prior to these inspections, one of Respondent's clients, Rodney, had been hospitalized. Respondent did not report the hospitalization as required by Petitioner's policies. Instead, Respondent informed Tara Anderson, a developmental services support coordinator employed by Petitioner, of Rodney's hospitalization. Ms. Anderson should have told Respondent to file a written incident report, but she did not do so. Ms. Anderson told Respondent to contact Robert Rouege, an independent contractor who provided supporting services to Petitioner and its licensees, to determine whether he could arrange supporting services for Rodney while he was hospitalized. Respondent followed Ms. Anderson's instructions as to what she should do. Respondent knew, or should have

known, from her training that she was required to promptly report Rodney's hospitalization to Petitioner's district office.

11. On March 30, 2000, one of the female residents of the facility was disoriented and was unkempt with long, dirty fingernails and dirty hair. This resident was in a room where the floor was dirty. The resident appeared to be very pale and unhealthy. Another client appeared to be very thin and undernourished. 5/

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

13. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

14. Rule 65B-6.010, Florida Administrative Code, provides for certain standards for group homes pertinent to this proceeding. Rule 65B-6.010(4), Florida Administrative Code, provides for the following services to be provided by a group home:

(4) Services to Be Provided. Group home facility services shall include, but not be limited to, provision of adequate living accommodations, proper and adequate dietary supervision, appropriate physical care, support, guidance, supervision and assistance with training required to assure each individual the opportunity for personal growth and development. Specific services to be provided shall be defined by the needs of the clients to be served. Consideration shall be given to age, sex, developmental level and specific needs.

15. Rule 65B-6.010(7)(b)10, Florida Administrative Code, provides as follows:

10. All doors with locks must be readily opened from the inside.

16. Rule 65B-6.010(8)(c)8, Florida Administrative Code, provides, in pertinent part, as follows:

8. . . . Bed linens shall be replaced with clean linens at least once each week, or more frequently as required.

17. Rule 65B-6.010(8)(f)2, Florida Administrative Code, provides as follows:

2. Laundry services must be provided for those residents without ability to obtain these services for themselves.

18. Rule 65B-6.010(8)(i), Florida Administrative Code, provides as follows:

(i) Each facility shall have equipment and supplies to:

1. Keep the building in a clean, safe and orderly condition.

2. Control odors by appropriate sanitation practices, effective cleaning procedures and proper use of ventilation.

19. Rule 65B-6.010(8)(j), Florida Administrative Code, provides, in pertinent part, as follows:

(j) Temperature and humidity shall be maintained within a normal comfort range for the climate. . . .

20. Rule 65B-6.010(8)(l)1 and 2, Florida Administrative Code, provides, in pertinent part, as follows:

(l) Maintenance.

1. The facility shall maintain the interior and exterior of the building in a clean, safe, presentable and repaired condition.

2. The grounds and all buildings on the grounds shall be maintained in a safe, sanitary and presentable condition.

21. Rule 65B-6.010(14)(e), Florida Administrative Code, provides, in pertinent part, as follows:

(e) Medications shall be kept in a locked enclosure.

22. Rule 65B-6.010(23)(c), Florida Administrative Code, provides, in pertinent part, as follows:

(c) Serious illness, accident, injury, death, assault, and missing clients should be handled as an emergency. The staff should meet the immediate needs of the client and then report the incident by telephone to the district office as instructed by the social worker serving the facility. . . .

23. Rule 65B-6.010(7)(b)10, Florida Administrative Code, requires that all doors with locks must be readily opened from the inside. While Petitioner established that a bathroom door was locked and had to be pried open with a fork, there was no evidence as to whether that door could be readily opened from inside the bathroom. Consequently, it is concluded that Petitioner failed to establish the alleged violation of Rule 65B-6.010(7)(b)10, Florida Administrative Code.

24. Respondent's failure to timely report to the district office that Rodney had been hospitalized is properly viewed as a serious violation of Petitioner's rules. While Respondent established that she promptly notified Ms. Anderson of Rodney's hospitalization and followed Ms. Anderson's instructions, those actions do not excuse Respondent's failure to report the incident to the district office as required by Rule 65B-6.010(23)(c), Florida Administrative Code. 6/

25. Petitioner established that Respondent had medication in an unlocked container in violation of Rule 65B-6.010(14)(e), Florida Administrative Code. That violation justifies the denial of Respondent's application for renewal of her group home license.

26. Petitioner established that Respondent's group home failed to meet basic sanitation standards set forth in Rule 65B-6.010(8)(1), Florida Administrative Code, and failed to maintain

the premises at an appropriate temperature as required by Rule 65B-6.010(8)(j), Florida Administrative Code. Those failures justify the denial of Respondent's application for renewal of her group home license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order denying Respondent's application for the renewal of her group home license.

DONE AND ENTERED this 21st day of August, 2000, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of August, 2000.

ENDNOTES

^{1/} The Health Department noted that Respondent would have to re-screen the front door, clean the ceiling fans, and install a thermometer in the refrigerator.

^{2/} Between the time Ms. Aleszczyk left the facility and Mr. Stoltz and Ms. Cerney arrived, someone had raised the windows and had begun to clean the facility. As a consequence, the

facility was not as hot as described by Ms. Aleszczyk and the smell of urine was not as strong during the second inspection.

^{3/} In resolving the conflicting testimony, the undersigned is mindful of Respondent's testimony at the final hearing that the inspectors came before she could do her routine cleaning, that clothes were piled up because she was in the process of buying new furniture, that the blanket was not musty smelling, the sheet was not dirty, and that none of the clothes were dirty or smelled of body odor.

^{4/} Ms. Aleszczyk did not attempt to open the bathroom door from inside the bathroom.

^{5/} Petitioner has not, in this proceeding, alleged that Petitioner neglected or otherwise abused the residents in her care. The evidence as to the appearance of the residents served to corroborate Petitioner's position that Respondent failed to provide her clients with a sanitary, healthy environment.

^{6/} Assuming that Petitioner adopts the recommendation that follows and assuming that Respondent applies for licensure in the future, Respondent's reporting to Ms. Anderson and following her instructions should be considered as mitigating Respondent's violation of Rule 65B-6.010(23)(c), Florida Administrative Code.

COPIES FURNISHED:

Laurel Hopper, Esquire
Department of Children and
Family Services
337 North 4th Street, Suite A
Fort Pierce, Florida 34950

Curtis Randolph, Sr., Esquire
850 South 21st Street
Fort Pierce, Florida 34950

Virginia A. Daire, Agency Clerk
Department of Children and
Family Services
Building 2, Room 204B
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel
Department of Children and
Family Services
Building 2, Room 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.