

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR PERSONS WITH )  
DISABILITIES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 08-1812  
 )  
AMANDA AND CO., INC., d/b/a )  
LOVING HEARTS GROUP HOME, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A final hearing was conducted in this case on August 6, 2008, in Lake City, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Julie Waldman, Esquire  
Agency for Persons  
with Disabilities  
1621 Northeast Waldo Road  
Gainesville, Florida 32609

For Respondent: Lloyd E. Peterson, Esquire  
905 Southwest Baya Drive  
Lake City, Florida 32025

STATEMENT OF THE ISSUE

The issue is whether Respondent should be subject to administrative penalties, up to and including revocation of its

group home license, for non-compliance with the residential facility requirements of Chapter 393, Florida Statutes (2007).

PRELIMINARY STATEMENT

On or about February 13, 2008, Petitioner Agency for Persons with Disabilities (Petitioner) issued an Administrative Complaint against Respondent Amanda and Co., Inc. d/b/a Loving Hearts Group Home (Respondent). The complaint alleged in Count I that Respondent's employee had violated Section 393.13(3)(g), Florida Statutes (2007), by physically injuring and/or failing to protect a client from physical injury. In Count II, the complaint alleged that Respondent failed to ensure that clients were protected from physical injury.

On February 15, 2008, Respondent requested an administrative hearing to contest the allegations in the complaint. On April 11, 2008, Petitioner referred the hearing request to the Division of Administrative Hearings.

Administrative Law Judge Lisa S. Nelson issued a Notice of Hearing dated April 22, 2008. The notice scheduled the hearing for June 2, 2008.

On May 27, 2008, Respondent filed an unopposed Motion for Continuance. On May 29, 2008, Judge Nelson granted a continuance and rescheduled the hearing for July 1, 2008.

On June 4, 2008, Respondent filed an unopposed Motion for Continuance. On June 9, 2008, Judge Nelson granted a continuance and rescheduled the hearing for August 6, 2008.

During the hearing, Petitioner presented the testimony of two witnesses. Petitioner offered Exhibit Nos. A, B, and D through I that were accepted as evidence. Petitioner's Exhibit No. C was accepted as evidence to the extent that it does not constitute inadmissible hearsay.

Respondent presented the testimony of three witnesses. Respondent offered Exhibit Nos. A, C, and D that were accepted as evidence to the extent they do not constitute inadmissible hearsay.

The parties were unable to complete the presentation of all the evidence on August 6, 2008. Accordingly, the undersigned issued an Order Re-scheduling Hearing dated August 12, 2008. The order scheduled the continued hearing for September 22, 2008.

On September 17, 2008, Petitioner filed an unopposed Request to Cancel Hearing, advising the undersigned that neither party intended to present further evidence. On September 19, 2008, the undersigned issued an Order Canceling Hearing.

The parties did not file a transcript of the proceeding. Petitioner filed a Proposed Recommended Order on October 3, 2008. As of the date that this Recommended Order was issued,

Respondent had not filed proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the licensing and operation of foster care facilities, group home facilities, and residential habilitation centers.

2. Respondent holds a group home facility license. The group home is located in Lake City, Florida.

3. Ms. Amanda Houston is the operator of the group home. Ms. Houston is responsible in that capacity for compliance with statutes and rules relating to residential facilities.

4. At all times material here, A.D. was a vulnerable 17-year-old female who resided at the group home. A.D. is mentally retarded and has significant behavior issues.

5. Ms. Nigeria Taiwan Wills was a trusted employee of the group home for four or five years. On October 8, 2008, Ms. Wills was responsible for the supervision and care of the group home's disabled residents.

6. On October 8, 2008, Ms. Wills began her shift at 2:00 p.m. and worked until 8:00 p.m. During at least part of that time, Ms. Wills was the only staff member present in the home.

7. On October 8, 2007, while under the supervision of Ms. Wills, A.D. suffered significant injury to her buttock area.

8. The next morning, Ms. Houston arrived at the group home around 6:30 a.m. Ms. Houston woke A.D. who dressed herself. Ms. Houston gave A.D. her medications. Ms. Houston did not notice any difference in A.D.'s demeanor. A.D. seemed normal in every way.

9. The group home had four residents. Three of the clients, including A.D., rode a bus to school. On October 9, 2009, the bus arrived to pick up the clients at 8:10 a.m. It left the facility at 8:20 a.m. Ms. Houston was not aware of A.D.'s injury before the bus picked her up.

10. On October 9, 2008, Ms. Wills visited the group home around 11:00 a.m. to pick up a piece of paper that she had left there the night before. While at the group home, Ms. Wills casually mentioned to Ms. Houston that she had an incident with A.D. the night before, that it was no big deal, and that she would tell Ms. Houston about it when she returned to work her shift that evening. Ms. Wills then left the group home. Ms. Wills did not have a home phone.

11. All supervisory employees of the group home are trained to keep notes during every shift to record chronologically all events occurring at the group home. If an injury of any kind occurs, an employee is supposed to immediately fill out an incident report and call Ms. Houston.

12. Ms. Houston knew that Ms. Wills had not filled out an incident report the night before. Ms. Houston read Ms. Wills' notes from the night before and, finding no reference to an incident with A.D., mistakenly assumed that whatever had happened truly was no big deal. This was not an unreasonable conclusion given Ms. Wills' long-term employment with no complaints and A.D.'s history of stealing and other behavior problems.

13. In the mean time, Ms. Lanitra Sapp, a child protective investigator for the Department of Children and Family Services, received a call from A.D.'s school. Ms. Sapp subsequently visited the school, interviewed A.D., and observed bruising to her buttocks and upper thigh. Ms. Sapp concluded that the bruising was consistent with physical abuse. Ms. Sapp then took A.D. to her office.

14. When A.D. did not get off the bus after school, Ms. Houston called the school, A.D.'s mother, and A.D.'s waiver support coordinator. Ms. Houston was unable to locate A.D. until she received a call from Ms. Sapp, asking Ms. Houston to go to Ms. Sapp's office.

15. At Ms. Sapp's office, Ms. Houston and her husband, Adam Houston, first learned about A.D.'s injury. Mr. and Mrs. Houston were shocked at the degree of A.D.'s injury as reflected in photographs. After a short meeting, A.D.

voluntarily rode with the Houstons to the group home. Ms. Sapp followed in her car.

16. When the Houstons and Ms. Sapp arrived at the group home, the police were already there. Ms. Wills was also there. Ms. Houston left A.D. in the car with Mr. Houston before going into the group home.

17. Ms. Wills talked to the police and Ms. Sapp in separate interviews. At some point, Ms. Wills told the police that she had spoken to Ms. Houston about the incident that morning. Ms. Houston admitted to the police and Ms. Sapp that Ms. Wills had made a reference to an incident that morning.

18. Ms. Wills never admitted that she spanked A.D. with a belt. Ms. Houston placed Ms. Wills on administrative leave just before the police handcuffed her and took her to jail. Immediately thereafter, Ms. Houston prepared and sent an official incident report to Petitioner and A.D.'s waiver support coordinator.

19. A.D. wanted to remain at the group home. Her mother and waiver support coordinator agreed. A.D. remained in that environment until March 2008, when Respondent lost its status as a Medicaid waiver provider.

20. Ms. Houston never let Ms. Wills return to the group home. Instead, Ms. Houston paid Ms. Wills for one week of

earned wages and one week of vacation time. This was the final pay check for Ms. Wills.

21. Within days, Ms. Houston took A.D. to see her pediatrician for a medical evaluation. A week or so later, Ms. Sapp took A.D. for an evaluation by the Department of Children and Family Services child protection team. The Department of Children and Family Services subsequently issued a report containing verified findings of failure to protect against Mr. and Ms. Houston and maltreatment/physical injury against Ms. Wills.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

23. The Administrative Complaint, as amended at the hearing, charges Respondent with the failing to ensure that A.D. was protected from harm. The complaint does not charge Respondent with failing to report the incident of abuse as required by Sections 39.201 and 415.1034, Florida Statutes (2007). Accordingly, violations of Sections 39.201 and 415.1034, Florida Statutes (2007), relating to mandatory reports of abuse, have not been considered here. See Trevisani v. Department of Health, 908 So. 2d 1108 (1st DCA 2005)(punitive



action may be based only upon those offenses specifically alleged in the administrative complaint).

24. Petitioner has the burden of proving by clear and convincing evidence that Respondent's group home license should be disciplined based on Respondent's failure to protect A.D. from harm. See § 120.57(1)(j), Fla. Stat. (2007); Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern Company, 670 So. 2d 932 (Fla. 1996).

25. Section 393.067(13) states as follows in pertinent part:

393.13 Treatment of persons with developmental disabilities.--

(1) SHORT TITLE.--This section shall be known of the "The Bill of Rights of Persons with Developmental Disabilities."

\* \* \*

(3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.--The rights described in this subsection shall apply to all persons with developmental disabilities whether or not such persons are clients of the agency.

\* \* \*

(g) Person with developmental disabilities shall have a right to be free from harm, including unnecessary physical, chemical, or mechanical restraint, isolation, excessive medication, abuse, or neglect.

\* \* \*

(4) CLIENTS RIGHTS.--For purposes of this subsection, the term "client," as defined in s. 393.063, shall also include any person served in a facility licensed under s. 393.067.

26. Florida Administrative Code Rule 65G-2.012 states as follows in relevant part:

65G-2.012 Group Home Facility Standards.

\* \* \*

(5) Personnel Qualifications, Requirements and Responsibilities.

\* \* \*

(c) Staff shall be of suitable physical and mental ability to care for the clients they propose to serve; have knowledge of the needs of the clients; be capable of handling an emergency situation promptly and intelligently; and be willing to cooperate with the supervisory staff.

\* \* \*

(15) Discipline and Abuse. Each client shall receive humane discipline.

\* \* \*

(b) The facility shall take all reasonable precautions to assure that no client is exposed to, or instigates, such behavior as might be physically or emotionally injurious to him/herself or to another person.

\* \* \*

(d) Facility staff shall be knowledgeable of provision of provisions of the Bill of Rights of Persons with

Developmental Disabilities, Section 393.13,  
F.S.

27. Section 393.0673, Florida Statutes (2007), states as follows in pertinent part:

(1) The agency may revoke or suspend a license or impose an administrative fine, not to exceed \$1,000 per violation per day, if:

(a) The licensee has:

\* \* \*

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the licensee; or

(b) The Department of Children and Family Services has verified that the licensee is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

28. In this case, Ms. Houston initially did not have a reason to suspect that Ms. Wills had physically abused A.D. Instead, Ms. Houston had every reason to believe that the "incident with A.D." was not serious enough to be an event requiring a mandatory report to the abuse hotline or even included in Ms. Wills' notes from the prior evening.

29. Once Ms. Houston became aware of the abuse, she took every precaution she could to cooperate with the authorities and to protect A.D. This included placing Ms. Wills on administrative leave and never letting her return to the group home.

30. A.D. was not in any danger of further abuse after Ms. Wills left the facility on the evening of October 8, 2008. The evidence is not clear and convincing that Respondent's group home license should be disciplined.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order finding that Respondent's license is not subject to discipline for failure to protect.

DONE AND ENTERED this 29th day of October, 2008, in Tallahassee, Leon County, Florida.



---

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

Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of October, 2008.

COPIES FURNISHED:

Julie Waldman, Esquire  
Agency for Persons with Disabilities  
1621 Northeast Waldo Road  
Gainesville, Florida 32609

Lloyd E. Peterson, Jr., Esquire  
905 Southwest Baya Drive  
Lake City, Florida 32025

John Newton, General Counsel  
Agency for Persons  
with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950

James DeBeaugrine, Executive Director  
Agency for Persons  
with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950

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.