

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR PERSONS WITH  
DISABILITIES,

Petitioner,

vs.

Case No. 16-0386FL

NEW LIFE CHARITIES,  
INCORPORATED, OWNER AND  
OPERATOR, JANAЕ HOUSE GROUP  
HOME,

Respondent.

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RECOMMENDED ORDER

An administrative hearing was conducted in this case on March 24, 2016, in Ocala, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Andrew F. Langenbach, Esquire  
Agency for Persons with Disabilities  
Suite S430  
400 West Robinson Street  
Orlando, Florida 32801

For Respondent: No Appearance

STATEMENT OF THE ISSUES

Whether Respondent, New Life Charities, Incorporated, Owner and Operator, Janae House Group Home (New Life or Janae House or Respondent), violated one or more of the group home licensure

standards as alleged by the Agency for Persons with Disabilities (APD or Petitioner) in the Administrative Complaint and, if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On December 4, 2015, APD served an administrative complaint (Complaint) on Respondent. The nine-count Complaint sought revocation of Respondent's group home license for numerous alleged violations of licensure standards. Respondent timely disputed the allegations and APD referred the matter to the Division of Administrative Hearings (DOAH) on January 25, 2016. The case was assigned to the undersigned to conduct an administrative hearing pursuant to chapter 120, Florida Statutes.<sup>1/</sup>

A two-day hearing was scheduled for March 24 and 25, 2016. On the first day of the hearing, however, no one appeared on behalf of Respondent and the final hearing was completed in less than one day. During the hearing, APD presented the testimony of six witnesses: Ronald Graham, an adult protection investigation supervisor with the Department of Children and Families; Charles Bory, a supervisor with the Agency for Health Care Administration; Scott Traynor, a senior behavior analyst with APD; Michael McKenna, an APD home inspector; Joyce Leonard, an APD licensing supervisor; and Michelle Young, a medical case manager with APD. Petitioner offered 19 exhibits which were

received in evidence as Petitioner's Exhibits P-A through P-S, with the caveat that hearsay evidence within the exhibits could not be relied upon as the sole basis for a finding of fact.

The proceeding was recorded and a transcript was ordered. Petitioner was given 30 days from the filing of the transcript within which to file its proposed recommended order. The one-volume Transcript of the proceedings was filed on April 27, 2016, and Petitioner timely filed its Proposed Recommended Order. Respondent did not file a proposed recommended order. Petitioner's Proposed Recommended Order was considered in preparing this Recommended Order.

#### FINDINGS OF FACT

1. Janae House is a group home owned by New Life located at 17130 Southwest 41st Court, Ocala, Florida 34473. It is licensed as a group home by APD.

2. As a group home licensing agency, APD has multiple employees assigned to monitor group homes and their employees.

3. In monitoring a group home's compliance with applicable licensing standards, APD also reviews findings of group home investigations conducted by the Department of Children and Families (DCF).

4. The Complaint charges Janae House with two Class I violations of group home licensing standards from reported incidents allegedly occurring in 2013 and 2015. The Complaint

further alleges that in 2014, Janae House was responsible for numerous other violations of group home licensing standards, including 10 alleged Class II violations and 25 alleged Class III violations.

#### CLASS I VIOLATIONS

5. Florida Administrative Code Rule 65G-2.0041(4) (a) includes as Class I violations "all instances where the Department of Children and Families has verified that the licensee is responsible for abuse, neglect, or abandonment of a child or abuse, neglect or exploitation of a vulnerable adult."

6. The two alleged Class I violations against Respondent stem from 2014 DCF investigations of alleged incidents occurring in 2013 and 2014, respectively.

7. According to Count I of the Complaint, Janae House's first alleged Class I violation occurred in 2013 and was verified in a February 2014 DCF investigative report prepared by Charles Bory. Mr. Bory conducted the investigation in person and testified at the final hearing regarding his investigation. At the time of the report, Mr. Bory was an adult protective investigator for the Department of Children and Families.

8. Mr. Bory's investigation concerned an allegation that a New Life employee caused Janae House resident RB to fall and injure his shoulder. During the investigation, Mr. Bory spoke with the owner of New Life, Kevin Rivers, who denied the

allegation, stating that the allegation was "crazy," that resident RB had tried to escape, fallen while doing so, and hurt his shoulder in the fall. Mr. Bory later interviewed the alleged perpetrator, a former staff member of New Life, who admitted that he and resident RB fell to the ground while he was holding resident RB and trying to stop resident RB from leaving. Given the staff member's admission, Mr. Bory found that the allegation was verified. Mr. Bory's testimony and the investigative report support the allegation, which is found to have occurred.

9. The other alleged Class I violation is from a 2014 incident alleged in Count III of the Complaint. As to this second alleged Class I violation, although APD submitted DCF's investigative report, the investigator who conducted that investigation did not testify. Rather, APD called the investigator's supervisor, who advised that the investigator was no longer employed by DCF and was unavailable. The investigator's supervisor further testified that he did not know if any of the information in the investigative report was true. Under the circumstances, it is found that the investigative report for the 2014 alleged incident is hearsay and prepared in anticipation of litigation. Further, that 2014 investigative report is not corroborative of other evidence and the evidence

is otherwise insufficient to find a Class I violation stemming from the 2014 incident.<sup>2/</sup>

#### CLASS II VIOLATIONS

10. Rule 65G-2.0041(4) (b) classifies Class II violations as violations that "do not pose an immediate threat to the health, safety or welfare of a resident, but could reasonably be expected to cause harm if not corrected."

11. In October 2014, APD Investigator Michael McKenna found a broken window at the Janae House that had been improperly repaired, with glass still lying in the yard and in the window frame.

12. Given the fact that the Janae House is a behavioral home, a broken window with exposed broken glass presents a direct risk that a resident may hurt themselves or another.

13. Mr. McKenna advised owner Kevin Rivers about the window and its danger during the October 2014 visit.

14. On a return visit in November 2014, Mr. McKenna noted that the window was broken again, and that, for a second time, jagged glass was left in the window.

15. When Mr. McKenna spoke to Mr. Rivers again, Mr. Rivers' response was that the investigator was intentionally looking for items to note.

16. During her visit to Janae House on August 8, 2014, APD licensing supervisor Joyce Leonard observed that there was no

carbon monoxide detector in the home and that the smoke detector needed a battery. Ms. Leonard also observed that the pantry door in the kitchen was broken. Mr. Rivers was advised of these deficiencies.

17. Two months later, during a monitoring visit to Janae House on October 29 and 30, 2014, Investigator McKenna observed that there was still no carbon monoxide detector in the home and that the smoke detector lacked a battery. During that same visit, Mr. McKenna also observed broken doors and holes in the wall.

18. In cases where a behavioral analyst is not available for residents needing behavioral services, APD regulations require a short one- or two-page sheet of procedures from the residents' health care provider for group home employees to follow in case of problematic behaviors. While monitoring Janae House on February 24, 2014, APD Senior Behavior Analyst Scott Traynor noted that, although Janae House resident JR had the need, no behavior analyst was available for resident JR. There was also no behavior procedure sheet specific to resident JR.

#### CLASS III VIOLATIONS

19. Rule 65G-2.0041(4)(c) classifies Class III violations as "statutory or rule violations related to the operation and maintenance of the facility or to the personal care of residents, other than Class I or Class II violations."

20. When Joyce Leonard visited Janae House on August 8, 2014, Ms. Leonard observed that there was garbage strewn throughout the front yard.

21. On his October 29 and 30, 2014, visit, Michael McKenna discovered that there was no physical exam on file for resident JR, there were no financial records of residents' personal funds available for review, a Janae House staff member was administering medication to residents even though there were no current medication administration training credentials on file, and there was no communication log for Janae House staff.

22. During that same visit, Mr. McKenna observed exposed light bulbs in their fixtures, filthy rugs throughout the home, a dryer was full of lint, numerous wasps nests on the outside of the building, and various debris littered throughout the grounds.

23. New Life owner, Mr. Rivers, was made aware of these deficiencies at the time and advised that he would correct them. Corrections, however, were not made.

24. Upon Mr. McKenna's return to Janae House on November 20, 2014, there were no financial records available for review for resident KJ's personal funds, no documentation of an annual dental visit for resident KJ, no weekly schedule for staff, and light bulbs were still exposed.



25. During Scott Traynor's visit to Janae House on February 24, 2014, he found that a board-certified behavior analyst was not monitoring at least 50 percent of Janae House staff each month as required, and that Janae House did not have site-specific reactive strategy procedures for staff to implement, if needed. He also discovered that, despite ADP's request, the behavior analyst for Janae House resident DJ did not present resident DJ's behavior plan to the local review committee for review, and that Janae House staff was not conducting quarterly or semi-annual quality assurance meetings to review reactive strategies and develop strategies for behavioral incident reduction.

26. APD also alleged that, during her review and investigation, former APD Medical Case Manager Victoria McKenna discovered that Janae House had violated a number of medical regulations. Ms. McKenna, however, did not testify. Rather, APD attempted to prove the alleged medical violations by submitting reports and notices of violations allegedly observed by Ms. McKenna and by offering the testimony of Michelle Young, a current APD medical case manager, who testified that notices of noncompliance are the same regardless of who does them. However, as in the alleged Class I violation that was only supported by an investigative report, it is found that the notices of violations prepared by Ms. McKenna, without more, are

hearsay, prepared in anticipation of litigation, and insufficient to prove the alleged medical violations.

#### CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. See §§ 120.569 and 120.57(1), Fla. Stat. (2015).

28. The Department, as the party asserting the affirmative in this proceeding, has the burden of proof. See, e.g., Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977). Because the Department is seeking to prove violations of a statute or rule and impose administrative fines or other penalties, it has the burden to prove the allegations in the complaint by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

29. As the licensing authority, APD is charged with regulating the licensing and operation of foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs pursuant to section 20.197 and chapter 393, Florida Statutes.

30. APD is authorized to revoke a license, or impose an administrative fine if the licensee has failed to comply with the applicable requirements of chapter 393 or applicable rules.

31. Rule 65G-2.0041(4) (a)1. provides that Class I violations may be penalized by revocation of the license. APD proved by clear and convincing evidence that Janae House had one Class I violation arising from the abuse and injury of a resident in 2013.

32. With regard to Class II violations, rule 65G-2.0041(4) (b)1. states: "If four or more Class II violations occur within a one year time period, the Agency may seek the suspension or revocation of the facility's license, nonrenewal of licensure, or a moratorium on admissions to the facility."

33. APD proved by clear and convincing evidence at least seven Class II violations by Janae House, including two incidents of exposed broken glass and improper window repair,<sup>3/</sup> two incidents of failing to have carbon monoxide detectors,<sup>4/</sup> two incidents of failing to have working batteries in a smoke detector,<sup>5/</sup> and one failure to have a written behavioral protocol for a resident who needed behavioral services.<sup>6/</sup>

34. Regarding Class III violation, rule 65G-2.0041(4) (c)3. states: "If twenty or more Class III violations occur within a one year time period, the Agency may seek the suspension or revocation of the facility's license, nonrenewal of licensure, or moratorium on admissions to the facility."

35. APD proved, by clear and convincing evidence, 18 of the Class III violation allegations against Janae House,

including two incidents of strewn garbage,<sup>7/</sup> one failure to have a resident's medical exam records on file,<sup>8/</sup> two failures to have residents' personal financial records available,<sup>9/</sup> an incident of a staff member administering medication without documented training,<sup>10/</sup> the lack of a staff communications log,<sup>11/</sup> two incidents of exposed light bulbs,<sup>12/</sup> an incident of having filthy rugs,<sup>13/</sup> maintaining a fire hazard by failing to clean lint from a dryer,<sup>14/</sup> having numerous wasp nests,<sup>15/</sup> failure to maintain dental records on a resident,<sup>16/</sup> failure to maintain a weekly staff schedule,<sup>17/</sup> failure to have at least 50 percent of staff monitored by a board-certified behavior analyst,<sup>18/</sup> failure to have site-specific behavioral reactive procedures,<sup>19/</sup> failure to submit a resident's behavioral plan for local committee review,<sup>20/</sup> and failure to conduct quarterly or semi-annual quality assurance meetings.<sup>21/</sup>

36. While APD did not prove 20 Class III violations, the numerous Class III violations that it did prove are not insignificant. Further, the Class I violation and the seven Class II violations that were proved against Respondent are more than adequate to support revocation of Respondent's license.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Agency for Persons with Disabilities enter a final order finding that Respondent violated the group home licensing standards as concluded above and revoking Respondent's group home license.

DONE AND ENTERED this 14th day of July, 2016, in Tallahassee, Leon County, Florida.



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JAMES H. PETERSON, III  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of July, 2016.

ENDNOTES

<sup>1/</sup> All citations to the Florida Statutes or the Florida Administrative Code are to current versions which have not substantively changed since the date of the alleged violations.

<sup>2/</sup> "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." § 90.801(1)(c), Fla. Stat. Under the Administrative Procedure Act, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." § 120.57(1)(c), Fla. Stat. Moreover, if "a record is made for the purpose of preparing for litigation, its trustworthiness is suspect and

should be closely scrutinized." King v. Auto Supply of Jupiter, Inc., 917 So. 2d 1015, 1019 (Fla. 1st DCA 2005) (quoting Professor Ehrhardt comments, Florida Evidence, § 803.6 at 786 (2004)).

<sup>3/</sup> Rule 65G-2.007(2)(e) states: "The facility shall provide safe and sanitary housing. Floors, walls, ceilings, windows, doors, and all parts of the structures shall be of sound construction, properly maintained or in working order, and kept clean as necessary to ensure the health and safety of the facility's residents." Rule 65G-2.007(2)(h) then states: "A violation of this subsection shall constitute a Class II violation."

<sup>4/</sup> Rule 65G-2.007(16) states: "Facilities shall be equipped with smoke and carbon monoxide detectors in good working condition. A violation of this subsection shall constitute a Class II violation."

<sup>5/</sup> Id.

<sup>6/</sup> Rule 65G-2.009(8)(a) provides:

BEHAVIORAL INTERVENTIONS AND RESPONSES TO  
BEHAVIORAL ISSUES INVOLVING RESIDENTS.

(a) The facility shall have a written statement of policies and procedures governing actions that may be taken by direct service providers to help prevent or respond to problematic behaviors exhibited by residents. Such policies and procedures, as well as any actions taken by direct service providers involving residents of the facility, shall include emergency procedures, reporting requirements, and be consistent with the provisions of Section 393.13, F.S., as well as Chapters 65G-4 and 65G-8, F.A.C. A violation of this paragraph shall constitute a Class II violation.

<sup>7/</sup> Rule 65G-2.007(10)(d) states: "All outdoor garbage and other waste materials shall be kept in covered containers until removed. Containers shall be emptied as often as necessary to prevent public nuisance and health hazards in accordance with municipal and county requirements of the jurisdiction within which the facility is located."

<sup>8/</sup> Rule 65G-2.009(5)(b)5. provides that the licensee shall maintain on the premises residents': "Medical and dental reports, including any examination results and laboratory findings, if received by the facility, and the client's medication history and any special instructions for carrying, lifting, positioning, bathing, assisting with meals or other aspects of personal care."

<sup>9/</sup> Rule 65G-2.009(4)(b) provides: "A record of income and expenditures from each client's personal funds shall be maintained in accordance with generally accepted accounting principles."

<sup>10/</sup> Section 393.506(2), Florida Statutes, states:

In order to supervise the self-administration of medication or to administer medications as provided in subsection (1), a direct service provider must satisfactorily complete a training course of not less than 4 hours in medication administration and be found competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner. Competency must be assessed and validated at least annually in an onsite setting and must include personally observing the direct service provider satisfactorily:

- (a) Supervising the self-administration of medication by a client; and
- (b) Administering medication to a client.

Further, rule 65G-7.004(1) provides:

An unlicensed provider applying for validation as a medication assistance provider must be assessed and validated at least annually, through demonstration, as competent to administer medication or to supervise the self-administration of medication. Successful completion of an Agency-approved medication administration course is a prerequisite to an assessment of competency validation.

11/ Rule 65G-2.009(15) requires: "A facility shall have a system in place to communicate recent incidents and client information to staff working on subsequent shifts."

12/ Rule 65G-2.007(2)(e) states: "The facility shall provide safe and sanitary housing. Floors, walls, ceilings, windows, doors, and all parts of the structures shall be of sound construction, properly maintained or in working order, and kept clean as necessary to ensure the health and safety of the facility's residents."

13/ Id.

14/ Id.

15/ Id.

16/ See Fla. Admin. Code R. 65G-2.009(5)(b)5., supra, n.7.

17/ Rule 65G-2.008(6)(d) requires licensed facilities to maintain "[a] weekly written schedule indicating staff coverage for at least one week in advance. Weekly schedules of actual staff coverage shall be maintained for a six-month period and provided to the Regional Office upon request."

18/ The Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, 2-50, applicable to Respondent, states: "Monitoring for competence must occur at least once per month for 50% of direct service staff that have completed the training described above."

19/ Rule 65G-8.003(1) provides:

All facilities or providers subject to this rule shall develop and implement policies and procedures consistent with the provisions of this rule chapter, including adoption of an approved emergency procedure curriculum, appropriate staff training, record maintenance, reporting and recording the use of any reactive strategy, training in the provisions of this rule chapter, data collection, and maintenance of reactive strategy consent information in client records, and any other requirements established in this rule chapter.



<sup>20/</sup> Rule 65G-2.009(1)(a)1.-3., provides:

(1) MINIMUM STANDARDS. Residential facility services shall ensure the health and safety of the residents and shall also address the provision of appropriate physical care and supervision.

(a) Each facility shall:

1. Facilitate the implementation of client support plans, behavior plans, and any other directions from medical or health care professionals as applicable;

2. Contact the client's support coordinator, as necessary, to ensure the timely provision of needed medical and dental care; and

3. Participate in staff training and meetings as required by the Agency.

<sup>21/</sup> Id.

COPIES FURNISHED:

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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.