



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF CINDY KAY PORTER

CASE NO. 3110521

[County Case No. 10126]

DATE OF HEARING: February 15, 2012

APPEARANCES:

Mr. Lee Meadowcroft, Attorney for Appellant

Mr. Patrick Henry, Attorney for County

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Patrick Henry ("Mr. Henry"), Multnomah County Assistant Attorney, appeared at the hearing and represented the Multnomah County Adult Care Program ("ACHP"). Mr. Lee Meadowcroft ("Mr. Meadowcroft"), attorney, appeared at the hearing and represented Ms. Cindy Porter ("Appellant"). Witnesses appearing at the hearing included Ms. Aimee Commeree, Ms. Bonnie Commeree, Mr. Thomas Thomas ("Mr. Thomas"), Ms. Christine Peters ("Ms. Peters"), Mr. Tim Porter ("Mr. Porter"), Alan Harris ("Mr. Harris"), and Appellant. Exhibits 1, 2, 2a, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 14a, 15, 16, 17, 18, 20, 21, 22, 23, and 24a were admitted into the evidentiary record without objection. Exhibits 8 and 24 were withdrawn and not offered into the evidentiary record. Exhibit 19 was found by the Hearings Officer to not be relevant and was not admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of the witnesses at the hearing, the admitted exhibits and the closing arguments of Mr. Henry and Mr. Meadowcroft.

Jurisdiction: ACHP operates under Multnomah County Administrative Rules For the Licensure and Regulation of Adult Care Homes ("MCAR"). MCAR Chapter 023 governs the licensing and operation of Adult Care Homes in Multnomah County, Oregon. ACHP licenses Adult Care Homes and enforces the MCAR. MCAR 023-160-200 grants an operator of an Adult Care Home in Multnomah County to request a hearing to contest sanctions (including fines) imposed by ACHP on the operator. The City of

Portland Code Hearings Office is authorized, under an Intergovernmental Agreement with ACHP, to conduct appeal hearings.

Appeal Issue: On October 26, 2011, the ACHP sent a Determination Letter, Exhibit 4, to Appellant alleging seven violations of the MCAR. Appellant, through her attorney, denies all of the alleged violations, and appeals the sanctions imposed by the ACHP. At the start of the hearing, Mr. Henry indicated that the ACHP would like to withdraw Allegation 7. The Hearings Officer is to consider whether Allegations 1 through, and including, 6 occurred and whether the associated sanctions are appropriate.

Relevant Law/Rules: The Determination Letter alleges that Appellant violated MCAR 023-120-105, MCAR 023-030-105(a) and (h), MCAR 023-080-420, and MCAR 023-070-855. The relevant parts of the listed sections are outlined below.

MCAR 023-120-105 states that an operator of an Adult Care Home in Multnomah County “shall exercise all reasonable precautions against conditions that could threaten the health, safety or welfare of Adult Care Home residents. It is prohibited for anyone who lives or works in an Adult Care Home to, abuse, neglect or exploit residents or other occupants...” Abuse is defined in MCAR 023-120-115 as, “Physical abuse . . . (i) the use of physical force that may result in bodily injury, physical pain, or impairment. (ii) Any physical injury to an adult cause by other than accidental means.” MCAR 023-120-115 also defines abuse as “Verbal or Emotional Abuse . . . (A) . . . threatening significant harm or threatening or causing significant emotional harm to an adult through the use of: (i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule. (ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.” MCAR 023-120-115 also defines abuse as “Involuntary Seclusion of an adult for the convenience of a caregiver, or to discipline the adult. (A) Involuntary seclusion may include: (i) Confinement or restriction of an adult to his or her room or a specific area. (ii) Placing restrictions on an adult’s ability to associate, interact, or communicate with other individuals.”

MCAR 023-030-105 contains the Resident’s Bill of Rights and grants residents of an Adult Care Home the following rights in sections (a) and (h); “Each resident of an adult care home in Multnomah County has a right to: (a) Be treated as an adult with respect and dignity. . . . (h) Receive appropriate care and services from the adult care home and access to prompt medical care as needed.”

MCAR 023-080-420 regulates resident care plans and provides that “Care plans shall be rewritten annually. Additionally, the care plan shall be updated whenever the resident’s care needs change and at least every 6 months.”

MCAR 023-070-855 regulates staff coverage, supervision and staffing changes and provides “Operators shall keep adequate staff necessary to maintain a stable environment and to provide quality care in the home.”

Overview of Evidence: Ms. Aimee Commeree testified that she was a resident at the Porter home for 2.5 years before moving out on July 28, 2011. Ms. Aimee Commeree testified that while living at the Porter home she needed assistance with daily activities such as transferring in and out of bed, to and from the toilet and the bathtub. Ms. Aimee Commeree testified that she needed assistance with dressing, undressing, and showering. Ms. Aimee Commeree testified that her needs changed during the time that

she was a resident at the Porter home. Ms. Aimee Commeree testified that she only needed the assistance of one person to transfer from her bed when she first arrived at the Porter home. Ms. Aimee Commeree testified that when she left the Porter home, she needed additional assistance. Ms. Aimee Commeree testified that “with time to practice” she “could have” transferred with the aid of a transfer pole and one other person. Ms. Aimee Commeree testified that she was “told” she was leaving the Porters because Appellant’s back hurt and that Appellant believed that she needed the assistance of two people to transfer. Ms. Aimee Commeree testified that she was “evicted” from the Porter home because her needs exceeding the abilities of the home. Ms. Aimee Commeree testified that while she was a resident at the Porter home she was mostly assisted by Appellant. Ms. Aimee Commeree testified that Mr. Porter helped with her care “at times,” and that Mr. Porter’s sister, Theresa, helped also.

Ms. Aimee Commeree testified about a specific incident when Mr. Porter was transferring her, and caused her pain. Ms. Aimee Commeree testified that Appellant was also present when the incident occurred. Ms. Aimee Commeree testified that during the incident when she was hurt, Mr. Porter pushed on her knees and caused three significant “pops” in her back. Ms. Aimee Commeree testified that previously Appellant had corrected Mr. Porter when he had pushed on her knees and had told him that her knees do not bend.

Ms. Aimee Commeree testified that while she was living in the Porter home, Mr. Porter spoke to her with a tone that was “strong, harsh . . . strong, as in close to yelling.” Ms. Aimee Commeree testified that Mr. Porter would tell her that she had to wait to use the restroom, when she would ask for assistance after dinner. Ms. Aimee Commeree testified that Mr. Porter told her on multiple occasions that she would need to wait to have her needs met because it was “family time.” Ms. Aimee Commeree testified about three specific incidents when no one assisted her when she asked for help, and instead she was told by Mr. Porter that it was “family time.” Ms. Aimee Commeree testified that she felt “belittled and unrespected” by Mr. Porter’s tone of voice.

Ms. Aimee Commeree testified that while she was living in the Porter home, Appellant placed a sign on the wall over her bed telling her when she was permitted to call for help. Ms. Aimee Commeree testified that the sign meant that she was not to call for assistance after nine o’clock unless she “fell out of bed” or needed meds. Ms. Aimee Commeree testified that there were times when she did not ask for help that she needed because it was after nine o’clock. Ms. Aimee Commeree testified that she would try to use the bathroom before bed because she “might not” get assistance if she needed to use the bathroom later in the evening. Ms. Aimee Commeree testified that being “uncomfortable” didn’t mean the same thing to the Porters as it did to her, and that her needs/requests were not taken seriously.

Ms. Aimee Commeree testified that prior to July the care that she received in the Porter home was good. And, prior to July she was comfortable in the home.

Mr. Meadowcroft asked Ms. Aimee Commeree a number of questions about the care she received in the Porter home. Ms. Aimee Commeree testified that Appellant always came when she called for her, but that it might take a long time. Ms. Aimee Commeree testified that she was unsure whether she ever called Appellant for frivolous things, such as to pick up a sock, after nine o’clock. Ms. Aimee Commeree testified that she was unsure whether she asked for the sign to be placed over the bed, or not. Ms. Aimee Commeree testified that she told investigators that she was evicted because the Porters were fined because of her, but she now believes she was evicted because of the fine and her care needs. Ms. Aimee Commeree testified that she doesn’t recall what the fine was for, but that Mr. Porter yelled about

the fine at a time when she was in her room and he was in the dining room. Ms. Aimee Commeree testified that she could hear Mr. Porter from her room.

Appellant testified that she has operated an Adult Care Home for 14 years. Appellant testified that Ms. Aimee Commeree was a resident in her home for 2.5 years and needed assistance with transfers, bathing, meals, medications, and laundry while at her home. Appellant testified that Ms. Aimee Commeree has a significant amount of pain associated with her medical condition, and that she takes pain medication daily. Appellant testified that Ms. Aimee Commeree entire body hurts and that her pain medications are changed frequently to try to manage her pain. Appellant testified that initially Ms. Aimee Commeree was able to transfer with "support" from one other person. Appellant testified that at the time Ms. Aimee Commeree left her home she required "lift assistance" to transfer. Appellant testified that Ms. Aimee Commeree's needs exceeded the abilities of the home when she began requiring lift assistance. Appellant testified that she issued an "eviction notice" because Ms. Aimee Commeree needed the assistance of two people to safely transfer.

Appellant testified that there were four care providers in her home; Mr. Porter, "Theresa," "Rochelle" and herself. Appellant testified that she trained the providers and told them how to assist the residents. Appellant testified that on the day Mr. Porter caused Ms. Aimee Commeree pain and "popping" in her back Mr. Porter was assisting her in positioning Ms. Aimee Commeree in her bed. Appellant testified that she requested Mr. Porter's help to problem-solve how to get Ms. Aimee Commeree safely into her bed. Appellant testified that Ms. Aimee Commeree needed to move closer to her bed prior to sitting, and Mr. Porter applied pressure to her knees to help move her legs backwards. Appellant testified that she told Mr. Porter that pushing on Ms. Aimee Commeree's knees would cause her pain, and that it was not "okay." Appellant testified that she had not instructed Mr. Porter specifically about Ms. Aimee Commeree knee pain in the past, but had instructed him about how to properly transfer Ms. Aimee Commeree. Appellant testified that Ms. Aimee Commeree's knees would not be touched during a "typical" transfer, and that Mr. Porter hurt her knees because he "didn't know better."

Appellant testified that she has a "care plan" for each resident which is filled out when the resident enters the home. Appellant testified that when a resident's needs change, the plan must be updated. Appellant testified that Ms. Aimee Commeree's care plan, Exhibit 11, was created on October 22, 2010, and reviewed on May 4, 2011. Appellant indicated that Ms. Aimee Commeree became more difficult to transfer as time passed and that she issued an eviction notice, Exhibit 10, because Ms. Aimee Commeree's level of care exceeded the abilities of the home. Appellant testified that she wrote "she has become a 2-person assist in & out of bed" on the eviction form, but that Ms. Aimee Commeree was not yet a "2-person transfer" and instead was "becoming a 2-person transfer." Appellant testified that at the time of the eviction notice she was still transferring Ms. Aimee Commeree by herself.

Appellant testified that after issuing the eviction notice she contacted Ms. Aimee Commeree's family. Appellant denied encouraging the family to move Ms. Aimee Commeree prior to the end of the 30 day notice period. Appellant also denied telling the family that she would not be responsible for Ms. Aimee Commeree if she fell.

Appellant provided a staffing plan for her home at the request of the ACHP, Exhibit 7. The staffing plan indicated that on most days Appellant was the only care provider in the home. Appellant indicated that her father would occasionally provide substitute care in the home. Appellant testified that her father could transfer Ms. Aimee Commeree, if necessary, but not in and out of bed. Appellant testified that

Ms. Aimee Commeree would not have been in her bed when Appellant's father was present as the care provider. Appellant indicated that if Ms. Aimee Commeree was in her bed and needed assistance with transferring, she would have to wait until Appellant returned.

Appellant testified that Ms. Aimee Commeree's requests were excessive at times, and that she would make unimportant requests at inappropriate times. Appellant denied telling Ms. Aimee Commeree not to ask for help after nine o'clock, and testified that Mr. Porter didn't tell Ms. Aimee Commeree not to call either. Appellant testified that she explained to Ms. Aimee Commeree that her time to sleep needed to be respected, and that she should only call after nine o'clock if she was uncomfortable. Appellant testified that Ms. Aimee Commeree asked her to write the note to remind her of when it was appropriate to call for assistance. Appellant testified that Ms. Aimee Commeree often asked to have notes posted on her wall to help her remember things.

Appellant testified about a specific incident which occurred on July 28, 2011, when a monitor from the ACHP came to the home. Appellant testified that she was not home, and that her father was the care provider when the monitor visited. Appellant testified that Mr. Porter became upset with the monitor because she directed questions towards the Porter's children. Appellant testified that Mr. Porter called her on the phone and told her to come home. Appellant testified that Mr. Porter was speaking quietly, but was frustrated.

Ms. Bonnie Commeree testified that she is the sister-in-law of Ms. Aimee Commeree and that she has known Ms. Aimee Commeree for thirty years. Ms. Bonnie Commeree testified that she visited Ms. Aimee Commeree approximately two times a week while she was living with the Porters. Ms. Bonnie Commeree testified that Ms. Aimee Commeree liked the home initially, but then began complaining that she felt intimidated. Ms. Bonnie Commeree testified that Ms. Aimee Commeree told her that she felt like she couldn't have a conversation in the home without someone standing over her. Ms. Bonnie Commeree testified that Ms. Aimee Commeree told her that she felt intimidated because Mr. Porter "yelled at her" and was "rough." Ms. Bonnie Commeree testified that she was told by Ms. Aimee Commeree about the incident when Mr. Porter hurt her knee. Ms. Bonnie Commeree testified that Ms. Aimee Commeree told her that she was afraid of getting hurt at the Porter home, because the Porters were not being as careful as they had been in the past.

Ms. Bonnie Commeree testified that she asked Ms. Aimee Commeree about the note over her bed and was told that the note was because of "family time." Ms. Bonnie Commeree testified that Ms. Aimee Commeree told her that she felt like she couldn't ask to have her needs met.

Ms. Bonnie Commeree testified that she received a call from Appellant when the eviction notice was given. Ms. Bonnie Commeree testified that she was told that the eviction was because of Ms. Aimee Commeree's increased needs. Ms. Bonnie Commeree testified that it was the caseworker who told her that Appellant didn't want to be responsible if Ms. Aimee Commeree fell.

Mr. Thomas Thomas testified that he is a Human Services Investigator for Multnomah County Adult Protective Services. Mr. Thomas testified that he has held the position for nine years and that he investigates licensed care facilities based on reports of abuse.

Mr. Thomas testified that he received a referral on July 28, 2011, and started an investigation based on an allegation of failure to care and protect. Mr. Thomas' report is in the evidentiary record as Exhibit 5.

Mr. Thomas testified that his investigation consists of an unannounced visit where he speaks with caregivers, alleged perpetrators, victims and witnesses. Mr. Thomas testified that he then writes a report and passes the report on to the ACHP. Mr. Thomas testified that, based on his investigation, he found a "substantiated" claim.

Ms. Christine Peters testified that she is a monitor for the ACHP and has held the position for 5.5 years. Ms. Peters testified that she makes announced and unannounced visits to homes and conducts records reviews and safety checks. Ms. Peters testified that she visited the Porter home on July 28, 2011, based on a report from the licensure. Ms. Peters testified that she intended to have a staffing plan completed and to interview residents when she visited the Porter home. Appellant's report is in the evidentiary record as Exhibit 6.

Ms. Peters described interviewing Ms. Aimee Commeree about her needs. Ms. Peter testified that Ms. Aimee Commeree told her that she needed the assistance of two people to transfer. Ms. Peters testified that Appellant's father was the care provider in the home at the time of her visit and that he appeared "feeble." Ms. Peters testified that Mr. Porter came home while she was talking with Ms. Aimee Commeree and that Ms. Aimee Commeree became uncomfortable and stated that Mr. Porter "intimidated" her. Ms. Peters stated that after leaving Ms. Aimee Commeree's room she encountered Mr. Porter in the kitchen. Ms. Peters testified that Mr. Porter "yelled" at her about being in the home and asking questions of the children. Ms. Peter's testified that she felt intimidated by Mr. Porter.

Ms. Peters testified that she interviewed other residents in the home and that the other residents did not complain about the care in the home. Ms. Peters clarified that the "yelling" by Mr. Porter was his use of a raised voice when speaking with her.

Mr. Alan Harris testified that he is the Program Development Specialist for the ACHP and that he has held the position for nine years. Mr. Harris testified that he prepared the Determination Letter sent to Appellant (Exhibit 4). Mr. Harris testified that he consulted page 9 of the Determination Letter when determining the appropriate sanction to impose for the alleged violations. Upon cross examination by Mr. Meadowcroft, Mr. Harris acknowledged that he did not interview the parties personally, but instead relied on others' reports when issuing sanctions.

Mr. Bertrum Tompkins testified that he is a resident of the Porter home and has lived in the home since April 2010. Mr. Tompkins testified that he has never seen or heard Mr. Porter yell at anyone. Mr. Tompkins testified that he has not seen Mr. Porter hurt Ms. Aimee Commeree's knees and he has always received care when needed.

Mr. Porter testified that he is a caregiver in his wife's Adult Care Home and that he works full-time. Mr. Porter testified that he has assisted with the care of Ms. Aimee Commeree infrequently during the last 2.5 years.

Specific to the incident when Ms. Aimee Commeree indicates that her knees and back were hurt, Mr. Porter testified that he was discussing with Ms. Aimee Commeree and Appellant about how to get Ms. Aimee Commeree safely into bed. Mr. Porter testified that he pushed on Ms. Aimee Commeree leg to help get her back to the edge of the bed. Mr. Porter testified that Ms. Aimee Commeree stated "ouch" and he stopped pushing. Mr. Porter testified that Ms. Aimee Commeree never complained of any rough treatment.

Mr. Porter testified that he never yelled at Ms. Aimee Commeree about a fine that his wife received. Mr. Porter testified that he read the letter about the fine to his wife, but that he was not yelling. Mr. Porter denied being upset with Ms. Aimee Commeree about the fine. Mr. Porter denied yelling at Ms. Aimee Commeree about family time or denying her requests for assistance. Mr. Porter did admit to being frustrated by Ms. Aimee Commeree's requests at night. Mr. Porter testified that Ms. Aimee Commeree never told him that she was intimidated and he doesn't know why she was intimidated.

Mr. Porter testified that he did not yell at Ms. Peters, the ACHP monitor. Mr. Porter testified that he was annoyed and "spoke sternly," but denied yelling.

Hearings Officer's Findings:

Allegation #1: Mr. Henry argued that Mr. Porter subjected Ms. Aimee Commeree to abuse when he applied pressure to her knees causing her pain. Mr. Henry argued that Appellant's failure to adequately train Mr. Porter with respect to caring for Ms. Aimee Commeree is significant. Mr. Meadowcroft argued that Ms. Aimee Commeree has pain associated with her medical issues, and some pain when assisting her does not constitute abuse.

The Hearings Officer finds with respect to allegation #1 that only one incident in which Ms. Aimee Commeree experienced pain cause by Mr. Porter was sufficiently identified and described by the parties. The Hearings Officer finds that Appellant and Mr. Porter were credible and consistent in their description of the conduct which caused Ms. Aimee Commeree pain. The Hearings Officer finds that Ms. Aimee Commeree's testimony specific to allegation #1 was not as credible as her testimony was less descriptive and less consistent when describing any incident in which Mr. Porter caused her pain. The Hearings Officer finds that Ms. Aimee Commeree experienced pain in her knees on one specific occasion when she was being assisted into bed by Mr. Porter and Appellant. The Hearings Officer finds physical force applied by Mr. Porter resulted in physical pain to Ms. Aimee Commeree and constitutes abuse under MCAR 023-120-115.

The Hearings Officer finds that Appellant trained Mr. Porter to care for residents in the home. The Hearings Officer finds that the training by Appellant consisted of instructing Mr. Porter about how to transfer Ms. Aimee Commeree to and from bed, and telling Mr. Porter that Ms. Aimee Commeree has significant amount of pain associated with her medical issues. The Hearings Officer finds that at the time Ms. Aimee Commeree experienced pain the parties were attempting to problem-solve and determine the best way to transfer Ms. Aimee Commeree into her bed. The Hearings Officer finds that this was a unique situation and not a "typical" transfer. The Hearings Officer finds that Mr. Porter's application of pressure to Ms. Aimee Commeree's knees was not unreasonable in the situation, and that Appellant could not have reasonably anticipated and prevented such conduct. The Hearings Officer finds that Appellant exercised all reasonable precautions as required by MCAR 023-120-105 with respect to Allegation #1. The Hearings Officer finds that ACHP did not carry its burden of demonstrating to the Hearings Officer that Appellant violated MCAR 023-120-105 by failing to present physical abuse from occurring. The Hearings Officer finds the violation, as set forth in the Determination Letter (Exhibit 4), does not exist. The Hearings Officer finds that the \$500.00 penalty shall not be assessed against Appellant.

Allegation #2: Mr. Henry argued that Ms. Aimee Commeree was consistent in her reports of intimidation from Mr. Porter, and that she reported repeatedly. Mr. Henry argued that Ms. Aimee Commeree has a right to be treated as an adult, and not to be talked to sternly by Mr. Porter. Mr. Meadowcroft argued that Ms. Aimee Commeree lacks credibility and that she has a history of confusion and lashing out. Mr. Meadowcroft argued that the other residents did not corroborate Ms. Aimee Commeree's statements about Mr. Porter yelling.

The Hearings Officer finds with respect to allegation #2 that Ms. Aimee Commeree was credible, consistent and descriptive when reporting and testifying about intimidating conduct by Mr. Porter. The Hearings Officer finds that Ms. Aimee Commeree's statements about Mr. Porter's demeanor were supported by the testimony of Ms. Peters. The Hearings Officer finds that Appellant and Mr. Porter were less credible in their denial of Mr. Porter's intimidation of Ms. Aimee Commeree. The Hearings Officer finds that Mr. Porter used a raised voice when denying reasonable requests by Ms. Aimee Commeree. The Hearings Officer finds that Mr. Porter harassed Ms. Aimee Commeree when he used a raised voice to read a sanction letter aloud. The Hearings Officer finds that Mr. Porter engaged in verbal or emotional abuse as defined in MCAR 023-120-115 when he caused her distress, fear, and unreasonable emotional discomfort by means of using a raised voice and making harassing statements. The Hearings Officer finds that Appellant did not exercise reasonable care to prevent such verbal or emotional abuse from occurring, based on the repeated nature of the abuse. The Hearings Officer finds that ACHP met its burden of demonstrating to the Hearings Officer that Appellant violated MCAR 023-120-105 with respect to Allegation #2. The Hearings Officer finds the violation, as set forth in the Determination Letter (Exhibit 4), does exist. The Hearings Officer finds that the \$500.00 penalty shall be assessed against Appellant.

Allegations #3 and #4: Mr. Henry argued for allegations 3 and 4 that Ms. Aimee Commeree has a right to be treated as an adult and to not be secluded in her room. Mr. Henry argued that Ms. Aimee Commeree has a right to not be required to go to bed at 8:00 p.m. Mr. Henry also argued that Ms. Aimee Commeree has a right to seek and receive help when needed. Mr. Meadowcroft again argued that Ms. Aimee Commeree's credibility is at issue and that the many of the witnesses relied only on statements by Ms. Aimee Commeree without interviewing the Porters.

The Hearings Officer finds with respect to Allegations #3 and 4 that Ms. Aimee Commeree was credible, consistent and descriptive when reporting and testifying about the restrictions placed on her by Appellant. The Hearings Officer finds that the existence of the note in Ms. Aimee Commeree's room is not the issue, and that the nature restrictions placed on Ms. Aimee Commeree is the issue to be evaluated. The Hearings Officer finds that Appellant was credible in her description of why the restrictions were put into place and what she intended the restrictions to mean. The Hearings Officer finds that Appellant placed restrictions on Ms. Aimee Commeree's ability to seek care after nine o'clock. The Hearings Officer finds that regardless of whether Appellant would respond to requests made after nine o'clock, the stated restrictions had the effect of preventing Ms. Aimee Commeree from seeking needed care. The Hearings Officer finds that Ms. Aimee Commeree limited her requests for care because she believed that she was not permitted to seek assistance after nine o'clock. The Hearings Officer finds that the restrictions placed on Ms. Aimee Commeree by Appellant restricted Ms. Aimee Commeree ability to communicate about her needs after nine o'clock and resulted in involuntary seclusion as defined in MCAR 023-120-115. The Hearings Officer finds that Appellant did not exercise reasonable care to prevent such involuntary seclusion from occurring, based on the extended term of the exclusion. The Hearings Officer finds that ACHP met its burden of demonstrating to the Hearings

Officer that Appellant violated MCAR 023-120-105 with respect to Allegation #3. The Hearings Officer finds the violation, as set forth in the Determination Letter (Exhibit 4), does exist. The Hearings Officer finds that the \$500.00 penalty shall be assessed against Appellant. The Hearings Officer finds that the restrictions placed on Ms. Aimee Commeree by Appellant violated Ms. Aimee Commeree's right to be treated with dignity and respect, in that the restrictions limited Ms. Aimee Commeree's ability to have her basic needs met. The Hearings Officer does not find that the restrictions limited Ms. Aimee Commeree's ability to receive appropriate care and services when requested, as the testimony indicated that Appellant responded when Ms. Aimee Commeree requested care. The Hearings Officer finds that ACHP met its burden of demonstrating to the Hearings Officer that Appellant violated MCAR 023-030-105(a) with respect to Allegation #4. The Hearings Officer finds the violation, as set forth in the Determination Letter (Exhibit 4), does exist. The Hearings Officer finds that the \$250.00 penalty shall be assessed against Appellant.

Allegation #5: The attorneys did not offer argument specifically related to Allegation #5. The care plan which is the subject of Allegation #5 is contained in the evidentiary record as Exhibit 11. The Hearings Officer finds with respect to Allegation #5 that on June 28, 2011, Appellant issued a 30 day eviction notice, Exhibit 10, to Ms. Aimee Commeree and indicated that Ms. Aimee Commeree "has become a 2-person assist in & out of bed." The Hearings Officer finds that Ms. Aimee Commeree's care plan, Exhibit 11, was last updated on May 4, 2011, and indicates that Ms. Aimee Commeree "can transfer herself holding onto an arm of caregiver." MCAR 023-080-420 provides that "care plans shall be updated whenever the resident's care needs change . . ." The Hearings Officer does not find Appellant credible in her statement that she intended the statement to mean that Ms. Aimee Commeree was "becoming" a 2-person transfer. The Hearings Officer finds that ACHP met its burden of demonstrating to the Hearings Officer that Appellant violated MCAR 023-080-420 with respect to Allegation #5. The Hearings Officer finds the violation, as set forth in the Determination Letter (Exhibit 4), does exist. The Hearings Officer finds that the \$250.00 penalty shall be assessed against Appellant.

Allegation #6: The attorneys did not offer argument specifically related to Allegation #6. The staffing plan which is the subject of Allegation #6 is contained in the evidentiary record as Exhibit 7. The Hearings Officer finds that Exhibit 7 indicates that during the week of July 24-27, 2011, Appellant was the only staff person in the home on multiple days. The Hearings Officer notes that the 30 day eviction notice issued to Ms. Aimee Commeree on June 28, 2011, indicates that Ms. Aimee Commeree requires two people to safely transfer. The Hearings Officer does not find Appellant credible in her statement that she intended the statement to mean that Ms. Aimee Commeree was "becoming" a 2-person transfer. The Hearings Officer finds that Appellant failed to maintain adequate staff to safely transfer Ms. Aimee Commeree during the week of July 24-27, 2011. The Hearings Officer finds that ACHP met its burden of demonstrating to the Hearings Officer that Appellant violated MCAR 023-070-855 with respect to Allegation #6. The Hearings Officer finds the violation, as set forth in the Determination Letter (Exhibit 4), does exist. The Hearings Officer finds that the \$500.00 penalty shall be assessed against Appellant.

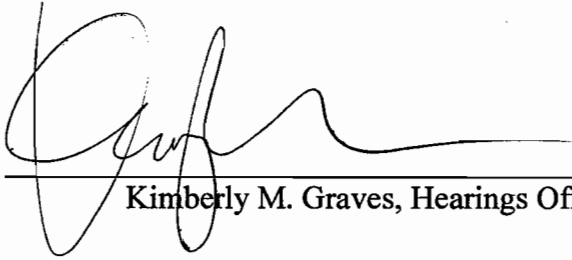
ORDER AND DETERMINATION:

1. The Determination Letter (Exhibit 4) is overruled in part and sustained in part; a violation of MCAR 023-120-105 (verbal emotional abuse and involuntary seclusion), MCAR 023-030-105(a), MCAR 023-080-420 and MCAR 023-070-855 did occur and sanctions imposed are sustained.

2. Appellant prevailed in part in this appeal.
3. County prevailed in part in this appeal
4. This order has been mailed to the parties on March 30, 2012, and shall become immediately effective.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 30, 2012

KMG:rs/jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	11/9/11 letter	Henry, Patrick W.	Received
2	Appeal form page 1	Henry, Patrick W.	Received
2a	11/1/11 letter, Meadowcroft to Harris	Henry, Patrick W.	Received
3	Appeal form page 2	Henry, Patrick W.	Received
4	Notification of Administrative Sanction	Henry, Patrick W.	Received
5	AFH Complaint Report	Henry, Patrick W.	Received
6	License Chronology	Henry, Patrick W.	Received
7	Staffing Plan - A Typical Week	Henry, Patrick W.	Received
8	Operator Request for Exception to Multnomah County Administrative Rules	Henry, Patrick W.	Withdrawn
9	Photos	Henry, Patrick W.	Received
10	Adult Care Home 30 Day Notice	Henry, Patrick W.	Received
11	ACHP Care Plan for Adult Care Home Operators	Henry, Patrick W.	Received
12	Mailing List	Hearings Office	Received
13	11/15/11 letter with attachments	Meadowcroft, Lee A.	Received
14	Appeal form page 1	Meadowcroft, Lee A.	Received
14a	11/11/11 letter	Meadowcroft, Lee A.	Received
15	Notice of Hearing	Hearings Office	Received
16	Request to reschedule	Henry, Patrick W.	Received
17	Hearing Notice	Hearings Office	Received
18	2/14/12 Faxed Letter	Henry, Patrick W.	Received
19	Pharmacy Records	Meadowcroft, Lee A.	Rejected
20	House Rules	Meadowcroft, Lee A.	Received
21	Written Statement from Aimee	Meadowcroft, Lee A.	Received
22	10/03/11 Fax	Meadowcroft, Lee A.	Received
23	Affidavit of Richard Percy	Meadowcroft, Lee A.	Received
24	Facility Plan	Meadowcroft, Lee A.	Withdrawn
24a	Facility Plan - with markings	Meadowcroft, Lee A.	Received