

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

CLAUDETTE HINDS,
Petitioner,

v.

DEPARTMENT OF COMMUNITY
HEALTH, HEALTHCARE FACILITY
REGULATION DIVISION,
Respondent.

Docket No.:
OSAH-DCH-HFR-PCH-1554338-75-Walker



FILED
OSAH

JUL 9 2015

INITIAL DECISION

K. Westray
Kevin Westray, Legal Assistant

Petitioner, Claudette Hinds, appeals a decision by Respondent, the Department of Community Health, Healthcare Facility Regulation Division, (hereinafter the "Department"), to impose a civil penalty of \$600.00 for operating an unlicensed Personal Care Home. An administrative hearing was held on June 17, 2015, and the record closed on June 24, 2017. For the reasons given below, the Department's action is **REVERSED**.

I. FINDINGS OF FACT

1.

The Department conducts inspections of state-licensed Personal Care Homes and also investigates complaints regarding Personal Care Homes. In response to two complaints that the Petitioner was operating an unlicensed Personal Care Home, Latonda Oladapo, a Nurse-Surveyor with the Department, conducted an investigation. *Testimony of Latonda Oladapo; Testimony of Elaine Wright.*

2.

Typically, a Personal Care Home serves individuals who are frail or disabled. In order to operate a Personal Care Home, an individual must complete mandatory training and obtain a permit from the Department. *Testimony of Elaine Wright.*

3.

Petitioner lives with her children in a home that she owns located at 748 Rock Lane in McDonough, Georgia (the "Rock Lane home"). The Rock Lane home has eight bedrooms, seven bathrooms and two kitchens. For the past seven years, Petitioner has been offering some of the bedrooms to the general public as rental units. *Testimony of Petitioner.*

4.

Ms. Oladapo visited the Rock Lane home on October 14, 2014, and October 29, 2014. On October 30, 2014, she prepared an inspection report regarding her site visits. *Testimony of Latonda Oladapo.*

5.

Based on the inspection report, the Department determined that Petitioner was operating an unlicensed Personal Care Home because she provided at least two of her tenants with housing, food services and personal services, including assistance with or supervision of self-administered medications. Specifically, the Department maintains that Petitioner reminded residents to take their medicine, reordered their medicine and scheduled their doctors' appointments. *Testimony of Latonda Oladapo; Testimony of Elaine Wright; Exhibits R-1; R-3.*

6.

On November 13, 2014, the Department notified Petitioner that she must cease and desist from operating a Personal Care Home and that it intended to impose a civil penalty. In response, Petitioner denied that she provided her tenants with either food services or personal services and petitioned for an administrative hearing. *Testimony of Petitioner; Testimony of Elaine Wright; Exhibit R-1.*

7.

On October 14, 2014, Ms. Oladapo interviewed Petitioner at the Rock Lane home. Petitioner told her that she rented rooms in her home to tenants and that she only had two tenants. *Testimony of Latonda Oladapo.*

8.

Although Petitioner stated that she only had two tenants, when Ms. Oladapo returned to the Rock Lane home on October 29, 2015, she was able to meet with five tenants. There appeared to be at least four additional tenants in the home, excluding Petitioner and her family. *Testimony of Latonda Oladapo.*

9.

Based on confidential interviews with the residents, Ms. Oladapo prepared a report for the Department containing the following information. Ms. Oladapo interviewed Resident S.S., who stated that Petitioner checked to ensure that S.S. had taken her medication on a daily basis. Resident T.S. told Ms. Oladapo that she showed Petitioner that she had taken her medicine. Resident B. H., who Ms. Oladapo noted was an older gentleman who had urinated on himself, told Ms. Oladapo that Petitioner helped him administer his insulin. Resident J.W. stated that at times Petitioner assisted her with medication reminders and administration. J.B.-J. told her that Petitioner reordered his medication and scheduled his medical appointments. Although not referenced in the report, Ms. Oladapo testified that residents B.H., J.W. and J.B.-J. told her that Petitioner prepared their food. *Testimony of Latonda Oladapo; Exhibit R-3.*

10.

On November 24, 2014, Jonathan McGehee accompanied Ms. Oladapo to the Rock Lane home for further discussions with Petitioner. Petitioner met with Ms. Oladapo and Mr. McGehee. She denied administering medications to her tenants, but acknowledged that she had ordered an insulin refill for B.H. and checked to make sure J.W. took her medications. Petitioner then told Mr. McGehee that it was getting late and that she needed to prepare meals for the residents. *Testimony of Jonathan McGehee Testimony of Latonda Oladapo.*

11.

Petitioner presented J.B.-J. as a witness. He testified that he still lives in Petitioner's home and denied that Petitioner had ever provided him with meals or assisted him with his medications. He was able to identify his physician and stated that Petitioner drove him to a doctor's appointment on one occasion but that he usually "took the van." He stated he could not recall what he told Ms. Oladapo during the interview conducted on October 29, 2014. *Testimony of J.B.-J.*

12.

B.H. had been J.B.-J.'s roommate. J.B.-J. testified that he never observed Petitioner helping B.H. with his medication. Other than J.B.-J., none of the tenants appeared as witnesses during the hearing and their credibility could not be assessed. *Testimony of J.B.-J.*

13.

Petitioner also testified. She rejected the Department's contention that she prepared food for the tenants, stating that Mr. McGehee misunderstood her statement. She maintained she only prepared food for her family. Petitioner acknowledged that she took J.B.-J. to his physician on one occasion. Although B.H. had asked her to obtain a refill for him at the pharmacy, in general she did not know whether or not her tenants took prescription medication, and stated that she had never helped to administer any medication. *Testimony of Petitioner.*

II. CONCLUSIONS OF LAW

1.

The Department bears the burden of proof to show that its proposed action is warranted. The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.07 & .21.

2.

The administrative hearing is *de novo* and the undersigned must make an independent determination on the basis of the evidence presented at the hearing. Ga. Comp. R. & Regs. r. 616-1-2-.21(1), (3).

3.

A Personal Care Home is "a dwelling that provides housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage." O.C.G.A. § 31-7-12(a)(1). Personal services include "individual assistance with or supervision of self-administered medications and essential activities of daily living such as eating, bathing, grooming, dressing and toileting." O.C.G.A. § 31-7-12(a)(2). Pursuant to O.C.G.A. § 31-7-12(b), a Personal Care Home must be licensed by the Department of Community Health. A facility providing personal services and operating as an unlicensed Personal Care Home shall be assessed a civil penalty in the amount of \$100.00 per bed per day for each day of violation. The department shall take no action to collect such civil penalty until after the opportunity for a hearing. O.C.G.A. § 31-7-12.1.

4.

In this case, the Department proved that the Rock Lane home provided housing to two or more adults not related to Petitioner by blood or marriage.

5.

The Department also must prove that the Rock Lane home provided food services to two or more adults who are not related to the owner or administrator by blood or marriage.¹ In this case, the only non-hearsay evidence as to whether or not Petitioner was providing food services is her statement to Mr. McGehee that it was getting late and that she had to prepare meals for the residents. It is unclear whether or not the food Petitioner referred to would be a full meal, whether or not she provided food regularly or was only doing so on this one occasion, and which residents were to receive the food. Neither Ms. Odalapo nor Mr. McGehee observed Petitioner prepare food for the residents, nor did they testify that there were indications, such as a large number of place settings at a dining table or individual dining trays, which would support the conclusion that Petitioner was providing regular food services to two or more of her tenants.² Thus, the Department did not prove by a preponderance of the evidence that Petitioner provided food services to two or more adults not related to her by blood or marriage.

6.

Finally, the Department maintains that it presented sufficient evidence that Petitioner provided personal services by offering assistance with or supervision of self-administered medications. The Department primarily relies on the report prepared by Ms. Oladapo containing statements by the tenants that Petitioner assisted them with their medications.

7.

Pursuant to O.C.G.A. § 24-8-803(8)(C), public records, reports, statements, or data compilations of public offices, "setting forth factual findings resulting from an investigation made pursuant to authority granted by law are admissible, unless the sources of information or other circumstances

¹ Under Ga. Comp. R. & Regs. r. 111-8-62-.21, Personal Care Homes must provide a minimum of three regularly scheduled meals seven days a week.

² Ms. Oladapo testified at the hearing that three residents told her that Petitioner prepared their food. She did not include this information in the investigatory report prepared for the Department and none of the three residents testified at the hearing. The purported statements made by the residents are out of court statements offered for the truth of the matter asserted. In this case the Department asserts that to the extent Petitioner did not properly object to such hearsay, any objection is waived and the hearsay evidence is admissible. The Department is correct in its assertion. See O.C.G.A. § 24-8-802. Nonetheless, even if admissible the undersigned does not rely on these vague statements given that they lack any specificity that would constitute sufficient indicia of reliability.

indicate lack of trustworthiness.” Thus, in civil cases personal observations of a police officer made in a police report would be admissible. Maloof v. Metropolitan Atlanta Rapid Transit Authority, 330 Ga. App. 763, 767 (2015) (also noting that the police report at issue also contained out-of-court statements made by third parties to the police officer but that such statements were not at issue in the case before the court of appeals). Although personal observations are admissible, courts that have examined whether or not hearsay statements contained within the reports are admissible have concluded that such statements must have an independent basis for admissibility. Jordan v. Binns, 712 F.3d 1123, 1132 (7th Cir. 2013) (third-party statements do not become admissible for their truth by virtue of their presence in a public record). “This is because the presumption of reliability that serves as the premise for the public-records exception does not attach to third parties who themselves have no public duty to report.” Id. at 1132, citing (4 C.B. Mueller & L.C. Kirkpatrick, *Federal Evidence*, §§ 8.86, 8.88, at 770-71, 783-84 (3d ed. 2007)).³ Accordingly, “it is well established that although entries in a police or investigating officer's report which result from the officer's own observations and knowledge may be admitted, statements made to the officer by third parties under no business duty to report may not.” United States v. Snyder, 787 F.2d 1429, 1434 (1986) (citations omitted).

8.

As noted by the Department, to the extent that Petitioner did not properly object to hearsay contained within the report, the objection is waived and the hearsay evidence “shall be legal evidence and admissible.” O.C.G.A. § 24-8-802. However, even if admissible, the undersigned does not rely upon the statements made in the report because they lack sufficient indicia of reliability. The statements lacked specificity that would have bolstered their credibility. Notwithstanding that the investigator testified credibly as to the statements made during the investigation, there is no evidence that the individuals making the statements were in good physical or emotional health; to the contrary there was some testimony at the hearing indicating that one of the declarants recently had been released from a mental health facility and that another one appeared for the interview in urine-soaked clothing. Given that the individuals were taking medication, there was no testimony affirming that such medication did not impact their

³ Georgia Courts have noted that O.C.G. A § 24-8-803 mirrors Rule 803 of the Federal Rules of Evidence. Ware v. Multibank 2009-1 RES-ADC Venture, LLC, 327 Ga. App. 245, 249, n. 11 (2014) (citations omitted).

intellectual capacity, nor did the investigator assert that the declarants seemed particularly unbiased and worthy of belief. Moreover, J.B.-J. testified that the statements contained in the report that Petitioner reordered his medication and that he did not know the name of his doctor were incorrect.⁴

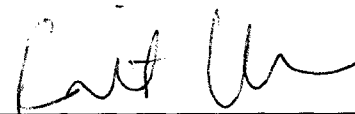
9.

Petitioner admitted that she assisted one tenant with her medication and reordered insulin for another tenant on at least one occasion. However, even if her actions constituted the administration of personal services as contemplated by O.C.G.A. § 31-7-12(a)(1), the Respondent did not prove by a preponderance of the evidence that Petitioner was providing food services to two or more adults not related to the owner by blood or marriage.

III. DECISION

In this case the Department diligently responded to complaints and commenced an investigation into the operation of an alleged Personal Care Home. Ms. Odalapo testified credibly as to her actions. However, based on the reliable evidence presented at the hearing Respondent did not prove by a preponderance of the evidence that Petitioner was operating an unlicensed Personal Care Home and the Department's proposed action is **REVERSED**.⁵

SO ORDERED, this 8th day of July 2015.



RONIT WALKER
Administrative Law Judge

⁴ Respondents' arguments that hearsay statements are admissible under either O.C.G.A. §§ 24-8-803(3) and 24-8-803(4) are also without merit.

⁵ Although the undersigned has issued this decision in Petitioner's favor, Petitioner's agitated testimony and disruptive demeanor at the hearing was disturbing.