

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 19,305  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a substantiation by the Department of Aging and Independent Living (DAIL) that he sexually exploited a vulnerable adult.

FINDINGS OF FACT

1. The petitioner is the brother of an elderly woman, B.B., who lives in a nursing home. She suffers from Parkinson's disease and dementia. The petitioner has a power of attorney to act for her.

2. The petitioner visits his sister in the nursing home on an almost daily basis.

3. On July 7, 2004 the petitioner was visiting his sister. At about 2:45 p.m., during the shift change, the nursing assistant, A.R., who covers B.B.'s room, was supposed to check the room but did not when she saw that B.B. had a visitor.

4. A.R. went into the dining room to fill out paperwork. After a few minutes she was approached by the

nursing assistant who was to replace her on the shift who told her that she had just been in B.B.'s room and insisted that she come with her to see what was going on in the room.

5. Both nursing assistants went to the room. A.R. arrived at the room and peeked around the curtain. She saw B.B. in her bed and the petitioner standing next to the bed. She saw the petitioner vigorously rubbing her vaginal area with his hand over the sheet. A.R. watched for a few more seconds then left the room.

6. A.R. began to cry and reported what she had seen to the charge nurse. The charge nurse contacted the Director of Nursing.

7. The Director of Nursing went to B.B.'s room but the petitioner was gone. She found that the petitioner was grasping the sheet over her pubic area and that it had a large wet area around it. B.B. was not able to say what happened.

8. The Director of Nursing reported the incident to DAIL and to B.B.'s physician who ordered that she not receive visitors until he could exam her.

9. The petitioner was asked to come to a meeting with the Director of Nursing and the nursing home administrator. He was told that his visits would be limited to supervised

visits in the common area and that he was to call before he came to the home so that B.B. could be dressed and waiting for him there when he came. The petitioner agreed to this restriction. He was also advised that the matter had been referred to DAIL.

10. The DAIL investigator came to the nursing home and talked with B.B. who was not able to respond to questions or to say what had happened. He also talked with the nursing assistants, the director of nursing and the hospital administrator. Finally, he spoke with the petitioner whom he described as acknowledging of and very embarrassed by the incident. The petitioner stated to the investigator that his hand had been placed on the vaginal area by his sister and she asked him to rub it. He said that he knows that he should not have done it, that he had apologized to his sister, had confessed to his wife, and was accepting of restrictions on his visitation.

11. Based on these interviews, the investigator concluded that the petitioner had sexually exploited his sister and notified him of that finding by letter. The petitioner appealed that decision.

12. The petitioner declined to speak at this hearing because this incident is currently under criminal investigation.

13. Based on the above information, it is found that the petitioner did perform the sexual actions described in paragraph five above on B.B. who is a vulnerable adult and who is incapable of consenting to such actions.

ORDER

The decision of DAIL substantiating the abuse is affirmed.

REASONS

DAIL is required by statute to investigate reports of abuse of the elderly and to make findings as to whether the abuse took place. 33 V.S.A. § 6906(a). Reports that are substantiated as abuse are placed in a registry which is used to prevent persons in it from working in centers or facilities for elderly or disabled adults. 33 V.S.A. § 6906(c). Abuse is defined in the regulations, in pertinent part, as follows:

As used in this chapter:

. . .

(6) "Exploitation" means

. . .

(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status.

33 V.S.A. § 6902

As was found above, the petitioner engaged in sexual activity with a vulnerable adult who was incapable of consenting to the activity due to her age and disability. Therefore, DAIL was correct under the above statute that the petitioner had engaged in sexual exploitation of an adult and its decision to substantiate that fact in the registry must be upheld.

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