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HUMAN RIGHTS AUTHORITY-CHICAGO REGION

REPORT 21-030-9017

Southview Manor

INTRODUCTION

The Human Rights Authority (HRA) reviewed the care and treatment provided to a resident at Southview Manor (Southview). The complaint under investigation was that the guardian was not allowed proper access to manage the resident's funds.

The rights of mental health patients at Southview are protected by the Illinois Mental Health and Developmental Disabilities Code (405 ILCS 5) and the Nursing Home Care Act (210 ILCS 45/2-102). Substantiated findings of this complaint would constitute violations of these Statutes.

Southview is a long-term care center in the Bronzeville community of Chicago. The facility was opened in 1980 as the Kowozon Retreat Center, which was akin to a halfway house. According to Illinois Department of Public Health (IDPH), Southview is a 200-bed facility. The facility provides a range of treatment services to the residents including, physical therapy, podiatry, pain management and behavioral health services.

The HRA discussed the complaint with the facility's administrator, business manager, director of operations and legal counsel via WebEx and conference call due to COVID -19. Relevant policies were reviewed as was the medical record with proper authorization.

COMPLAINANT SUMMARY

It was reported that a patient under guardianship was residing in a nursing facility. The report indicated that the resident's guardian requested funds from the resident's personal balance and the request was denied. The report stated that the guardian had legal authority to manage the funds and consent from the resident.

FINDINGS

"Southview" Record Review

The facility provided a record that includes patient progress notes, surveys/investigations conducted by IDPH regarding complaints filed on the resident's behalf, financial balance sheets, some formal and some informal documents regarding the resident's trust fund. The record illustrates that the resident arrived at the facility in March of 2019. The record also details that the resident was discharged to another facility in April of 2021.

The financial balance sheets provided in the record begin with January of 2020. The sheets show all deposits, cost of care charges, and withdrawals made by the resident. Per the record, from January of 2020 to May of 2020 the resident only has deposits of social security. The only charges are for cost of care, and the only withdrawals are for the Medicaid monthly personal allowance (\$30/monthly).

The record details that on May 29, 2020 an economic stimulus deposit was attributed to the resident's account. The entire amount of the economic stimulus deposit was withdrawn on June 10, 2020. The record does not contain any notes about who authorized or received this withdrawal. However, there is a copy of a check dated June 10, 2020, made payable to the guardian in the record. The copy of the check is for the full amount of the stimulus.

The provided financial sheets do not depict any other unusual disbursement for the year of 2020. However, there are a couple of disbursements in 2021 that the guardian received. The first disbursement occurred on February 19, 2021. There are notes for this issuance and a copy of the check. The initial note about the disbursement is dated January 27, 2021. This note illustrates that the facility had been in contact with the guardian regarding the resident's funds. The note reads, "[guardian] contacted the business office manager and administrator regarding gaining access to her [ward]'s stimulus check. She was informed that [the facility] will only release the check to her with her [ward]'s permission, which he did not grant at this time."

Following the note is a letter addressed to the guardian. The letter is dated February 2, 2021 and is signed by the facility's administrator. The letter informs the guardian of the requirements mandated in the Illinois Administrative Code. The letter also provides the guardian with a copy of the Administrative Code regarding residents' funds, as well as, an apology for lack of explanation during the first round of stimulus payments.

Finally, there is a resident trust transfer agreement with a note for the initial disbursement. The note details that the guardian had a disagreement with the amount the resident approved. The note further details that \$400 was approved by the administrator. A copy of the new amount was issued and can be found in the record.

The second disbursement occurred on March 16, 2021. There is a copy of the check in the record, but a note is absent for this issuance. There is a memo on the copy of the check that states, "remaining balance for [resident]." Per the record there are no other disbursements on

the resident's account and the resident was discharged to another facility shortly after this issuance.

The record is absent any formal complaints or grievances filed by the resident or guardian. Yet there is an Illinois Department of Public Health (IDPH) survey in the record that involves the resident. The survey investigated the following: physical abuse, improper nursing care, theft, resident rights, lack of staff, inappropriate employee behavior, menu/meals, and policy and procedures. IDPH found violations regarding physical abuse but all other investigated items were found to be invalid.

Guardian Interview

The HRA's Disability Rights Manager interviewed the guardian of the resident. The guardian stated that she had a conversation with the facility's administrator. The guardian stated that the "administrator was rude, very short," and refused to allow her access to the resident's account. The guardian furthered that the facility initially provided her access then made requests for receipts.

The Disability Rights Manager requested the guardianship paperwork from the guardian. The guardian provided legal documentation that established her as the guardian of the person only for the resident. Finally, the guardian mentioned that she did not have receipts and that the facility does a poor job in keeping up with items she has purchased for the resident.

Resident Interview

The HRA's Disability Rights Manager interviewed the resident on July 1, 2021 at his new residence. The resident was interviewed in the dining room with a social worker present. However, there was ample space for private conversation with the resident. The resident was initially guarded but became more open during the conversation. The resident informed the Disability Rights Manager that he did not like his previous residence because it was an "institution."

The resident was questioned about the management of his funds. The resident informed the Disability Rights Manager that he "did not want anyone to manage his funds." He furthered that his guardian did in the past, but he no longer wants anyone to manage his funds. The resident was asked if he was ok with his guardian previously managing his funds, the resident responded "no!" emphatically. Lastly, the resident expressed a desire to become his own guardian, so that information was passed on to the resident. This information will also be forwarded to the guardian.

Site Interviews

In response to the complaint, the HRA conducted a WebEx site visit with the administrator, business manager, director of operations and legal counsel on June 23,2021. At the site visit the

HRA was informed by the facility's legal counsel that the guardian was plenary of person only and had no legal authority to manage the resident's estate. The HRA responded that this resident lacked the necessary assets to warrant an estate guardian. The HRA furthered that at no point during his stay at the facility did his account exceed Medicaid's asset limit of \$2,000 dollars. However, after the site visit the Disability Rights Manager consulted agency attorneys for clarification. The attorneys mentioned that the most important thing is that the individual gets to spend their own money on what their wants and needs but did not feel an estate guardian was necessary for limited assets.

The conversation pivoted and the HRA asked the staff present if they were aware that the resident had a guardian. The administrator responded that initially the staff were not aware. She furthered that according to the record the facility knew about the guardian in August of 2019. Then the HRA asked if the resident completed the admission packet. The staff indicated that the admission contract was completed with the guardian. Finally, the HRA asked who completed the Social Security Representative Payee (rep payee) form that is included in the admissions packet. The facility responded that the resident completed his own paperwork, allowing the facility to become rep payee for his social security benefits. The HRA requested documentation of this via email.

The HRA also asked the staff to describe the intake process for new residents. The business office manager explained that typically within 24 hours of entering the facility an admission contract is filled out with resident or guardian. She furthered that during this process a rep payee form is filled. However, the business manager informed the HRA that social service personnel handles those tasks. It was also noted, that in the admission process all residents and guardians are explained their rights.

The HRA followed up this question inquiring if guardians or residents can make requests for items. The staff indicated that there is a form that is available for residents and guardians to request items. The staff furthered that residents typically manage their own personal allowance. Lastly, the staff reported that the facility will ask for receipts if a family seeks reimbursement for expenditures for any resident or if there is suspected misappropriation of resident funds.

The HRA then asked the staff present if there was any formal complaint filed by the guardian. The staff responded that there was not a formal complaint filed by the guardian or resident with any member of the staff. However, the staff did add that the guardian did call the facility's I-Care call line, which is used for comments and suggestions for improvement. The staff maintained that the facility was aware of this issue and addressed it promptly.

The HRA then asked the staff to describe the grievance process. The administrator indicated that there is a grievance form that is filled out and she reviews it. The administrator indicated that there is an official policy on complaint and grievances. Finally, it was mentioned that there is no formal timeframe for a grievance to be completed in, but all complaints are handled as soon as possible.

Finally, the HRA asked the staff to explain the disbursement from the resident's trust fund from June of 2020. The director of operations informed the HRA that none of the staff present for the interview worked for the facility at that time. She furthered that she had no knowledge of this disbursement as none of them were employed during that period. If the facility was rep payee, it should have had records.

Follow up Attorney dialog and Email

The facility's legal counsel spoke with the HRA at length after the site visit. He indicated that he understood the HRA's position that the resident did not need an estate guardian for minor assets. However, he referenced that nursing home regulations (77 Ill. Adm. Code 300.3260(o)) required the skilled nursing facility to take all steps necessary to ensure that the resident's trust fund was used exclusively for his benefit. The attorney furthered, that the resident did give the guardian some authority to manage the funds on some occasions, but this was not the case every time. The attorney indicated the resident revoked the guardian's access on several occasions. (*The HRA's investigation only turned up one such instance of resident refusal*).

Lastly, the HRA followed up via email with a request to receive copies of relevant policy. The documents were provided as well as the signed rep payee form for the resident from the legal counsel. No other request was made for information and all documents were received timely.

Policy Review

The HRA reviewed Southview's "Resident's Rights" pamphlet. The document is given and explained to all new residents and guardians entering the facility. The document informs residents and guardians that all health information is confidential, private, and protected. It further educates residents on their ability to visit with any person of their choosing, participate in treatment planning, to have reasonable access to any personal funds held for the resident by the facility, and request explanations of medication and health diagnoses. Lastly the pamphlet notifies residents of their right to refuse care, treatment, and voice any grievances. Therefore, this document meets the requirements of providing each recipient of services an explanation of their rights orally and in writing. (405 ILCS 5/2-200)

Next the HRA reviewed Southview's "Resident Trust" protocols that govern all residents' deposits to and withdrawals from the resident trust fund accounts. The procedure was implemented in July of 2015 and revised on July 8, 2020. The procedure governs all deposits to and withdrawals from resident accounts. The policy does not identify if guardians can manage resident funds. However, it notifies all accounting staff of the types of deposits that enter residents' accounts. The procedure then dictates that a deposit report is conducted on the third day of each month.

For withdrawals, the protocols detail that banking is done weekly, and it is the responsibility of the business office manager to provide reports of the residents' balances to employees who distribute funds. The protocols further detail that the request "for all money withdrawn shall be

signed by the resident and the crew member withdrawing the cash.” Thus, this policy meets the minimum requirements of The Nursing Home Care Act (210 ILCS 45/2-102) which stipulate that residents “shall be permitted to manage [their] own financial affairs ...[.]”

Finally, the HRA reviewed Southview’s “I-Care” policy. This policy originated in April of 2020. The purpose of the policy is to “support the resident, responsible party or visitors right to voice a grievance ... without discrimination or reprisal or fear of discrimination.” The policy is explained to all residents, guardians, and family members at admission. The policy also explains that the “facility will post in prominent locations throughout the facility information notifying residents of their right to file grievances orally or in writing, the right to file grievances anonymously,” as well as the right to obtain written notice of the grievance decision. Therefore, this policy meets the requirements of the Act (210 ILCS 45/2-112) which mandate that all residents “shall be permitted to present grievances on behalf of himself or others to the administrator ... [.]”

CONCLUSION

A guardian was not allowed proper access to a resident’s financial account.

The record indicates that a guardian was in contact with the facility over the course of the resident’s stay. The record illustrates that the guardian did receive funds from the resident’s account on several occasions. Initially the guardian had unadulterated access to the funds of the ward. At some point, per the guardian interviews and staff interviews, the facility requested receipts for expenditures, and they were not provided.

The Mental Health Code and Nursing Home Care Act allow residents to manage and have access to their own funds (405 ILCS 5/2-105 & 210 ILCS 45/2-102). However, the Illinois Administrative Code allows facilities to take “all steps necessary to ensure that a personal needs allowance that is placed in a resident’s personal account is used exclusively by the resident or for the benefit of the resident.” (77 Ill Adm Code 300.3260(o)) There is evidence in the record that this was explained orally and in writing to the guardian. Therefore, a rights violation is unsubstantiated.

SUGGESTIONS

1. The HRA would suggest strongly that the facility create a policy and procedure that specifically addresses guardian (estate or person) access to financial information and records. The HRA would add that although some guardians may not have the legal authority to manage funds, they are still entitled to know the balances of such funds.