FOR IMMEDIATE RELEASE

East Central Regional Human Rights Authority
Shapiro Center
Report of Findings
Case # 23-060-9019

The East Central Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission voted to pursue an investigation of The Shapiro Center in Kankakee, Illinois receiving the following complaints of possible rights violations:

1. **Inadequate treatment including inappropriate restraining of a patient.**

If the allegations are substantiated, they would violate protections under The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102, 405 ILCS 5/2-201, 405 ILCS 5/2-100, and 405 ILCS 5/2-108).

Complaint Summary: The complaint alleges the facility inappropriately restrained the individual. Allegedly, the individual's sweatshirt sleeves were tied together, preventing the individual from utilizing her hands or arms.

Investigation:

The HRA proceeded with the investigation after having received proper consent. Relevant practices, policies and sections of the consumer's record were reviewed, including consumer records maintained by the guardian.

Interviews:

The HRA met virtually with staff of the Shapiro Center on August 25th, 2023. Staff stated Shapiro is a residential facility that serves adults with developmental disabilities. Shapiro is a teaching facility that helps educate residents on a variety of skills to help them become more independent. Staff stated the goal is to teach the residents skills they need to live in the community.

Staff stated the individual has been at the facility since 1983, and in January 2023 the individual was placed on enhanced 1 on 1 supervision for the am and pm shifts due to the individual's medical condition. Staff advised in April 2023 the individual started receiving hospice services. Additionally, the individual's supervision was increased to 1 on 1 supervision on all 3 shifts. Staff stated hospice comes in daily and assists staff with the individual's daily tasks.

Staff stated on June 12th, 2023, around 8:15am, hospice arrived to assist the individual for the day. The individual was lying awake in bed with the covers on. The worker discovered the

individual's sweatshirt sleeves had been tied together upon removing the blanket from the individual. The staff member who was supervising the individual started her shift at 6:30am and upon her arrival, the individual was sleeping in bed and covered up. It was discovered that another staff member tied the individuals sleeves together during the evening of June 11th. Staff were not sure why the individual's sleeves were tied together. Staff advised that even though the individual's sleeves were tied together, she was still able to move her hands and arms within the sweatshirt. Staff advised that the staff member who tied the individuals sleeves together was fired the same day of the incident. The staff member did not follow the facility's restraint policy. Staff advised that the group leader is now checking on the individual every 30 minutes, on top of the 1 on 1 supervision, to ensure staff are following policy and procedure and the individual is safe.

Staff stated that the facility's restraint policy documents that if an individual is displaying behaviors dangerous to self or others then staff attempt to implement the individual's Behavior Support Plan. If that does not work, then staff may need emergency restraints. Staff stated to perform emergency restraints, a supervisor must be called. The supervisor then makes the decision if a mechanical restraint is needed. If a mechanical restraint is not needed or cannot be used, a physician may be called to order a chemical restraint. Staff stated the guardian and individual would be notified of any restraints are used.

Policy Review:

The HRA reviewed Shapiro Center's "use of Restraints" policy that states "Restraint is only used when there is an emergency necessitating its use. Some emergencies can be planned for based on knowledge and experience with the individual's behavior and the function of the behavior enabling restraints to be incorporated into an individual's behavior intervention program resulting in the programmatic use of restraint. Use of restraint in an emergency and outside of a program is unplanned restraint. Whenever feasible, planned or programmatic restraint, rather than unplanned restraint, should be used to ensure the individual has the opportunity to be apprised of the risks and benefits associated with the use of restraint, the opportunity to be apprised of the risks and benefits associated with the use of restraint, the opportunity to consent to or protest the use of restraint and the opportunity to have the planned use of restraint reviewed by the Behavior Intervention Committee and the Human Rights Committee prior to restraint being employed. In addition, programmatic use of the restraint results in greater staff consistency and competency in the management of an individual's behavior which would be harmful to self and/or others … Competency Based Training, approved by SODC (State Operated Developmental Center) Operations, is mandated for every person who employes or authorizes the use of restraint. Training is essential for understanding the underlying principles and values that guide restraint use as outlined in this policy including the application of restraints and the effective monitoring of the environment and the individual's physical condition while restrained … The type and number of less restrictive interventions to be employed prior to the use of restrains is to be determined based on assessment of a variety of factors such as: the size of the person; the function of the behavior; the type of aggressive behavior warranting intervention; the intensity of the aggressive behavior to self or others; the number of persons needed to safely intervene … Restraint used should always be the least restrictive, most effective form of restraint a person who exercises sound rational judgment would determine to be the safest for the

individual being restrained, the person applying the restraint, and the circumstances requiring restraint use …Required Safeguards: Restraint must be used in a humane manner. Restraint may only be used to prevent an individual from physically harming self or others. Competency Based Training must be successfully accomplished at a 100% criterion level prior to staff being determined qualified to implement, monitor or supervise use of restraint. Only authorized persons may order restraint…".

Shapiro Center's "Rights of Individuals (#1/11)" states "Individuals who reside at the Shapiro Center shall not be deprived of any of their rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely because he/she is a recipient of services. Shapiro must ensure the rights of all people who live here. Ensure means that Shapiro actively asserts the person's rights and does not wait for him or her to claim a right. … Any restriction of right necessitates the development of a plan with specified criteria to restore the rights and requires due process… Specific procedure for limiting right of persons served. As outlined in the Illinois Mental Health and Developmental Disabilities Code, certain rights of persons served may be limited in accordance with clinical recommendations. In some cases, this may be done through combined clinical and administrative procedures. In other cases, both clinical and judicial proceedings are required. In accord with applicable accreditation standards, this Center has identified specific procedures to be followed in limiting the rights of individuals served. Rights of persons served are not to be limited without due process. Rights of individuals to communicate (this is use of a telephone, for both local and long-distance calls); send or receive mail in privacy; receive visitors; to have personal property; freedom of movement; privacy, and to manage his/her financial affairs. Where limitation or restriction of the above specified rights are considered necessary, the following procedures must occur: Each limitation or restriction of any individual's rights must be discussed in a meeting of the Interdisciplinary Team and documented in the Individual Support Plan, in accord with the Mental Health and Developmental Disability Code. The rights to be limited must be documented in the SC 762E(c) 'Assessment of Individual Rights' and summarized in the ISP in Section IV, Rights. The guardian is given a written copy of the individual's ISP including section IV. In addition, the SC 762E(c) must be submitted to the Human Rights Committee for review and approval. If a restriction/limitation of an individual's rights is incorporated into a behavior intervention plan, the plan must receive approval from the Behavior Intervention Committee and Human Rights Committee and consent from the person served or his/her guardian, if applicable, prior to implantation of the plan. The rights to be limited must be specifically explained to the person served, his/her family/guardian, and appropriate, an advocate. The affected individual or others acting on his/her behalf are given an opportunity to object to the proposed limitation of rights. Modifications of a right is specific to the individual's ability to exercise the right…".

The HRA reviewed Shapiro's "Behavior Intervention Procedures" which states that "Restrictive behavior intervention procedures may be used as an unplanned intervention to manage aggressive, self-injurious, destructive, or other significant inappropriate behaviors. The following restrictive behavior intervention procedures may be used on an emergency basis: mobility restriction (not to exceed 72 hours), restriction of personal property (not to exceed 24 hours), search of person or possessions, one to one staff supervision (not to exceed 72 hours), visual observation supervision (not to exceed 72 hours), same room supervision (not to exceed 72 hours), physical restraint including transport physical restraint, mechanical restraint, chemical

restraint … Restrictive behavior procedures may not be used on an emergency basis for the convenience of staff or as retribution. Restrictive behavior intervention procedures should generally be used on an emergency basis only when appropriate less restrictive procedures have been implemented and were ineffective. The Center's central paging emergency system should be utilized to obtain additional staff to assist with the emergency when needed. In rare instances, the person's behavior may warrant the immediate emergency use of a restrictive behavior intervention procedure to protect the person or others from harm. The reason for the immediate emergency use of a restrictive procedure must be clearly indicated … Each time a restrictive behavior intervention procedure is utilized on an emergency basis, the following are to be completed: IL462-2004D Notice Regarding Restriction of Rights of an Individual and A progress note … the psychologist/behavior analyst and Qualified Intellectual Disabilities Professional (QIDP) are to carefully evaluate each emergency use of a restrictive behavior intervention procedure to determine the reason for its use, the action to be taken to prevent further need for emergency procedures and whether a meeting of a person's Interdisciplinary Team is necessary. The Center Director or his/her designee must review all restraint orders daily and inquire into the reasons for restraint order by any person who routinely order them. If emergency procedures are used three times in a six-month period, the IDT must meet within 5 working days of the third use to perform a functional analysis and revise the person's plan."

Records Review:

The HRA reviewed the "Significant Event Report" dated 6/12/23 that states "At approximately 8:15am on 6/12/23, [CNA] from [Hospice] came to living area 100B to visit [individual]. When [CNA] pulled [individual] covers back she noted that the bottom sleeves to the sweatshirt [Individual] was wearing were tied together. She reported this to [staff] who was the assigned group leader for [Individual] at this time. [Staff] indicated she did not know the sleeves were like that since [Individual] had been sleeping since she reported to work at 6:30am and [Individual] had been under the covers sleeping … Shapiro Center immediately initiated an investigation into this incident. [Staff] was removed from contact with all individuals served. A medical assessment was completed with [Individual] with the results of no visible injury to both arms. The Office of Inspector General intake and assessment was notified. Shapiro Center continues to investigate."

The HRA reviewed an injury report for the individual dated 6/12/23 which indicated the individual did not have any visible injuries to her hands or forearms.

The HRA reviewed "Informational Memo for non-visible injuries" report from 8 staff members. However, all 8 staff members indicate they were not with the individual at the time of the incident.

A review of the Individual Support Plan from 2021 states "When upset [Individual] may remove clothing items, inappropriately urinate on her clothing, and request new clothing items to wear or scream out profanity. Less frequently, [Individual] will hit, scratch, bite, pick her skin and rub her skin with spit. These behaviors are addressed in her Behavior Intervention Plan (BIP)… [Individual] has restrictions regarding freedom of movement Refer to Restrictive Techniques. She demonstrates the ability to open a door with a knob, thumb latch or crash bar. [Individual]

has access to appropriate areas of her home. She does not have control of the temperature, but adjustments are provided if needed to ensure her comfort. She is ambulatory but she requires hands on assist in dim lit areas. Based on the results of the Assessment of Need for Supervision, the IDT has determined that [Individual's] supervision in the living area and her day program is same room during waking hours to increase prevention of injuries due to self-injurious behavior. [Individual] is living unit with staff when asleep. [Individual] is 2-1 for medical appointments. Her supervision is same room during dining and showering to ensure her safety. [Individual's] level of supervision on campus is with staff due to self-injurious behavior. Her level of supervision off campus is with staff due to self-injurious behaviors and to ensure her safety and to increase her knowledge of safety situations when she goes out … [Individual] engages in self-injurious behavior, physical aggression, inappropriate undressing, disruptive behavior, irritability, and sleep disturbance. [Individual] has a BIP to address these behaviors …".

The Individual Support Plan from 2022 states "When upset [Individual] may remove clothing items, inappropriately urinate on her clothing, and request new clothing items to wear or scream out profanity. Less frequently, [Individual] will hit, scratch, bite, pick her skin and rub her skin with spit. These behaviors are addressed in her Behavior Intervention Plan (BIP)… [Individual] had 2 ER visits and no hospitalizations this past year. She had 11 minor injuries reported this past year requiring observation or first aid… Maladaptive Behavior: The MBA was conducted on 8/31/2022 by the unit psychologist. The results indicate that [Individual] engages in the following maladaptive behaviors: Self-injurious behavior- hits self, scratches self, bites self, picks own skin and rubs own skin with spit, Physical Aggression- strikes, kicks, bites and shoves others, Disruptive Behaviors- yelling, makes excessive noise, teases others, clings to others and bothers peers, Stereotypic Behavior- body rocking and repetitive noises, Socially Offense Behavior- swearing, standing too close, expelling gas purposefully and spits on finger and rubs in eye, and Inappropriate Toileting- urinates on self. The outcome is like last year. All the target behaviors have multiple functions, The primary function for Disruptive behavior is attention seeking followed by escape from demands, non-social reasons and to gain tangibles. For Self-Injurious Behavior, Physical Aggression, Inappropriate Undressing, and Inappropriate Urination the primary function is escape from demands followed by non-social reasons, attention seeking and gaining tangibles … Restrictive Techniques … [Individual] has the restrictive technique of same room supervision and on and off campus with staff in her BIP with the informed consent of her guardian representative. This was approved by the Behavior Intervention Committee and the Human Rights Committee. A fading plan for these techniques is included in her BIP. The team has carefully considered the risks associated with the use of the noted restrictive techniques and had determined that the risk of discontinuing these at the current time outweigh the risk of continuing them."

The HRA reviewed the individual's "Behavior Intervention Plan (BIP) Objectives" that states "Fading Plan-[Individual's] same room observation in her BIP will be reviewed monthly to ensure implementation of the fading plan establish by the IDT. Progress/Results: [Individual] has had some behaviors that have led to injuries that have resulted in her being placed on same room supervision. The IDT will meet once [Individual] has met the criteria as indicated in her BIP. [Individual] was able to meet the requirements of her fading plan and will now have the level of supervision of living room with staff."

Progress notes:

The HRA reviewed progress notes for the individual. The note on 6/11/23 states "Staff reported that individual suddenly kicked herself off the bed while staff was adjusting the bed remote. On assessment, no visible injury noted, injury report initiated, shift coordinator notified."

The note on 6/12/23 at 2:15am states "Individual in bed resting comfortably w/o (without) any s/s (signs/symptoms) of distress. V/S (vital signs) refused by individual at this present time." At 4:05 am the note states "Individual in bed awake and appears to exhibit signs of agitation in which prescribed medications will be administered accordingly. Individual refused vitals to be taken." At 4:10am the note states "Medication admin and well tolerated. Individual remains in bed with staff at bedside." The note at 10:15am states "Injury- she is sleeping [sic]." Another note at 11:30am states "F/u (follow up), no injury noted, resting in bed, f/u call placed to hospice. Nothing about fall from previous evening. Nursing to monitor."

Conclusions

Complaint 1. Inadequate treatment including inappropriate restraining a patient.

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102) also requires that "A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient."

The Mental Health and Developmental Disabilities Code (405 Ill. Comp. Stat. Ann. 5/2-201) states " (a) Whenever any rights of a recipient of services that are specified in this Chapter are restricted, the professional responsible for overseeing the implementation of the recipient's services plan shall be responsible for promptly giving notice of the restriction or use of restraint or seclusion and the reason therefor to: (1) the recipient and, if such recipient is a minor or under guardianship, his parent or guardian; (2) a person designated under subsection (b) of Section 2-200 upon commencement of services or at any later time to receive such notice; (3) the facility director; (4) the Guardianship and Advocacy Commission, or the agency designated under "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985,1 if either is so designated; and (5) the recipient's substitute decision maker, if any."

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-100) guarantees that "(a) No recipient of services shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of the receipt of such services. (b) A person with a known or suspected mental illness or developmental disability shall not be denied mental health or developmental services because of age, sex, race, religious belief, ethnic origin, marital status, physical or mental disability or criminal record unrelated to present dangerousness."

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-108) provides that "Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. Restraint may only be applied by a person who has been trained in the application of the particular type of restraint to be utilized. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff. The Code (405 ILCS 5/2-112) requires that "Every recipient of services in a mental health or developmental disability facility shall be free from abuse and neglect."

The complaint alleges the individual was inappropriately put in restraints by having her sweatshirt sleeves tied together, restricting the individual the use of her hands and arms. According to the Individual Support Plan (ISP) the individual has a restriction of same room supervision due to the individual's self-injurious behaviors. However, nothing in the individual's ISP or Behavior Intervention Plan (BIP) states the individual has a restraint restriction. The HRA reviewed the "Significant Event Report" which indicated the individual was found laying in bed with her sweatshirt sleeves tied together. There was nothing documented showing why the individual's sleeves were tied together or when this occurred. However, staff stated the individual was discovered lying in bed with her sweatshirt sleeves tied together on 6/12/23 around 8:15am. Staff stated there was no reason for the individual's sleeves to be tied together and this type of restraint goes against the facilities policy. Staff stated the employee that restrained the individual was fired immediately. Staff stated because of this inappropriate restraint the individual is being checked every 30 minutes by the group leader to ensure the individual is not inappropriately restrained. Additionally, there were no documents provided to the HRA that demonstrate the individual or the individual's guardian were given notice of the restriction as required in The Code (405 Ill. Comp. Stat. Ann. 5/2-201). The HRA understands the employee that inappropriately restrained the individual was fired immediately and the facility has taken steps to ensure the individual's safety since the incident. However, the East Central Human Rights Authority concludes that the recipient's rights were violated, and the complaint is **substantiated.**

The Human Rights Authority makes the following **recommendations**:

1. Shapiro Center follow The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102) by ensuring residents are "…provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan."
2. Shapiro Center follow The Code (405 Ill. Comp. Stat. Ann. 5/2-201) by ensuring all individuals and guardians are "…promptly giving notice of the restriction or use of restraint or seclusion and the reason...".
3. Shapiro Center follow The Code (405 ILCS 5/2-108) by ensuring individuals are not restrained unless it's a "therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others."
4. Shapiro Center retrain staff on the importance of The Code (405 ILCS 5/2-108, 405 ILCS 5/2-201, and 405 ILCS 5/2-102). Provide evidence of the training to the HRA.

The HRA **strongly suggests** Shapiro review the individual's behavior plan and to review the behavior plan of any individual experiencing a change in their medical condition.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.

JB Pritzker, *Governor*

Illinois Department of Human Services

Grace B. Hou, *Secretary Designate*

Shapiro Center
100 East Jeffery Street • Kankakee, Illinois 60901

October 27, 2023

Human Rights Authority
Illinois Guardianship and Advocacy Commission
East Central Regional Office
2125 South First Street
Champaign, Illinois 61820
ATT: Lara Davis, HRA Coordinator

RE: Human Rights Authority Case #23-060-9019

In response to your report on the above case, the following is offered:

On June 12, 2023, upon discovery of this incident; Shapiro Center immediately initiated an investigation. A medical assessment was completed with results of no visible injuries noted. The Office of the Inspector General Intake and Assessment hotline, the Illinois Department of Public Health, and the guardian were notified. The agency employee's contract was immediately terminated. A comfort care check sheet was initiated and staff who work on this living area were re-trained on Shapiro Center's SOPP Restraint Policy and SOPP Abuse and Neglect Policy.

In summary, when this event occurred, the appropriate actions were taken by the Center. The contractual employee did not have any further contact with any individuals served and the Center terminated the agency employee's contract. The unit nurse and physician assessed the individual for injuries. An investigation was initiated; and the guardian was notified of the incident which included the unauthorized restraint. The Office of the Inspector General Intake and Assessment hotline and the Illinois Department of Public Health were also notified. The Center re-trained the employees who work on this living area in Standard Operating Policies and Procedures as it relates to the use of Restraints and Abuse, Neglect, and Mistreatment of Individuals served. In addition, the Center initiated a new procedure to ensure this individual is not restrained without the required authorization in accord with policy and procedures.

Shapiro Center will continue to follow the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102) by ensuring residents are provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual's Service Plan.

The Center will continue to follow the Code 405 Ill. Comp Stat. Ann 5/2-201 by ensuring guardian notification and the Code 405 ILCS 5/2-108 by ensuring individuals are not restrained unless it is a therapeutic measure to prevent a recipient from causing physical harm to himself/herself or physical abuse to others.

Respectfully submitted,

Lynne C. Gund

Lynne C. Gund, Center Director