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**FOR IMMEDIATE RELEASE**

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**SPRINGFIELD REGIONAL HUMAN RIGHTS AUTHORITY**

**REPORT OF FINDINGS**

**HRA CASE # 09-050-9002**

**LOGAN-MASON REHABILITATION**

**JANUARY 27, 2009**

Case summary: The HRA substantiated the allegation that a resident's right to receive visitation was violated by Logan-Mason Rehabilitation Center for not allowing unimpeded visitation by the resident's sister.

**INTRODUCTION**

The Springfield Regional Human Rights Authority (HRA) has completed its investigation of a complaint regarding the Logan-Mason Rehabilitation Center (LMRC), an agency that provides rehabilitation services for about 265 persons with developmental disabilities. The allegation states that LMRC may violate a consumer's rights when it does not allow him unimpeded visitation.

If substantiated, the allegation would be a violation of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-103), the Illinois Administrative Code (59 Ill. Admin. Code 119.235) and the Illinois Probate Act (755 ILCS 5/11a-23).

Specifically, the allegation states that the Center violated the consumer's rights when it did not allow a consumer visitation with his sister between December 2007 and July 2008 and when it restricted him to supervised visitation.

**MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE**

Pursuant to the Mental Health and Developmental Disabilities Code:

Except as provided in this Section, a recipient who resides in a mental health or developmental disabilities facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone and visitation.

(c) Unimpeded, private and uncensored communication by mail, telephone, and visitation may be reasonably restricted by the facility director only in order to protect the recipient or others from harm, harassment or intimidation, provided that notice of such restriction shall be given to all recipients upon admission. When communications are restricted, the facility shall advise the recipient that he has the right to require the facility to notify the affected parties of the restriction, and to notify such affected party when the restrictions are no longer in effect. (405 ILCS 5/2-103)

(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 therefore to:

(1) the recipient and, if such recipient is a minor or under guardianship, his parent or guardian... (405 ILCS 5/2-201)

### **ILLINOIS ADMINISTRATIVE CODE**

Pursuant to the Illinois Administrative Code (59 Ill. Admin. Code 119.235):

To ensure that the individual's rights are protected and that all services provided to the individual comply with the laws cited in subsections (a) and (b) of this Section, providers shall assure that:

(a) The individual's rights are protected in accordance with the Code, except that the use of seclusion shall not be permitted....

(c) Staff shall inform individuals entering a program of their rights in accordance with subsections (a) and (b) of this Section and of their right to contact the Guardianship and Advocacy Commission, Equip for Equality, Inc., and the provider's human rights committee....

### **LMRC HANDBOOK**

The LMRC Handbook, consumer rights section states:

...13. You have the right to have mail, phone calls and visitors in private.

### **ILLINOIS PROBATE ACT**

Pursuant to the Illinois Probate Act (755 ILCS 5/11a-23):

Every health care provider and other person (reliant) has the right to rely on any decision or direction made by the guardian, standby guardian, or short-term guardian that is not clearly contrary to the law, to the same extent and with the same effect as though the decision or direction had been made or given by the ward. Any person dealing with the guardian, standby guardian, or short-term guardian may presume in the absence of actual knowledge to the contrary that the acts of the guardian, standby guardian, or short-term guardian conform to the provisions of the law....

### **METHODOLOGY**

The investigation includes interviews with the LMRC Director, Day Training Manager (Manager) and the guardian. The HRA Coordinator shared with members parts of

correspondence he had with the consumer's sister. The consumer consented to release information and the guardian approved that consent. The Administrator provided appropriate policies and procedures.

### **FINDINGS**

The consumer's sister stated that she had served as her brother's guardian for several years until October 2007 when the court replaced her as guardian. An attorney told her that she was removed as guardian because she had lost her job and did not have a telephone. According to the sister, she had a telephone with limited availability.

The sister said that while visiting another agency on the grounds of LMRC in October 2007, she was told by an LMRC staff person that she was banned from the grounds based on directions by the new guardian. The sister also noted that no one provided a copy of the court order that stated visitation rights and that she did not visit her brother from December 2007 until July 18, 2008. According to the sister she went to an attorney in July 2008 who contacted an attorney representing the residential facility. The attorney who represented the agency provided a copy of the Court Order and that is when she learned she was allowed visitation at the guardian's discretion.

The Director explained that the agency provides day training services and that it works in cooperation with the residential facility to provide a continuity of services. He said that the consumers attending day training have structured programs that must adhere to State requirements regarding attendance and the number of hours consumers must participate each day. Nevertheless, the Director stated the agency understands that consumers and their families may be required to visit during day training hours of service. He stated that the LMRC cooperates with the residential providers, families and guardians and allows reasonable visitation at the facility.

The Director explained that there have been incidents when the agency had concerns regarding the sister's behavior. He said that after she became upset and while leaving

the facility she demonstrated poor judgment by driving erratically through its parking lot. According to the Director that type of incident was a concern for the agency and it had to protect clients and staff who may be in the parking lot area.

The Manager stated that the consumer has not been denied visitation with his sister. She said that the sister may have misunderstood her status regarding being "banned from the grounds." The Director said that another agency whose offices are on the grounds of the LMRC may have told her she was banned based on interactions between her and that agency. The Manager explained that there have been concerns regarding the sister's occasional unpredictable behavior; however, she was never told that she could not see her brother.

According to the Manager, prior to October 2007, several incidents took place that led the

consumer's family to pursue changing guardianship. After the initial request to change the guardian, the court granted temporary guardianship to another family member. On October 17, 2007, the residential Manager notified the LMRC that the newly appointed temporary guardian had left directions that the sister may visit. Later that day, an incident occurred involving the sister and the newly appointed temporary guardian and after that incident the residential director notified the LMRC not to allow visitation, because there was concern that the sister, in her resentment for being replaced as guardian, may attempt to take the consumer from his current programs. The Manager emphasized that the consumer's sister had not visited him at the LMRC for several months prior to that incident and she did not contact the agency for visitation until July 2008. According the Manager, the agency has never issued a Notice of Restriction form to the consumer.

The current guardian stated that she has not restricted visitation between the consumer and his sister. She explained that after the court appointed her temporary guardian in October 2007 the sister was highly agitated and, based on threatening behavior and dialogue between her and the sister, she asked the residential and day programs to ensure the consumer's safety. The guardian noted that, to her knowledge, the sister did not attempt to contact or visit her brother between October 2007 and July 2008.

The HRA reviewed documents from the consumer's record.

Progress notes state:

10/17/07: [A residential staff member reported that a different family member] has taken temporary guardianship effective immediately. ...the judge granted [the sister] reasonable visitation rights. ....if [the sister] comes to LMRC to visit [the consumer] we are to let her see him. If she wants to take him somewhere off grounds, this is fine as long as [the sister] appears to be in control of herself. [The consumer] is not to go with her if she is upset, hysterical, not in control of herself, threatens to harm

herself or, [the consumer]. If [the sister] comes to workshop, please be observant throughout their visit. If it appears she is going to take him or asks to take him, please get [an administrator] so they can assess the situation.....

A memorandum dated October 18, 2007 written by the Manager states:

Starting immediately, [the sister] will not be allowed contact with [the consumer] while at workshop, no exceptions. If he goes outside, please keep a watchful eye on him. If you see [the sister] on grounds [notify an administrator]. Currently [the sister] should not be a problem as she has been arrested for attempting to run over [the person applying to replace her as guardian]. If [the sister] shows up here, please remove clients from the area she is in - example if she shows up at the pavilion during break time and there are clients outside - ask them to come inside the building.... She

will be asked to leave the grounds. If she does not immediately comply, the police will be called....

An Amended Order Appointing Temporary Guardian of the Person and Estate ordered that:

October 15, 2007: The letters of Office of [the sister] are suspended until further order of this court.... That [the sister] is granted reasonable visitation with [the consumer] at the discretion [of the newly appointed temporary guardian].

December 10, 2007: [The current guardian] has been appointed plenary guardian of the Person and Estate.

The HRA notes that the record did not contain a Notice of Restriction form regarding the Memorandum dated October 18, 2007.

### **CONCLUSION**

The Mental Health Code calls for unimpeded visitation and the Probate Act requires agencies to adhere to a guardian's authority. Based on the interviews and documentation, the HRA concludes that the allegation the LMRC violated the consumer's rights when it did not allow unimpeded visitation is substantiated.

Progress Notes dated October 17, 2008 states that staff from the residential facility directs the day training center to restrict visits when specific conditions are present. Also, the memorandum dated October 18, 2007 written by the Manager states that the sister will not be allowed contact with the consumer while at workshop, no exceptions.

The HRA notes that the parameters of visitation stated in the October 17, 2007 Progress Notes are not consistent with the Memorandum dated October 18, 2007.

Although the sister did not come to the facility and implementation of the directives were not necessary, the LMRC did not adhere to the Code's restriction process, most importantly, notifying the consumer and asking him if anyone else is to be notified and documenting it in the record.

### **RECOMMENDATION**

Whenever a guaranteed right is restricted, follow the Code and issue a Notice of Rights Restriction stating the reasons why, notify the consumer and ask him if anyone else is to be notified and document that information.

### **SUGGESTION**

When a guardian identifies visitation parameters, those requirements should be recorded in a document signed by the guardian.