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REPORT OF FINDINGS- 11-040-9004  
ST. COLETTA'S OF ILLINOIS, INCORPORATED  
HUMAN RIGHTS AUTHORITY- South Suburban Region

[Case Summary— The Authority made five corrective recommendations regarding the allegations presented below that were not accepted by the service provider. The public record on this case is recorded below; the case was referred for enforcement.]

## INTRODUCTION

The South Suburban Regional Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission has completed its investigation into allegations concerning St. Coletta's of Illinois, Incorporated. The complaint stated that residents are denied rights and privileges solely because of their status as a service recipient. Additionally, the complaint alleged that residents are denied the right to treatment in the least restrictive environment. If substantiated, these allegations would be violations of the Illinois Administrative Code (59 Ill. Admin. Code Part 115 et seq.) Standards for Community Integrated Living Arrangements and the Mental Health and Developmental Disabilities Code (the Code) (405 ILCS 5/100 et seq.).

St. Coletta's of Illinois located in Tinley Park provides residential, educational and vocational services to individuals with disabilities. This agency also manages 26 Community Integrated Living Arrangements (CILA) with a population of approximately 130 residents.

## METHODOLOGY

To pursue the investigation, the agency's Executive Director, the Director of Clinical Services, the Residential Administrator, the Assistant Manager of Vocational Services, a Clinical Therapist and a Qualified Support Professional were interviewed. The complaint was discussed with Resident A's legal guardian who gave consent to review the adult resident's record. Relevant policies were also reviewed.

## COMPLAINT STATEMENT

The complaint stated that the agency has a blanket policy that prohibits all clients from engaging in consensual sexual relations. Resident A allegedly had consensual sex with his housemate, and the staff recommended putting an alarm on Resident A's bedroom door to monitor him. The resident reportedly has expressed a desire to continue having consensual relations.

## FINDINGS

Resident A's record indicated that the 36-year old individual has been a client of St. Coletta since 1989. He reportedly was sexually abused as a child. He was charged with criminal sexual assault involving a young child in 1988, and was found unfit to stand trial. He was admitted to the agency's Community Integrated Living Arrangement (CILA) program in 1991 and was diagnosed with Mild Mental Retardation. His speech is clear, and he is able to communicate very well. Documentation indicated that there were two incidents of a sexual nature involving the resident and lower functioning housemates shortly after he moved into the home. These incidents were considered "serious," and a restrictive behavioral plan was developed that included an alarm being placed on Resident A's bedroom door. He also was referred to an outside agency for counseling in early 1992, and the door alarm was eventually removed because his sexual behavior in the home reportedly had ceased. The exact date that the alarm was placed on his bedroom door and removed is unclear.

The record further indicated that Resident A has lived in the same home since 1995 and has his own room. An incident report documented that Resident A was observed having sex with Resident B (his housemate) on July 18<sup>th</sup>, 2010. The incident reportedly occurred in the home's bathroom, and the door was wide open. He was verbally redirected to stop this behavior; the Residential Administrator was notified, and the incident was discussed with him. The Qualified Support Professional (QSP) checked on the form that "the incident was not severe enough to call the parents, guardian or a state agency." A note later indicated that Resident A's guardian was informed on August 2<sup>nd</sup>, 2010, and she did not understand the agency's concern about the alleged consensual incident. She was informed about the agency's policy and refused to give consent for any restriction to be placed on the resident's rights. The note does not provide any information about how the staff determined that it was consensual or the policy or who wrote the note.

The HRA reviewed Resident's A's "Individual Program Plan" dated September 8<sup>th</sup>, 2010. His plan does not mention the July 18<sup>th</sup> incident and documented that he did not have a behavioral plan because there were no concerns at the time. It lacked programming for accessing sexual resources and education. It stated that the resident met the requirements for unsupervised time and has a job in the community. It also documented that the risk of the resident having inappropriate sexual relations or engaging in dangerous antisocial behavior was "low to none." The resident's plan indicated that the QSP reviewed the Consumer Rights and Safety Checklist with him and that he is encouraged to verbalize things that he does not like. The record contained a copy of the agency's rights statement indicating that rights were explained to the resident and that staff cannot violate them. The rights form was signed by the resident on January 14<sup>th</sup>, 2010, but the line designated for his guardian's signature was blank.

At the site visit, the Director of Clinical Services reported that the agency's no-sex policy is explained to residents at intake and might be reviewed again on a case-by-case basis if needed. The investigation team was told that residents' spiritual beliefs are supported by the staff, but residents must abide by the rules of the agency's religious organization although some of them are non-Catholic. According to the Executive Director, residents are sexual beings, but

the staff cannot change the direction of the Catholic Church. He said that the agency was concerned about the health and welfare of residents who engage in sex, but the staff cannot refer them to agencies such as Planned Parenthood or condone any sexual behavior. The HRA was also informed that the agency does not have any married clients, and that residents' rights are reviewed annually.

The staff reported that Resident B, who also was involved in the July 18<sup>th</sup> incident, is non-verbal and lower functioning than Resident A. They said that Resident B's guardian does not approve of him engaging in sexual relations, but she was unwilling to move him to another home managed by the agency. According to the staff, a police report was made as requested by Resident B's guardian concerning the first incident of sexual nature. The agency's Human Rights Committee approved the alarm placed on Resident A's bedroom in 1991. His behavioral plan was discontinued after he became employed, and he has six hours of unsupervised time in the community. They said that Resident A must follow the rules or choose another placement. His guardian confirmed that the resident was given the option of transferring to another agency, but he chose to stay. The HRA was informed that the resident was referred to an outside counseling agency because of other issues but had not started when the complaint was discussed with the staff.

According to the Residential Administrator, Resident A wanted the alarm to be put back on his bedroom door after the July 18<sup>th</sup> incident, but the staff did not follow through with this behavioral intervention. The investigation team inquired whether all CILA residents who attempt or engage in consensual sex are subject to a door alarm. According to the Director of Clinical Services, a door alarm was recommended for Resident A because of his predatory behavior and obsessive attachment to others. She did not clearly address whether all incidents of consensual sex would result in restrictive interventions. Upon questioning, the Director of Clinical Services said that a police report was not made concerning the July 18<sup>th</sup> incident. She acknowledged that Resident B's feelings regarding the incident were unknown because of his limited cognitive ability. She said that Resident A has transferred his affection to someone in the community.

St. Coletta's "Unsupervised Time" policy (Reviewed on June 2006) that governs CILA residents only states that failure to follow certain rules will always result in residents' program plans being modified to supervised time. It states that residents may not engage in sexual relations because the agency does not have the authority or responsibility to screen potential partners. The Surgeon General also has strongly cautioned against premarital sex because participants are subject to significant health hazards. The policy states that St. Coletta cannot condone such behavior "while a consumer is supervised by the agency." Residents interested in having sexual relations or marriage should discuss this matter with the QSP who will forward this information to the Director of Ministry or appropriate supervisory personnel. They will be offered specific training programs to help them make informed decisions regarding this issue. According to the policy, the agency is responsible for protecting consumers' rights, and those who choose not follow the rules are free to find alternative placement and may be required to do so.

According to the agency's "Consumer Rights" policy (Reviewed on June 2006), every consumer and significant other shall be informed of the consumer's rights and responsibilities prior to admission to the agency. The form shall be signed by the consumer or significant other acknowledging that rights have been explained to them. The agency's rights statement includes the right to participate in treatment planning and guarantees that a resident will not be deprived of rights solely by receipt of services. The rights statement does not mention the agency's prohibition on sex outside of marriage.

St. Coletta's "Consumer Grievance" policy (Reviewed on June 2006) states that a grievance or complaint may be brought to the attention of any staff member, who shall complete the Consumer Grievance/Complaint form. All grievances shall be taken seriously and handled in a professional manner. The QSP shall schedule a meeting within two weeks of receiving the grievance. The consumer can invite any person he or she chooses to the meeting. The complaint shall be resolved or follow up will be noted on the form and sent to the Executive Director within five days. It states that the Executive Director may refer the grievance and resolution to the agency's Human Rights Committee and/or Chairperson of the Board of Directors if deemed necessary.

According to the agency's "Human Rights Committee" policy (Reviewed in 2006), the committee shall ensure that the least restrictive techniques are used in behavioral management programs, discipline and behavioral techniques. It states that the committee is responsible for resolving consumers' rights issues in an effective and timely manner.

## CONCLUSION

According to the Mental Health and Developmental Disabilities Code, Section 5/2-100,

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.

Section 5/2-102 (a) states that,

Services shall be provided 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. .... In determining whether services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided.

Section 5/2-201 of the Code states, whenever any rights of a recipient of services are restricted, the recipient shall be promptly given notice of the restriction.

According to the 59 Illinois Administrative Code 115.200,

(c) Services shall be oriented to the individual and shall be designed to meet the needs of the individual with input and participation of his or her family as appropriate.

(d) Based on their needs, individuals shall receive supervision and supportive services which may range from continuous to intermittent. CILAs shall be designed to promote optimal independence in daily living, economic self-sufficiency and integration into the community through the interdisciplinary process.

Section 115.320 (c) states that,

1) Services shall be provided in the setting most appropriate to the needs of and reflecting the preferences of the individual.

3) The agency is required to ensure a process for periodic review of behavior intervention and human rights issues involved in the individual's treatment and/or habilitation.

St. Coletta's "Unsupervised Time" policy that prohibits all CILA residents from engaging in sexual relations does not provide for resident's autonomy, individualized needs, and total care planning. The policy, as reported by the agency's staff, is a blanket requirement based on the agency's religious organization. The agency is subject to mandated rights under the laws, but the policy clearly does not promote resident or guardian's input in treatment decisions regarding sexuality. The Executive Director reported that residents cannot be referred to resources such as Planned Parenthood. The HRA is very concerned because residents are subject to being transferred to another agency if they choose to exercise their rights and express themselves sexually while in the agency's program. The staff said that rights are reviewed annually. The policy must be reviewed with the agency's Human Rights Committee because appropriate parties are not informed of the no-sex restriction until there is a related incident.

The Authority substantiates the complaint that residents are denied rights and privileges solely because of receipt of services. St. Coletta's blanket policy violates rights under Sections 5/2-100 and 5/2-201 of the Mental Health and Developmental Disabilities Code, the 59 Illinois Administrative Code, Sections 115.200 (c), 115.320 (c) (1) and (c) (3), and its rights statement regarding treatment planning.

In regard to Resident A, the staff reported that the agency's Human Rights Committee approved the alarm placed on his bedroom door for engaging in sexual relations with lower

functioning housemates in 1991. The door alarm generated behavioral programming, but the record does not clearly indicate that a restriction notice was given. It is unclear whether the resident had consensual sex with his housemate on July 18<sup>th</sup>, 2010. His housemate reportedly is lower functioning and was involved in one of the previous incidents. The Director of Clinical Services suggested that Resident A was a sexual predator but she backed away from her statement upon questioning about a police report concerning the July 18<sup>th</sup> incident. The HRA found no evidence that restrictive measures such as a door alarm were put in place after the July 18<sup>th</sup> incident. The resident signed documentation that rights were explained to him on January 14<sup>th</sup>, 2010, but his guardian's signature was not found on the form.

The complaint that residents are denied the right to treatment in the least restrictive environment is substantiated only in regards to the agency's policy that prohibits all consumers from engaging in consensual sex. The policy conflicts with individuality and preference components of 59 Illinois Administrative Code Section 115.200 (d) and the Mental Health and Developmental Disabilities Code, Section 5/2-102 (a). The Code also guarantees that the treatment planning process shall determine and address recipient needs (e.g. sex education, related programming, the use of an alarm, etc.) as well as any issues of concern (e.g. ability to engage in consensual relations, risks associated with unsupervised time or community access). Additionally, the agency violates its "Consumer Rights" policy because the rights form was not signed by the resident's guardian.

## RECOMMENDATIONS

1. St. Coletta shall revise its "Unsupervised Time" policy to promote self-determination regarding sexuality, based on individualized needs and resident's and significant others participation in total care planning.
2. Review the above policy with the agency's Human Rights Committee.
3. The agency shall follow the 59 Illinois Administrative Code, Sections 115.200 (c) and (d), 115.320 (c) (1) and (c) (3), and its rights statement regarding treatment planning.
4. Ensure that the Mental Health and Developmental Disabilities Code, Sections 5/2-100 5/2-102 (a) and 5/2-201 are followed. If there are concerns or needs of a sexual nature, ensure that they are addressed in the treatment planning process.
5. Ensure that rights forms are signed by the guardian according to the agency's policy.

## SUGGESTION

1. When using restrictive devices such as a door alarm, issue a rights restriction notice and address in the individual's treatment plan.