



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY – EGYPTIAN REGION
REPORT OF FINDINGS
Case # 14-110-9005
The H-Group Vocational Services

The Human Rights Authority (HRA), a division of the Illinois Guardianship and Advocacy Commission, opened an investigation after receiving complaints of possible rights violations at The H-Group. The complaints alleged the following:

- 1. Inappropriate restriction of rights/restraint of a recipient of services.**
- 2. Failure to communicate with a recipient’s guardian regarding new policies and behavioral reports/restriction of rights.**

If substantiated, the allegations would be violations of the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.) and the Illinois Administrative Code (59 Ill. Admin. Code 119).

The H-Group is a behavioral healthcare organization with inpatient as well as outpatient facilities, currently serving 94 patients. The H-Group owns, staffs, and supervises nine homes (Community Integrated Living Arrangements) with eight or four beds each, with a target population of residents who are over 18 and have a developmental disability. The H-Group also provides vocational services for people with developmental disabilities in recycling and contractual work as well as rest areas and work crews.

To investigate the allegations, HRA team members interviewed staff and reviewed documentation that was pertinent to the investigation. Such documentation included recipient records, with consent, as well as documentation from the treatment facility.

COMPLAINT STATEMENT

The first complaint alleges that despite an H-Group policy against using physical restraint on recipients, a recipient (an adult with an intellectual disability) in a Developmental Training area was placed in a physical hold around the time of 10/21/13, due to maladaptive behavior. Furthermore, the first complaint asserts that the guardian was not informed of that rights restriction.

The second complaint alleges that a change in policy regarding the use of a CPI (Crisis Prevention Institute) hold as an intervention was not communicated to the guardian or the recipient until after an incident in which it was used.

FINDINGS (including record review, mandates, and conclusion)

A. Staff Interviews

In order to determine the course of events involving the alleged rights restriction on 10/21/13, the Human Rights Authority conducted interviews regarding that incident, as well as policies on physical restraint, with six (6) staff members: an administrator, two behavioral analysts, a direct support professional, a licensed practical nurse, and a Qualified Intellectual Disabilities Professional (QIDP). These interviews were conducted on 12/18/13.

1. An administrator at the H-Group, told the Human Rights Authority that the Crisis Prevention Institute (CPI) interventions allow for defensive moves such as blocking, but that the facility does not utilize restraining holds unless already agreed to in behavioral plans and as a last resort. The administrator stated that that policy was written by quality assurance directors to comply with the Commission on Accreditation of Rehabilitation Facilities standards; after utilizing every possible method of nonviolent de-escalation, and after all of those methods being unsuccessful, rather than using restraint as a last resort, the facility calls the police. The only exception to this, according to the administrator, is in the case of a recipient injuring another peer; staff may perform a one-time physical intervention to prevent injury.

2. An H-Group behavioral analyst (BA 1), stated that in October she wrote a new behavioral plan for this recipient with more material on peer safety and redirection that encourages staff to try all methods other than restraint, including a two-person escort. BA 1 also indicated that the incident report forms were in the process of being revised to include Restriction of Rights forms issued and the positioning of the staff involved in the incidents. The recipient's guardian was involved in approving behavioral plans as per staff, and the incident report forms were not part of facility policies, but facility paperwork.

3. Another H-Group behavioral analyst (BA 2), stated that on 10/21/13, when BA 2 was walking through the Developmental Training area, she saw the recipient on the floor holding a dustpan, with the H-Group's QIDP beside the recipient. She said that she saw the QIDP hold the recipient's arm down to get the dustpan. Then, BA 2 said that the QIDP got up and left, after which time the recipient calmed down. BA 2 said that she thought that people resembling the QIDP were a trigger for the recipient. Additionally, BA 2 indicated that a new policy allowing for the use of physical holds as part of Crisis Prevention Interventions had been written by BA 1, which had been approved; training in the new policy was to begin in January of 2014. According to BA 2, anyone violating that plan was to be retrained and monitored—if it happened a second time, progressive discipline was to be pursued.

4. An H-Group Direct Support Professional (DSP) stated that she was present on 10/21/13. She indicated that she had asked the recipient about a new bag [the recipient had a collection of hundreds of bags, and one of his treatment goals was to reduce the number of bags in that collection], and that the recipient got anxious, grabbed a dustpan, and ran at her. The DSP blocked the recipient, but the recipient hit her shoulder and then hit a QIDP as well. The DSP reported that the recipient then sat on the ground, and that the QIDP and a nurse talking with the

recipient seemed to calm the recipient down. The DSP then left to help load other recipients onto the bus that was soon leaving.

5. An H-Group QIDP stated that he was also present on 10/21/13. He asked the recipient about a new bag; he was suspicious partly because of the recipient's posture and because of the recipient's presence in a unit that the recipient was not normally in. The recipient left the room ranting, according to the QIDP, and threw a safety cone at the QIDP when he followed and continued to try to talk to the recipient. The recipient picked up a dustpan, hit the DSP on the shoulder, then hit the QIDP on the head while running into a wall, where the recipient fell down. The QIDP continued to talk to the recipient as other staff cleared the area. The DSP and a nurse remained with the QIDP until the recipient calmed down and rode the bus home.

6. An H-Group licensed practical nurse stated that she was present for the 10/21/13 events, and that she saw the recipient throw a safety cone, grab a dustpan, and hit staff on the arm. She said that she redirected the recipient, trying to get the dustpan away and calm the recipient down, and that the recipient hit the QIDP, but that she wasn't sure whether that was intentional or due to the recipient losing his balance—he fell down, and stayed on the ground screaming, and nonresponsive. The nurse said that the QIDP knelt beside the recipient, and then took a few steps back as the recipient was very combative. The nurse stated that she then left because of another incident outside, and that BA 2 took over the situation.

Furthermore, in the investigation of the second complaint, the Human Rights Authority corresponded with BA 1 on 5/19/2014. The Behavioral Analyst said the following:

“We have not only revised our current policy [since that incident] to include physical holding restraints as trained in the Crisis Prevention Institute, but we have updated our forms, trained most of our staff, revised behavior plans, and our agency sent me ... to become a Certified CPI instructor, which I completed a few weeks ago.”

Staff also reported that they observed camera footage of the Developmental Training area on 10/21/13. According to staff, the footage showed an item being thrown, and the QIDP ducking out of the viewing area, with both parties moving out of view just afterward. The footage thus did not show any fall or physical hold by the recipient or the QIDP.

B. Facility Records

The QIDP who was hit in the head during this incident wrote a report on 10/23/13, which was sent to the recipient's guardian on 11/1/13, stating that the QIDP asked the recipient about a bag, that the recipient became agitated, and that when the QIDP followed the recipient, the recipient began yelling and throwing things at him. This report indicated that the DSP and the QIDP were both hit by a dustpan the recipient was holding and that when the recipient dropped the dustpan, the recipient swung at the QIDP barehanded. The QIDP indicated that attempting to talk to the recipient once he had fallen to the floor was not effective, so as soon as the recipient had moved enough for the QIDP to retrieve the dustpan (which was underneath the recipient), he left the area.

Additionally, Incident/Injury Reports were filed on 10/22/13 on behalf of the QIDP, the DSP, and the nurse who were present during the 10/21/13 incident. The nurse reported bruising and swelling to her left thumb, due to the recipient having grabbed her hand and fallen, forcing her into the wall. The DSP reported a red area on her shoulder where the recipient struck her with the dustpan. The QIDP reported a small red area on his forehead as well as redness and swelling of his left middle finger, due to a struggle with the recipient that had caused both to go to the ground.

The same QIDP who was injured during the incident submitted written correspondence to the guardian on 11/1/13 detailing the above information, and clarifying that the recipient was not restrained in any way during the 10/21/13 incident.

C. Recipient Record Review

The recipient's Assessment Record and Observation Worksheet dated 7/17/12 stated that the following methods would be followed in the event of aggressive/disruptive behavior from the recipient:

- “1. Verbally ask (the recipient) to stop the behavior.
2. Offer a reinforcer if he will make the decision to stop his behavior.
3. If he is being physically aggressive, use CPI as a last resort to prevent him from hurting himself or someone else.”

The recipient's Individual Service Plan dated 4/16/13 indicated that the recipient, who is a legally incompetent adult with an intellectual disability (ID), and who also has psychotic disorder, was being treated with goals of reducing his physical aggression, medication refusal, and noncompliance. At that time, “the only rights restrictions include giving up multiple bags for any new bags received.”

The Behavioral Analyst Follow-up Report dated 5/2/13 stated that the recipient had a collection of hundreds of bags. “In December, staffs (sic) started requiring that (the recipient) trade two or more bags for an undamaged bag. He has accepted this and now trades multiple older bags for one bag in good condition. Additionally, (the recipient) is now required to permanently give up a bag of bags at the house following a very serious target behavior.” That same report has a procedure in the event of the recipient exhibiting physical aggression, which includes the following directive as the eighth item in a list:

“If he becomes physically aggressive, use the least restrictive procedure possible. Use only as much force as is necessary, i.e., meet force with force. Do not use excessive force. Speak only as necessary. Do not praise him until he has remained calm for 10 minutes.

If he continues to be physically aggressive utilize agency-trained/CPI techniques to prevent further harm to self or others.”

The recipient's Behavioral Intervention/Supports Plan dated 10/18/13 reiterates that the recipient has a long history of physical aggression, property destruction, and verbal aggression,

as well as of “‘collecting’ bags.” This plan suggests using early intervention and re-direction via verbal de-escalation techniques, and if necessary, response blocking. Additionally, this plan states that “management staff will be responsible for reducing the bag collection by removing all straps, key chain rings, and old/torn bags and throwing them away; removing all feminine/female bags, purses, wallets, coin purses, etc. and putting them in a storage area that will not be located at [CILA name] Group Home.” The Plan also states that “bags will NOT be a part of his behavior plan as a positive or negative reinforcer.” The only restriction procedure included in that behavior plan was psychotropic medication.

C. Policies

The H-Group “Client Orientation Handbook” dated October of 2008 states under the “Facility Rules” heading that “emergency intervention physical holds may be used only to prevent you from destroying property or hurting yourself or someone else,” as well as that “you will also receive information about any restrictions that the program may place on your rights, events, behaviors, or attitudes that may lead to the loss of privileges, and the means by which you may regain the rights or privileges that have been restricted.”

The policy entitled “Management of Disorderly and Combative Service Recipients/Use of Seclusion or Restraint,” numbered 1.I.24 and dated June 2011 states the following:

The use of physical, mechanical, or chemical restraint is also prohibited. Physical restraint is defined as the use of physical means to temporarily limit an individual’s freedom of movement. Briefly holding an individual, without undue force, for the purpose of comforting him/her or to prevent harm to self or others, or holding an individual’s hand or arm to safely guide the individual from one area to another is NOT a restraint. Separating individuals threatening to harm one another, without implementing restraints, is also not considered “restraint” under this policy. ...

Emergency intervention (CPI) will be used to control and de-escalate potentially aggressive situations. CPI methods of verbal de-escalation and release movements may be used by staff to control a situation and/or to remove themselves from harm until law enforcement arrives.

Emergency intervention (CPI) is never to be utilized as a means of coercion, punishment, discipline of individuals or for convenience of staff. It is never to be used as a retaliatory measure.

Furthermore, an H-Group policy entitled “Behavioral Management Strategies” from June 2011 states that the H-Group would not use restrictive procedures unless non-restrictive procedures had failed. It states that restrictive procedures will be used when, among other things, signed, informed consent had been obtained from the recipient or guardian and the restrictive procedure had been integrated into the implementation of the individual plan.

Most recently, a policy called “Management of Disorderly and Aggressive Clients or Guests,” effective 2/27/2012 and approved 2/25/2014, states the following:

Physical restraint is prohibited in all facilities with the exception of the Vocational and Residential Programs. Physical restraint is defined as the use of physical means to temporarily limit an individual's freedom of movement. Briefly holding an individual, without due force...to prevent harm to themselves or others...is NOT a restraint. ... Physical restraint will only be used with those individuals who have been previously determined to be at risk of harm to self or others unless restrained, and whose behavioral/supports plan includes the use of CPI physical restraint techniques. All attempts will be made to de-escalate crises and use restraint only as a safety intervention of last resort. Restraint is not used as coercion, discipline, convenience, or retaliation by personnel in lieu of adequate programming or staffing.

Under the heading of “Management of Aggressive Individuals,” the same policy states that the use of CPI techniques would be utilized only for individuals whose behavioral/supports plans include the use of those techniques, except in the event of a crisis where an individual is a danger to themselves or others, when CPI holding restraints may be used on a one-time basis to ensure the safety of the individual and others.

D. Mandates

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102[a]) states 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 facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan.

Additionally, the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-108) states that restraint can only be used as “a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others.” The Code (405 ILCS 5/1-125), in defining restraint, states that “momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force, and that are designed to prevent a recipient from completing an act that would result in potential physical harm to himself or another” does not meet the definition of restraint, but that such occurrences must be documented in the recipient’s clinical record.

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-201) further indicates that whenever any recipient rights are restricted, the service provider has a duty to contact the recipient’s substitute decision-maker promptly, giving notice of, and reason for, the restriction [issuing a Restriction of Rights notice].

The Illinois Administrative Code (59 Ill. Adm. Code 119.220) mandates that developmental training programs provide an interdisciplinary team where the participation of the

recipient and/or his or her guardian is encouraged in preparing, revising, documenting and implementing the individual services plan.

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-202) states:

The Secretary of Human Services and the facility director of each service provider shall adopt in writing such policies and procedures as are necessary to implement this Chapter. Such policies and procedures may amplify or expand, but shall not restrict or limit, the rights guaranteed to recipients by this Chapter.

The same Code (405 ILCS 5/2-104) guarantees the right of recipients to possess personal property, and be provided with reasonable storage space for it, unless that property poses harm to the recipient or to others. If property ownership or access is restricted, a restriction of rights notice is to be given to the recipient, and that lawful personal property is to be returned to the recipient in its entirety in the event that the recipient is discharged from the facility.

The Illinois Administrative Code (59 Ill. Adm. Code 119.260) requires that providers have written policies that are reviewed annually, detailing program procedures such as restraint of individuals and handling emergencies.

E. Conclusions

1. Inappropriate restriction of rights/restraint of a recipient of services. The reports from a number of staff members indicated that there was no restraint of the recipient on 10/21/13, although there were some minor differences in the accounts given by staff regarding that incident. The Human Rights Authority attributed those minor differences to human error and the two-month interval between the event and the interviews. Additionally, a one-time use of due physical force to prevent harm to others would not have constituted “restraint” under either the Mental Health and Developmental Disabilities Code or H-Group policy; therefore, the Human Rights Authority finds this complaint **unsubstantiated**.

2. Failure to communicate with a recipient’s guardian regarding new policies and behavioral reports/restriction of rights. There was no confirmed restriction of rights in this case, only a matter of a new policy not being communicated to the recipient’s guardian. The Human Rights Authority reviewed H-Group policies and did not find a policy that forbade one-time uses of a CPI hold in order to prevent harm to recipients or others, although the wording in prohibiting “physical restraint” could lead certain readers to believe physical holds were entirely prohibited by the facility. However, a staff member made statements that restraint was not to be used even as a last resort, which seemed to contradict the behavioral plan from 5/12/13 where the recipient’s treatment team (including his guardian) agreed that CPI techniques could be utilized as a last resort in the event that the recipient became aggressive and threatening. If a policy was made that contradicted the behavioral plan, then the facility did have an obligation to inform the guardian of that change to the recipient’s treatment, as the guardian was to be involved in the recipient’s treatment and behavioral plans. However, the Human Rights Authority did not find any such policy that removed one-time physical force from the list of potential options to be utilized in the event of an aggressive incident; while “restraint” could not be utilized as a last resort, blocking techniques and using one-time physical holds without any undue force are not

considered “restraint” by the Mental Health and Developmental Disabilities Code nor the H-Group policies, and that definition appears to be what was agreed upon as a last resort by the recipient’s treatment team, including his guardian. Therefore, the discrepancy in what one staff member said regarding restraints and the policies/behavioral plans is attributed to a miscommunication. Additionally, there is no law (other than policies must be reviewed annually) stating that guardians must be continuously updated on all facility policy changes—rather, facilities have an obligation to include guardians and recipients in treatment planning, and policy changes that affect that treatment must therefore be communicated. Facilities are under no obligation to communicate every policy change that does not affect the recipient’s treatment to the recipient and his/her guardian, and in this case, the recipient’s treatment remained the same. For this reason, the Human Rights Authority finds this complaint **unsubstantiated**. With regard to guardian notification of behavioral incidents, the HRA is concerned about the delayed written notification dated 11-01-13 for an incident that occurred 10-21-13, 10 days later. Subsequently, the HRA offers the following **suggestions**:

1. If it has not already done so, the H-Group should update the 2008 “Client Orientation Handbook” which states that preventing destruction of property is an acceptable reason to utilize brief physical holds—this would not qualify as an exception to the definition of “restraint” under 405 ILCS 5/1-125 nor as justified restraint under 405 ILCS 5/2-108.
2. Provide guardians with timely notifications of behavioral incidents.

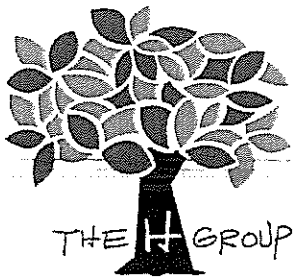
In the course of this investigation, the Human Rights Authority also determined certain facts that warrant the following **comment** and **suggestion**:

A number of the behavioral plans until 10/18/13 included reducing the number of bags in the recipient’s collection as a treatment goal. While giving the recipient the option of voluntarily trading in a few old bags for one new one does seem a reasonable method of accomplishing that goal, the method of throwing away the recipient’s old bags or having the recipient give up a bag of bags following a problem behavior (without issuing a Restriction of Rights notice) was unlawful; recipients have a right to their personal property, and if it is taken away from them as a rights restriction, treatment facilities must be prepared to return that property to the recipients upon their discharge, in accordance with the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-104).

Thus, although those treatment methods involving the personal property of this individual recipient were changed on 10/18/13, the practice of using the removal of recipient’s personal property as a negative reinforcement method could be a systemic one, and the Human Rights Authority would suggest that staff be trained in complying with 405 ILCS 5/2-104 regarding recipients’ rights to personal property, and never use the removal of that property as a negative reinforcement method unless a restriction of rights notice is issued to the recipient and the property is stored to be returned to recipients in the event of their discharge.

RESPONSE

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



Building Better Tomorrows...Today
www.buildingbettertomorrows.org

V&R Division
902 West Main Street
West Frankfort IL 62896
Phone (618) 937-6483
TDD (618) 937-6384
Fax (618) 937-4709

June 16, 2014

Chairman

Egyptian Regional Human Rights Authority

#7 Cottage Drive

Anna, IL 62906-16609

ADVOCATE DIVISION
EGYPTIAN REGIONAL OFFICE

Dear

Enclosed is the signed form requested by the HRA regarding Case No. 14-110-9005. We would also like to thank the HRA for your suggestions. We are currently in the process of updating our "Client Orientation Handbook" eliminating destruction of property as an acceptable reason to utilize physical holds. We also agree with and understand the need to provide guardians with timely notifications of behavioral incidents.

Sincerely,

, Vocational & Residential Director