

BEFORE THE
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:

ARCHWOOD HOUSE CLHF

Appellant.

HCAI No. 22-018-LTC

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), successor to the Office of Statewide Health Planning and Development (“OSHPD”),¹ State of California, on Tuesday, January 24, 2023, beginning at 10:30 a.m. PST.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section. Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section was also present on behalf of HCAI.

Archwood House CLHF, Inc., owner and operator of Archwood House CLHF², collectively “Appellant,” was represented by Sona Undzhyan, owner and administrator.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, January 24, 2023, at 10:45 a.m. PST.

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¹ Stats. 2021, ch. 143, §§ 30, 31.

² Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=630016884> [as of January 24, 2023].

PROCEDURAL FINDINGS

1. On June 16, 2022, HCAI assessed a penalty against Appellant for the late extension request of its Long-Term Care Annual Disclosure Report for \$1,600.³
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated October 23, 2022 and received by the Hearing Office via email on October 23, 2022.
3. Appellant presumably did not submit its appeal within the required fifteen business days from receipt of the penalty letter.⁴ At the time of appeal, Appellant's representative indicated that she was sick with COVID-19 during the time period the appeal was due. The Program Officer did not raise the presumed lateness as an affirmative defense and made no objection to a hearing on the merits of the case.⁵
4. The hearing was conducted electronically using video and teleconferencing.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 10 were found to be authentic and relevant and admitted to the record.
6. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal. The documents were found to be authentic and relevant and admitted to the record.

FACTUAL FINDINGS

1. Due to the ending of the COVID-19 emergency extensions on June 30, 2021, the initial due date for the report at issue was not extended as in 2020 and 2021.⁶ Appellant was therefore

³ Health & Saf. Code, § 128770. *See also* exhibit 10.

⁴ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

⁵ The Hearing Office has not independently explored the lateness of appeals during the COVID-19 pandemic due to its impacts on health care facilities and in deference to program seeking to address appeals on the merits. However, the Hearing Office believes that given the reduction of impacts due to the COVID-19 pandemic, the requirements of the code should be fully enforced in the future.

⁶ Executive Order N-08-21 (June 11, 2021) rescinded the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020) for reports with initial due dates after June 30, 2021.

required under Health and Safety Code section 128740 to file or request an extension for its Report Period Ending (“RPE”) date December 31, 2021 report by April 30, 2022.⁷

2. Automated reminder emails were sent to archwoodhouse55@yahoo.com on April 5, 2022, April 20, 2022, and April 29, 2022.⁸ In addition, an emailed delinquency notification was sent on Tuesday, May 3, 2022.⁹

3. HCAI mailed Appellant an Initial Delinquency notice using Global Logistics Services overnight mail dated Wednesday, May 4, 2022 which was delivered on Monday, May 9, 2022 at or around 10:28 a.m.¹⁰

4. On May 16, 2022, Appellant requested and was granted its extensions. Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report by July 15, 2022.

5. Penalties accrued from Sunday, May 1, 2022 until Monday, May 16, 2022 when Appellant filed the report at issue.¹¹

6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for sixteen days for the late extension request of the report at issue, resulting in a penalty amount of \$1,600.¹²

7. Appellant filed the report at issue on June 14, 2022, prior to the expiration of the extension.¹³

8. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

9. Appellant submitted a written statement with its appeal marked Exhibit A and made oral statements of facts it believes show good cause why the extension for its report was not requested in a timely manner.

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⁷ See also Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

⁸ Exhibits 1, 2, and 3.

⁹ Exhibit 4.

¹⁰ Exhibits 5 and 6.

¹¹ Exhibit 9.

¹² Health & Saf. Code, § 128770(a) and Exhibit 10.

¹³ Exhibit 10.

10. Ms. Undzhyan testified that she was seriously ill for approximately one month during the time period at issue. She required multiple blood transfusions due to idiopathic thrombocytopenia and was unable to go into the office or even work from home. She testified that for about a month she was unable to function. The facility is a small residential home-based congregate living health facility with limited administrative staff. Ms. Undzhyan is the administrator and files the reports with the assistance of a consultant, Miguel Rodriguez.

11. These facts were substantiated by oral statements made under oath by Ms. Undzhyan at the hearing as well as written exhibits.

12. HCAI's exhibits 10 shows that Appellant's previous report was filed timely and the report at issue was filed prior to the extended due date.

DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety Code section 128770, for failing to request an extension or file its Long-Term Care Annual Disclosure Report for its facility by April 30, 2022, and whether the penalty should be reduced or waived.

2. Under Health and Safety Code section 128770, a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause."¹⁴ In *Waters v. Superior Court*, the California Supreme Court stated that, "good cause may be equated to a good reason for a party's failure to perform that specific requirement from which he seeks to be excused."¹⁵ Good cause must be directly related to the specific legal requirement which the party failed to perform and should be outside the reasonable control of the party.¹⁶ Good cause is sometimes defined as

¹⁴ Health & Saf. Code, § 128770(c).

¹⁵ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹⁶ *Waters, supra*, 58 Cal.2d 885,893 and Secretary of State, "Good Cause" Reasons for Waiving Late Campaign & Lobbying Filing Fees <https://www.sos.ca.gov/campaign-lobbying/good-cause-reasons-waiving-late-campaign-lobbying-filing-fees/> [as of December 4, 2019].

circumstances beyond the party's control, and not related to the party's own negligent act or failure to act. On an individual basis, courts and administrative bodies have often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of records may constitute good cause.¹⁷ The determination of good cause in a particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.¹⁸

3. The substantiated facts show that Ms. Undzhyan was ill during the time immediately preceding the due date for the report at issue and was both unable to work from home or go into her office for the period of approximately one month. Ms. Undzhyan filed the extension request sixteen days late as a result of her inability to work due to illness. The substantiated facts show that her illness required multiple blood transfusions and prolonged bed rest.

4. Congregate living health facilities are residential homes with a capacity of no more than eighteen beds that provide inpatient skilled nursing care on a recurring, intermittent, extended, or continuous basis.¹⁹ However, they are typically home-based facilities and often share administrative staff between facilities. Due to their unique organization, congregate living health facilities are exempt from the electronic reporting requirements which apply to other types of facilities.²⁰ While exact numbers of staff were not provided by Appellant, the substantiated facts demonstrated that they operate with limited administrative staff and that Ms. Undzhyan is heavily involved in the day-to-day oversight and administrative operation of the facility. Her personal health issues were sufficient to temporarily overwhelm the typical processes and procedures.

5. A party's diligence is a factor in determining good cause for an extension or a delay.²¹ Here, Appellant had previously filed its reports timely and requested extensions timely.

¹⁷ Fair Political Practices Commission, Guidelines for Waiving Late Fines (Nov. 2017) <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/FilingOfficer/700FO-Folder/Late%20Fine%20Guidelines.pdf> [as of November 15, 2020]. See also *Waters, supra*, 58 Cal.2d 885, 893.

¹⁸ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁹ Health & Saf. Code § 1250(i).

²⁰ Health & Saf. Code § 128755(b)(4)(B). See also Cal. Code Regs. tit. 22, § 97041(c).

²¹ *People v. Financial & Surety, Inc.* (2016) 2 Cal.5th 35, 47. See also *Wang v. Unemployment Ins. Appeals Bd.* (1990) 225 Cal.App.3d 412, 420.

PROPOSED ORDER

The assessed penalty is waived.

Dated: February 17, 2023

//original signed//
MICHELLE L. CHURCH-REEVES
Hearing Officer
Department of Health Care Access and Information

DECISION

Pursuant to Health and Safety Code section 128775 and California Code of Regulations, title 22, section 97054, after due consideration of the record, the Proposed Decision is:

Accepted

Rejected

Dated: 3/19/2023

//original signed//
ELIZABETH A. LANDSBERG
Director
Department of Health Care Access and Information