

STATE OF MAINE

KENNEBEC, ss.

WOODLANDS ASSISTED LIVING
OF BREWER, LLC,

Petitioner

v.

COMMISSIONER, MAINE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. AP-08-63

117 - KEN - 6652009

DECISION

Facts

Woodlands is a level IV Private, non-Medical Institution that provides assisted living services to residents. Woodlands is subject to the Regulations Governing the Licensing and Functioning of Assisted Housing Programs Level IV Private Non-Medical Institution issued by the Department effective June 1, 2006. On June 20, 2007, the Department issued a Directed Plan of Correction (DPC) to the Woodlands. Woodlands filed an appeal. An administrative hearing was held at DHHS on April 22 and 23, 2008. The hearing officer issued his recommended decision dated June 24, 2008.

Following the recommended decision of the hearing officer on June 24, 2008, Woodlands filed a response and exceptions to the recommended decision. DHHS Commissioner Brenda Harvey issued her final decision on August 8, 2008, adopting the hearing officer's findings of fact and accepted the recommendation of the hearing officer that the Department was correct when it issued its DPC. Following this decision, the petitioner Woodlands appealed.

Standard of Review

The standard for reviewing the merits of an administrative agency decision is whether the agency abused its discretion, committed an error of law, or made findings not supported on the record. *Botting v. Dep't of Behavioral & Developmental Servs.* 2003 ME 152, ¶ 9, 838 A.2d 1168, 1171 (Me. 2003) and *Centamore v. Dep't of Human Servs.* 664 A.2d 369, 370 (Me. 1995).

Judges may not substitute their judgment for that of the agency merely because the evidence would give rise to more than one result. The administrative decision will be sustained if on the basis of the entire record before it, the agency could have fairly and reasonably found the facts as it did. *Seider v. Bd. of Examiners of Psychologists*, 2000 ME 206, ¶ 9, 762 A.2d 551, 555 (Me. 2000).

Discussion

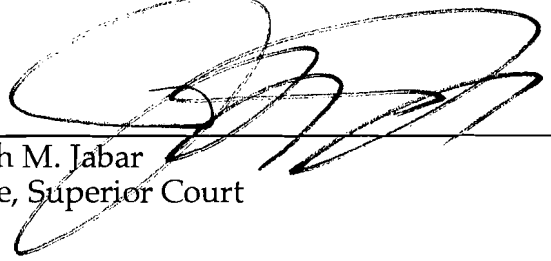
The evidence indicates that the parties agreed that there were problems and deficiencies but there is a significant difference of opinion regarding the solution to these problems. It is axiomatic that the court cannot substitute its judgment for the judgment of the agency. The question for this court in reviewing the agency's actions is whether the record contains competent and substantial evidence supporting the agency's recommendations. The petitioner does not question the agency's decision to issue a directed plan of correction. The petitioner actually acknowledges that there were deficiencies but the petitioner objects to the recommendations made by the agency in four areas.

First, Woodlands objects to the recommended need for an administrator for administration of drugs, second, the need for additional staffing, third, the need for more between-meals snacks, and, fourth, the presence of urine odor.

After reviewing the record below, the court finds and concludes that there is competent and substantial evidence supporting the agency's findings of deficiencies and the agency's directed plan of correction to alleviate these deficiencies.

For this reason, the court hereby denies the petitioner's 80C appeal.

Dated: June 25, 2009



Joseph M. Jabar
Justice, Superior Court

Attorney for Petitioner
Roger Katz
P O Box 1051
Augusta, ME 04432-1051

Attorney for Respondent
Thomas Bradley
Assistant Attorney General
6 State House Station
Augusta, ME 04333-0006

Action Petition for Review
80C

~~J. Mills~~
Recused

J. JABAR

Woodlands Assisted Living of Brewer, LLC vs. DHHS

Plaintiff's Attorney	Defendant's Attorney
<p>Roger J. Katz, Esq. 227 Water Street P.O. Box 1051 Augusta, Maine 04332-1051</p>	<p>Renee Guignard, AAG 6 State House Station Augusta Maine 04333-0006 - Thomas C. Bradley, AAG - Doris A. Harnett, AAG</p>
Date of Entry	
9/3/08	Petition for Review, filed. s/Katz, Esq.
9/9/08	Original summons with return service, filed.
09/11/08	Original summons with return service, filed.
	Letter entering appearance, filed. s/Guignard, AAG
09/23/08	Filed 09/11/08: Affidavit or service , with certified mail, return receipt green cards for Commissioner, Maine Department of Health & Human Services, and Office of the Attorney General. Filed by Attorney Katz.
10/10/08	Filed 09/23/08: Respondent's Motion to Enlarge Time in which to file the Certified Record filed by AAG Guignard.
11/4/08	ORDER, Mills, J. (10/8/08)
11/5/08	Respondent's Motion for Enlargement of Time to File the Certified Record is hereby GRANTED and the filing date of the record in this case shall be no later than October 30, 2008.
11/4/08	Copy mailed to attorneys of record.
11/4/08	Filed 10/30/08: Certified Record filed by AAG Guignard
11/5/08	Notice and Briefing Schedule mailed to attorneys of record.
12/11/08	Petitioner's Agreed-To Motion To Extend Deadline For Filing Of Petitioner's Brief, filed 12/5/08. s/Katz, Esq.
12/15/08	Proposed Order, filed 12/12/08. s/Katz, Esq.
12/26/08	ORDER, Marden, J. (12/23/08)
12/26/08	Deadline for filing Petitioner's Brief is extended to 12/22/08.
12/26/08	Copy mailed to attorneys of record.
1/15/09	Petitioner's Brief, filed 12/22/08. s/Katz, Esq.
1/15/09	Letter entering appearance, filed 1/9/09. s/Bradley, AAG
1/15/09	Assented-To Motion For Enlargement Of Time To File Reply Brief, filed 1/9/09. s/Bradley, AAG

Date of
Entry

Docket No. _____

1/15/09

Entry Of Appearance, filed. s/Harnett, AAG

2/2/09

Respondent's Brief, filed 1/30/09. s/Bradley, AAG

Notice of setting for 4/22/09

sent to attorneys of record.

4/22/09

Hearing held with the Hon. Justice Joseph Jabar, presiding.
Roger Katz, Esq. for the Petitioner and Renee Guignard, AAG for the
Respondent. Court to issue order Case under advisement.

6/25/09

DECISION, Jabar, J.
For this reason, the court hereby denies the petitioner's 80C
appeal.
Copies to attys. of record.
Copies to repositories