Home Health: Aide Ruled Negligent For Allowing Patient To Smoke Unattended.

The patient was an adult woman who had had a disabling stroke. Her right side was paralyzed, she was subject to tremors and seizures and she suffered from impaired vision. The court record did not indicate whether or not the patient's judgment had also been impaired by her stroke.

A home health aide left her alone in a room in her home for a few minutes with an absorbent pad around her neck, and a cigarette and lighter within her reach.

The fact the family sometimes allowed the patient to smoke while unattended did not absolve the home health aide from negligence for allowing the patient to smoke.

The aide's employer was ruled liable to pay damages for the patient's burns.

The damages included compensation for past and future medical expenses and pain and suffering, in excess of $1.2 million.

NEW YORK SUPREME COURT, APPELLATE DIVISION, 1996.

While left unattended, the patient was severely burned from smoking. The family sued the home health aide's employer on the patient's behalf for negligence, and got a substantial verdict.

The New York Supreme Court, Appellate Division, upheld the decision not to allow testimony to the jury that the family themselves had at times allowed the patient to smoke unattended, as that was irrelevant to the professional standard of care the home health aide owed to the patient. **Eaton vs. Comprehensive Care America, Inc., 649 N.Y.S. 2d 293 (N.Y. App., 1996).**

Family And Medical Leave Act: Employee Faulted For Giving Short Notice Of Doctor's Appointment.

The U.S. Family and Medical Leave Act (FMLA), among other things, gives an employee the right to take intermittent unpaid leave for healthcare appointments when medically necessary for the employee's or a close family member's serious health condition.

For medical, physical therapy, etc., appointments to fall under the protection of the FMLA as intermittent leave, however, the leave request must be medically necessary for a serious health condition, the employee must make reasonable effort to schedule the treatment so as not to unduly disrupt the employer's operations, and the employee must give at least thirty (30) days prior notice to the employer.

If an employee has not met all the requirements of the FMLA, an appointment with a care provider is not considered intermittent leave and is not protected by the FMLA. It can be treated like any other unexcused absences.

UNITED STATES DISTRICT COURT, GEORGIA, 1996.

The U.S. Family and Medical Leave Act (FMLA) is intended to allow some employees to take up to twelve (12) weeks per year unpaid leave for their own or a close family member's serious health condition, without jeopardizing their jobs. The Act to some extent protects employees who need to take intermittent leave, that is, unpaid time off for medical, therapy or rehabilitative care appointments for themselves or close family members, whether or not they have also taken leave in the form of a block of time off the job.

An employer who denies an employee's rights under the FMLA can be sued to compensate the employee for any monetary losses stemming from failure to protect the employee's job. The FMLA applies to employers with fifty (50) or more employees. The employee requesting leave must have worked at least 1,250 hours for the subject employer in the twelve months before requesting leave.

As the U.S. District Court for the Northern District of Georgia pointed out in a recent case, an employee who seeks to be protected under the FMLA from employer reprisals for taking intermittent leave must follow all three mandatory prior conditions. The employee must show the leave is medically necessary for a serious health condition. The employee must make reasonable effort to schedule any appointment or appointments so as not to unduly disrupt the employer's operations. And the employee must give at least thirty (30) days prior notice to the employer.

In this case the employee was ruled at fault for giving only two days notice of a follow-up appointment he had known of six weeks earlier (although how long he had known of the appointment was irrelevant). The FMLA treated the appointment as an unexcused absence, the court ruled. **Kaylor vs. Fannin Regional Hospital, Inc., 946 F. Supp. 988 (N.D. Ga., 1996).**