

Neglect Of A Resident: Aide's Name Placed In State Registry.

An aide worked with elderly nursing home residents who suffered from Alzheimer's disease.

She was assigned to care for an eighty-one year-old total-care Alzheimer's patient who was dependent on staff for all of her activities of daily living. The patient was wheelchair bound and had to be transported from activity to activity.

Before wheeling her to the bathroom, the aide put the patient's hands in the patient's lap as she was seated in her wheelchair. When the aide started to push the chair, the patient moved her hands out to the side of the chair. The aide put her hands back in her lap, and the patient again put them out to the side twice more.

Then as they were going through a doorway the patient put her hands out, struck her hand on the door jamb and sustained a wound that left a 3x5 cm piece of skin in the door jamb and required twelve staples to close.

The aide was fired and was reported to the State, which resulted in her name being listed in the abuse registry.

Court Finds Neglect Was Committed

The Superior Court of New Jersey, Appellate Division, ruled the aide committed neglect of this patient.

The patient's care plan called for Geri-Sleeves on the arms and legs. Putting them on was the a.m. aide's responsibility, but this aide, the p.m. aide, was still responsible for checking and putting them on if they were not. She should have looked under the patient's long-sleeve garment.

Two persons were required for wheelchair transport if the patient was restless or confused. This aide had worked with this patient many times before and knew she was often restless and confused.

The charge nurse was supposed to alert the aides when their patients were agitated, restless or confused. That did not happen this time, but the aide still knew she needed to get another staff person to help avoid injury to this patient that day.

It is not enough just to ask an agitated Alzheimer's patient to keep her hands in her lap. A second person must be brought in to hold the hands while another pushes the wheelchair. **Wormley v. Dept., 2014 WL 7466561 (N.J. App., January 6, 2015).**

State and Federal laws give residents of long-term care facilities the right to be free from physical and mental abuse and neglect.

Federal law requires every state to establish and maintain a registry containing names of nurses aides who have committed abuse or neglect of residents or misappropriated their property.

Neglect is the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

By definition, neglect does not include injury to a resident due to factors beyond the caregiver's control.

The aide was familiar with this resident and with the resident's care plan.

She knew she could not hold the resident's hands and push the resident's wheelchair at the same time. She was negligent in failing to seek assistance after the resident repeatedly stuck her hands out to the side of the wheelchair.

The aide also failed to see that the resident was wearing her Geri-Sleeves.

There is no evidence this injury to this resident was beyond the aide's control as the aide tried to claim in her own defense.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
January 6, 2015

FMLA: Nurse's Case Dismissed.

A licensed practical nurse was fired from the hospital where she had worked more than thirty years, for excessive unexcused absences.

The nurse claimed that many of those absences were instances for which she was entitled to leave under the US Family and Medical Leave Act (FMLA).

The US District Court for the Middle District of Tennessee dismissed the lawsuit she filed against the hospital, pointing to several fatal flaws in the legal reasoning behind her case.

Eligible Employee

To be bound by the FMLA the employer must have fifty or more employees.

To be eligible under the FMLA an employee must have worked 1,250 hours in the twelve-month period before the day the leave would begin.

The Court ruled an employer is allowed to grant or deny FMLA leave based on the precise number of hours the employee actually worked. This nurse had actually only worked 1249.8 hours in the prior twelve months.

That is, this nurse was paid for forty hours for working three twelve-hour shifts per week. According to the Court, only thirty-six hours per week, not forty, counted toward FMLA eligibility.

Family Member's Pregnancy

For an employee to be entitled to FMLA leave for a family member's, as opposed to her own pregnancy, the family member's pregnancy must involve medical complications which incapacitate the pregnant family member to the point that someone else needs to care for her. The nurse's daughter's pregnancy was not complicated and she did not need to be taken care of.

Taking Care of Grandchildren

Once the grandchild was born there were medical problems which sent the baby to the neonatal ICU.

However, although the grandchild, a family member, did have a serious health condition, the nurse was not taking care of the grandchild. She was staying with her daughter's other children while the daughter and her husband were at the hospital. That was a genuine family emergency, but not grounds for FMLA leave, the Court said. **Gray v. Clarksville, 2015 WL 36137 (M.D. Tenn., January 9, 2015).**