

Court Decides in Favor of Volunteer Feeding

By Susan Voigt
Public Affairs Attorney, Care Providers

In the contested case hearing, "In the Matter of Highland Chateau Nursing Home", Judge Howard Kaibel decided in favor of volunteer feeding provided that thorough training programs are conducted, volunteers are not used as a substitute for certified nursing staff, and such feeding practices are not a safety risk. Furthermore, the Judge favored Highland Chateau Health Care Center on all the feeding issues brought before him, thus impacting all Association members.

Attorney Craig Wildfang represented Highland Chateau Health Care Center at the contested case hearing which was held February 4, 1987. Public Affairs Attorney Susan Voigt monitored the hearing because Care Providers of Minnesota supported Highland Chateau on the resident feeding issue.

At the hearing, the following issues were heard and decided in favor of Highland Chateau:

1. None of the nursing home licensing rules cited by the Minnesota Department of Health staff surveyors in the correction order issued to Highland Chateau Health Care Center prohibit the practice of using trained volunteers to assist the nursing staff at mealtimes with certain residents.
2. The Judge approved the long-standing practice of training non-nursing personnel and certain volunteers in assistance with eating techniques, and then using these trained staff and volunteers to assist certain residents at mealtimes, when the patient's condition is such that, in the opinion of the nursing staff, the use of such trained staff and volunteers is safe and appropriate.
3. The Judge ruled that a training program on meal assistance is sufficient providing the volunteers and other non-nursing personnel undergo an extensive training program before assisting with feeding. Highland Chateau's training program included an American Health Care Association filmstrip on assistance with residents' meals, as well as a videotape discussion and demonstration by a registered dietitian and a registered nurse who is the staff development director. After undergoing the training program, the volunteers

and non-nursing staff were required to pass a test on assisting residents with meals before they were used for that purpose.

4. The Judge found that the training program conducted by Highland Chateau was at least equivalent to, if not superior to, training programs which are provided to certified nursing assistants as part of the nursing assistant training programs offered by various Minnesota technical vocational institutes.
5. No facility should attempt to skimp on employment of certified nurses in the event that they use volunteers to assist in feeding residents. Highland Chateau has a high staffing ratio per resident per day; therefore, its use of trained volunteers and non-nursing staff to assist certain residents at mealtimes was not a result of employing insufficient staff to provide such assistance.
6. The Judge ruled that the use of a small number of trained volunteers to assist the nursing staff in feeding certain residents poses no risk to the health or safety of the residents. Rather, the program contributes to better overall care of the residents.

Care Providers of Minnesota is keenly aware that other members have been cited for either volunteers or senior companions assisting in feeding of residents. Because the Judge was very favorable to Highland Chateau, it is reasonable to assume that the rulings should extend to encompass senior companions assisting in feeding, as well as volunteers, if the senior companions have been adequately trained.

Association conclusions are:

1. Facilities *may* use non-nursing personnel and certain volunteers in assisting with eating techniques where the use of such staff and volunteers is safe and appropriate, i.e., where the resident has no problem with choking or swallowing, etc.
2. Facilities must adequately train volunteers and other non-nursing personnel in assisting residents with meals. The facility should require that only

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trained persons supervise mealtime assistance for residents in a supervised dining room area. (Except for untrained volunteers who are relatives.)

3. Facilities should train volunteers to encourage residents to feed themselves.
4. The volunteers must be under direct control of the nursing home's nursing staff whenever they are assisting with meals.
5. The facility must have adequate nursing hours per resident per day so that the use of trained

volunteers and non-nursing staff to assist certain residents at mealtimes is not a result of employing insufficient nursing staff to provide such assistance.

If you have questions or comments about this decision, please contact Sue Voigt at the Association office.

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**TWIN CITIES CONSULTANT DIETITIANS
NEWSLETTER**
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STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF HENNEPIN

COMMISSIONER OF HEALTH

In the Matter of Highland
Chateau Nursing Home

ORDER

IT IS HEREBY ORDERED:

1. That the Findings of Fact contained in the Report of the Administrative Law Judge, dated April 21, 1987, in the above-entitled matter (a copy of which is attached) are adopted as my Findings of Fact in this matter;

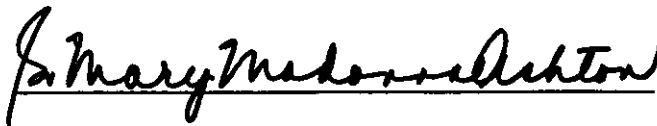
2. That Conclusions 1-6 contained in the above referenced Report are adopted as my Conclusions in this matter;

3. That the correction order issued to Highland Chateau Nursing Home on November 15, 1985 for a violation of Minnesota Rule 4655.1400 B. (5) is withdrawn; and

4. That the attached Memorandum is hereby made a part of my final decision in this matter.

DATE:

7-20-88



SISTER MARY MADONNA ASHTON

COMMISSIONER OF HEALTH

MEMORANDUM

The Findings of Fact and the Conclusions that I have accepted on the attached Order have been based on a careful review of the Administrative Law Judge's report in this proceeding. This case involved an appeal from the Department's decision denying a variance that would allow volunteers to assist in the feeding of nursing home residents. The Administrative Law Judge found that there are no provisions in the rules that specifically prohibit the use of trained volunteers to assist in the feeding of residents and I concur with that conclusion. However, it must be emphasized, as evidenced in the Findings of the Administrative Law Judge which I have accepted, that this decision is based on the premise that the facility had adequately trained its volunteers to perform this function, that steps were taken to clearly and carefully monitor the performance of the volunteers, and to assure that the use of volunteers did not jeopardize the health and safety of residents receiving these services. Since this decision has the potential for misinterpretation, it is necessary to clarify the intent of my decision in this proceeding. My decision is based on the acceptance of the ALJ's findings and conclusions relating to whether or not the current rules prohibit the use of volunteers to assist in the feeding of residents. Since it is my decision that there is no specific rule on this issue, it is not necessary to address the issues relating to the variance and waiver process and the ALJ's conclusions and findings in this area are not accepted as part of this decision. This memorandum substitutes for the memorandum of the ALJ.

The nursing home licensure rules clearly require that the licensee provide adequate staff to meet the nursing and personal care needs of its residents. It is also clear that facility staff must be appropriately trained to perform their functions. Volunteers cannot be used as a substitute for the required staffing levels in nursing homes. However, the role of volunteers in providing services to residents and augmenting the capabilities of nursing home staff cannot be overlooked.

The problem that arises is clearly defining the role of a volunteer and clarifying the requirements that must be followed when a facility would like to use volunteers to assist in the feeding of its residents. The Department had previously prohibited the use of volunteers to perform this function in a nursing home. That practice was based on the risk of harm that was presented to a resident that needed assistance with eating. There are some residents in nursing homes that have physical and neurological problems which pose complications in their ability to chew and swallow as well as their ability to distinguish hot from cold. Nursing staff are trained to recognize these problems, are trained in the correct techniques to feed residents, and are trained to initiate actions to protect residents in the event of choking or other health care problems. Meal time in the nursing home cannot be considered as a purely social affair. The needs

of the residents often require careful monitoring of food and fluid intake and the dietary requirements for residents is a major part of the plan of care for the residents. The nursing staff is trained and is responsible for observing residents during these periods and for noting whether there are problems that need to be further assessed.

The requirement in the rules that the licensee, the administrator and the Director of Nursing assume responsibility for the qualifications of staff and the maintenance of professional standards was designed to assure that individuals providing care to residents were appropriately trained and supervised. In addition, the staffing requirements are also intended to assure that adequate staff is always available to meet the needs of residents. Employees in a nursing home are clearly subject to the control and supervision of management staff. The employer-employee relationship provides a minimum assurance that staff will be trained, monitored and supervised and this provides an important assurance for resident care and safety. As noted in this proceeding, a facility can establish similar controls over volunteers through formalized procedures for training and supervision. The current rules require that the administrator provide training for both employees and volunteers to assure that they understand the proper method for carrying out all procedures. There is also a concern that once volunteers are used to provide direct care services, that this will be used a substitute for hiring adequate staff to meet the personal and nursing care needs of residents. It must be emphasized that the use of volunteers to substitute for adequate staffing levels would be a violation of the nursing home rules.

This decision is not intended to authorize the use of volunteers to perform direct nursing care services other than feeding. The facts of this case focused on the use of trained and supervised volunteers to assist in the feeding of residents in limited circumstances and based on those facts, there is not a violation of the rules. In determining, on a prospective basis, whether the use of volunteers to feed residents is appropriate, the following elements must be met: there must be evidence of an adequate training program for the volunteers which, at a minimum, meets the training and competency standards contained in the nursing assistant training curriculum; since feeding is a nursing function, the volunteers must be under the supervision of the Director of Nursing while performing this activity; there must be mechanisms in place to assure appropriate reporting to the nursing staff of observations made by the volunteer during meal time; there needs to be a process for determining that a resident can be safely fed by a volunteer and this fact documented in the resident's record, and there should be some indication that the resident has agreed to be fed by a volunteer.

It must be emphasized that the Department will still continue to hold a facility responsible for the care and services provided to residents even if those services are provided by volunteers. A facility must carefully consider the use of volunteers for

feeding residents and establish policies and procedures governing this practice. This would include a mechanism for the selection, supervision and monitoring of volunteers to assure that these individuals are capable of performing this function. Finally, the use of volunteers must not be considered as a substitute for nursing staff nor would volunteers ever be considered as part of the nursing staff. If volunteers were not available, staffing in the facility must be sufficient to meet the needs of the residents.

If these elements can be met by the facility, the facility would be considered to be in compliance with the rules.

SMMA

Monday Mailing

Minnesota Hospital Association

Minnesota Association of Homes for the Aging

July 25, 1988

News Briefs For Homes

Volunteers Can Help Residents Eat

Commissioner of Health Sister Mary Madonna Ashton Wednesday issued her long-awaited decision on whether volunteers can help residents eat in nursing homes. The Commissioner agreed with the Administrative Law Judge that under certain conditions, a nursing home may use trained volunteers to assist residents to eat.

The conditions are:

- The volunteers must be trained in feeding to at least the level in the nursing assistant training curriculum;
- The volunteers must be under the supervision of the Director of Nursing;
- The facility must have appropriate mechanisms for volunteers to report their observations to nursing staff;
- There must be an indication in the resident's record that the resident can be safely fed by a volunteer (i.e. the home must establish a process for making this determination and documenting it), and
- The resident must have agreed to be fed by a volunteer.

Under the Commissioner's decision, the nursing home is responsible for the selection, supervision and monitoring of volunteers to assure that the volunteers are capable of performing their functions. The scope of the Commissioner's decision is limited to the use of volunteers in feeding (as distinct from other nursing services), and the Commissioner clearly indicated that the use of volunteers must not be considered as a substitute for nursing staff. If volunteers are not available, staffing must be adequate to meet the needs of the residents.

Mealtimes place a strain on a facility's staff because of the need for staff to assist an unusually large number of residents during a short space of time, and volunteers have been viewed as an important resource. The decision should enable

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