ANNOUNCEMENTS

Benesch Attorneys Win Resident Rights Case for Washington County Home

SEPTEMBER 1, 2008

Washington County Court of Appeals Rules for County Home on Resident Mail Monitoring

The Washington County home has prevailed on an appeal of the Ohio Department of Health's position that Washington County's policy for handling resident mail violated Ohio's Resident Rights statute, Ohio Revised Code sec. 3721.13. At issue was Washington County's mail procedure wherein Facility personnel sorted the residents' mail into "personal" and "official" categories. Included in the "official" category was any mail that appeared to contain money or a check as well as mail from government agencies, such as the Social Security Administration, which may provide benefits to the resident. The personal mail was delivered to the resident but the "official" looking mail was retained by the social service director who invited the resident into his or her office, handed the resident the unopened mail and asked the resident if he or she required any assistance with the matters addressed in the mail. The resident was free to leave with the unopened mail. At no time did the Facility open the resident's mail unless specifically requested to do so by the resident. This mail policy was implemented to ensure the Facility's residents received any assistance necessary to receive state or federal benefits as well as to meet the Washington County's statutory obligation to take possession all property received by the resident to pay for the resident's care as required by Ohio Revised Code 5155.23.

The Ohio Department of Health, ignoring Washington County's statutory obligation under Chapter 5155, found Washington County's procedure to violated Ohio Revised Code sec. 3721.13(A)(21)(a) which provides that the resident has the right to receive or send mail unopened and cited Washington County. Washington County appealed ODH's findings. The hearing examiner upheld ODH's finding of a violation of the resident's rights statute.

Washington County then appealed to the Washington County Court of Common Pleas. The Common Pleas court reversed the decision of the hearing examiner finding that ODH's interpretation of the ORC 3721.13(A)(21) was incorrect and that Washington County's mail policy plainly did not violate the statute.

The State appealed to the Fourth District Appellate Court. After briefing and oral arguments by both ODH and Washington County, the Appellate Court upheld the decision of the Washington County Common Pleas Court. The court found that Washington County's policy of summoning a resident to the office to open mail does not violate the resident's right unless the mail originates for the resident's attorney, physician or a public official. The statute does not prohibit a county home from monitoring and sorting a resident's mail. Instead it imposes a duty upon the resident to request private and unrestricted communications, which includes the right to receive sealed , unopened

mail. However, the Court also held that mail from a physician, attorney or public official could not be restricted - meaning Washington County was not permitted to hold that mail. The court remanded the case to the trial court to determine if Washington County restricted resident access to mail from attorneys, physicians or public officials. Notably, the court held that mail from public agencies is not mail from "a public official," meaning that the social security administration is not a "public official."

The appellate court based its decision solely on its interpretation of the resident rights statute without reference to any of the special powers and duties of county homes.

The value of this decision as applied to all nursing homes, county homes and residential care facilities is that it permits the home to institute a procedure that results in more security for checks that arrive in the mail and a greater likelihood that important communication will not be overlooked by a resident. The decision applies in the 4th Ohio Appellate District and other courts may not agree. We do not yet know if ODH will attempt a further appeal but it does not seem a likely case for the Supreme Court to accept.

For more information contact:

Martha Sweterlitsch or Jennifer Turk
614-223-9300
msweterlitsch@bfca.com
jturk@bfca.com