



Community Care and Assisted Living Appeal Board

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DECISION NO. CCALB-CCA-21-A003(c)

In the matter of an appeal under section 29 of the *Community Care and Assisted Living Act*, SBC 2002, c 75

BETWEEN:	Ghalia Rebei Adlani (Moonlight Daycare)	APPELLANT
AND:	Dr. Emily Newhouse, Medical Health Officer, Fraser Health Authority	RESPONDENT
BEFORE:	A Panel of the Community Care and Assisted Living Appeal Board Richard Margetts, Q.C., Panel Chair Shelene Christie, Member Donald Storch, Member	
DATE:	Conducted by way of written submissions concluding on May 20, 2022	
APPEARING:	For the Appellant: Kenneth D. Craig, Counsel For the Respondent: Robert P. Hrabinsky, Counsel	

Decision on Application to Reconsider Decision to Lift Temporary Suspension

[1] The Panel is in receipt of correspondence from the Appellant dated May 6, 2022, seeking the Board's reconsideration of its interim decision, dated May 2, 2022, to lift the temporary stay of the Appellant's license cancellation (Decision No. CCALB-CCA-21-A003(b)). The Panel sought the Respondent's position on the application and the Respondent provided a written response on May 16, 2022. The Appellant provided a further submission on May 20, 2022.

[2] The Panel has reviewed the Appellant's submissions and, as we understand it, the Appellant raises the following concerns:

1. the Appellant appears to take issue with the Board's reliance on the inspection report of January 14, 2022, marked as exhibit 14 at the hearing, and argues that there is no entry in the report under the heading "contraventions"; The Appellant has further provided a copy of an email prepared and sent after the conclusion of the hearing wherein the witness BD appears to contradict her sworn testimony given during the course of the hearing;
2. the Appellant argues that the Panel's apparent determination of facts in the course of reconsidering the stay may amount to some form of apprehension of bias as no findings have yet been made in the hearing. This appears to be clarified in the

Appellant's letter of May 20, 2022 which states "until the Board has made a final determination of whether or not it prefers the testimony of Ms. Adlani or [BD], the Board is without jurisdiction to make a finding of this nature. The decision to lift the stay should be made at the same time as the ultimate decision of whether or not to close facility";

3. the Appellant argues that the panel "is now stating that the suspension of the termination is no longer of a short duration", and argues that either the number of witnesses the Respondent called or the Panel Chair's vacation was the cause of the delay and so the Appellant should not be prejudiced; and
4. the Appellant argues that the "procedural fairness of making a decision based on "information" referred to by the inspector in the above report which remains unspecified would make the decision to close the facility vulnerable to being overturned upon judicial review".

[3] The Respondent opposes the Appellant's request for reconsideration and raises the following points:

1. that the Board is functus to vary its interim decision at this juncture;
2. that the Appellant's request is ill-conceived; and
3. that lifting the stay is justified on broader grounds.

Decision

[4] The Panel concludes that the Appellant's request for reconsideration is ill-conceived, and we deny it.

[5] The Panel does not agree with the assertion that "until the Board has made a final determination of whether or not it prefers the evidence of Ms. Adlani or BD the Board is without jurisdiction to make a finding of this nature". The Panel has heard an abundance of evidence in great detail. Both parties were given ample opportunity to present evidence and to be heard on all issues. Simply put, the Panel is in a better position to assess all the evidence than Chair Narod was when she directed the stay of the suspension.

[6] In short, the interim decision of the Panel is no different than the interim decision of Chair Narod in that both decisions are based upon the evidence that has been placed before the adjudicator.

[7] In response to the Appellant's concerns about the January 14, 2022 inspection report, the Panel notes that the report was formally marked as an Exhibit, and the Appellant had ample opportunity to raise concerns, including concerns about procedural fairness, about the report during the course of the hearing. In any event, as set out in our May 2, 2022 decision, the Panel did not solely rely upon the inspection report in making its decision to lift the temporary suspension.

[8] We do not understand the Appellant's objection to the Panel's finding that the temporary suspension is no longer of short duration. The cause of the length of time that the temporary suspension has been in place is not material to the determination of whether or not it should remain in place. The hearing has run its course, and the Panel, understanding the length of time it typically takes a final decision of this nature to be

drafted and delivered, has concluded that the circumstances that predicated Chair Narod's decision are no longer applicable. In effect a "short duration" would be to ensure that the status quo prevailed until such point in time as the Panel hearing the matter could be in a position to provide a more focused determination of the applicability of the stay. Once those steps of hearing the evidence had been taken and the Panel felt it was in a position to make a determination the continuing applicability of the stay, it was no longer of short duration.

[9] It is unnecessary to deal with the Respondent's assertion that we are functus, but it would be our initial conclusion that until such time as the final decision on the merits of the appeal is rendered, this Panel is not functus and has the ability to address matters that arise on interim basis.

[10] Accordingly, the Appellant's request that we reconsider our May 2, 2022 decision and reinstate the temporary suspension of the license cancellation is denied. For clarity, the Appellant's licence will be cancelled effective May 31, 2022.

"Richard Margetts"

Richard Margetts, Q.C., Panel Chair

"Shelene Christie"

Shelene Christie, Member

"Donald Storch"

Donald Storch, Member

May 30, 2022