

MALTREATMENT INVESTIGATION MEMORANDUM
Office of Inspector General, Licensing Division
Public Information

Minnesota Statutes, section 626.557, subdivision 1 states, "The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment."

Report Number: 202302581

Date Issued: August 18, 2023

Name and Address of Facility Investigated:

PKT Enterprises
2750 Seminary Dr.
New Brighton, MN 55112

PKT Enterprises
514 2nd St. SE, Ste. 200
Minneapolis, MN 55414

Disposition:

Inconclusive as to emotional abuse of a vulnerable adult by a staff person.
False as to sexual abuse of a vulnerable adult by a staff person.

License Number and Program Type:

1083374-H_CRS (Home and Community-Based Services-Community Residential Setting)
1067825-HCBS (Home and Community-Based Services)

Investigator(s):

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Office of Inspector General
Licensing Division
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Suspected Maltreatment Reported:

It was reported that a staff person (SP) showed a vulnerable adult (VA) pornographic photographs, including a photograph of the SP's genitals.

Date of Incident(s): March 21, 2023

Nature of Alleged Maltreatment Pursuant to Minnesota Statutes, section 626.557, subdivision 9c, paragraph (b), and Minnesota Statutes, section 626.5572, subdivision 15, and subdivision 2, paragraph (b), clause (2); and subdivision 2, paragraph (c):

Conduct which is not an accident or therapeutic conduct which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to: the use of repeated or malicious oral, written or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening.

Any sexual contact or penetration between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility. Sexual contact is defined by Minnesota Statutes, section 609.341, as the intentional touching of the intimate parts with sexual or aggressive intent. 'Intimate parts' includes the primary genital area, groin, inner thigh, buttocks, and breast.

Summary of Findings:

Pertinent information was obtained during a site visit conducted on July 11, 2023; from documentation at the facility; and through four interviews conducted with a supervisory staff person (P1), the SP, the VA, and the VA's case manager (CM).

The VA enjoyed being independent and traveling on the local bus. The VA also enjoyed sewing, making crafts, going out to eat, and cooking. The VA had a part-time job in the community. The VA's diagnoses included a mild intellectual disability and an adjustment disorder with depressed mood. The VA was deaf and used American Sign Language (ASL) to communicate. The VA was not subject to guardianship.

According to the VA's *Individual Abuse Prevention Plan (IAPP)*, the VA showed an understanding of sexuality, but might not be able to defend him/herself against someone who was physically stronger than him/her. The VA might not be able to identify potentially dangerous situations. The VA had a history of posting inappropriate things of a sexual nature on the internet.

The VA stated that on one occasion, while the SP and the VA were in the VA's bedroom, the SP showed the VA a photograph on the SP's cell phone of the SP's genitals. The VA told the SP to stop and to leave the VA's bedroom. The SP left the VA's bedroom and the VA locked his/her bedroom door. The VA later told P1 about the incident. On two previous occasions "a long time ago," while the SP and the VA were in a car, the SP told the VA that s/he wanted "to have sex" with the VA.

According to the facility's *Internal Review*:

- On March 21, 2023, the VA told his/her job coach (JC) that the SP showed pornographic photographs to the VA, which made the VA uncomfortable. The VA also told the JC that the SP "seemed aroused" by the photographs. The JC then told a supervisory staff person (P2) about his/her conversation with the VA.
- On March 23, 2023, the VA told P1 that the SP saw the VA walking from the bathroom to his/her bedroom with only a towel and seemed aroused by seeing the VA. The SP then asked the VA to touch his/her genital area, but the VA refused.

- On March 23, 2023, when asked about the incident, the VA told P2 that the SP asked the VA to look at a picture of the SP's "private parts" on his/her telephone. The VA then went to his/her bedroom and locked the door.
- On March 27, 2023, P2 talked to the SP who told P2 that on March 21, 2023, the VA talked to the SP about two of the VA's friends and wanted to show "sexual" pictures of one of the friends to the SP. The SP told the VA that it was "inappropriate" and s/he did not want to see the photographs or talk to the VA about them. The VA then appeared "upset" that the SP told the VA to stop talking about the photographs.
- On March 27, 2023, when asked about the incident, the VA told P2 that s/he did not show inappropriate photographs of his/her friend to the SP. When asked if the SP asked the VA to touch his/her genital area at any time, the VA told P2 that the SP did not. When asked if the SP saw the VA walk from the bathroom to his/her bedroom while wearing only a towel, the VA said the SP did not. The VA also told P2 that s/he was "uncomfortable" with the SP working at the facility.

P1 provided the following information:

- The VA told P1 that s/he did not "feel comfortable" around the SP because when the SP drove the VA to a store, the SP showed "a dirty picture" to the VA. P1 asked the VA why s/he asked the SP to drive him/her to the store if s/he was uncomfortable around the SP. The VA also told P1 that the SP saw the VA wearing only a towel in his/her bedroom after taking a shower because the VA left his/her bedroom door open. P1 asked why the VA did not close his/her bedroom door when s/he showered, but the VA told P1 that it was his/her home and s/he did not want to close the door to his/her bedroom. The VA also told P1 that the SP was "aroused" after seeing the VA wearing only a towel.
- P1 did not believe that any of the staff persons, including the SP, showed "pornographic" photographs to the VA. The SP told P1 that the VA showed "inappropriate" photographs of the VA's friends to the SP, which made the SP uncomfortable. P1 stated that the VA was not a reliable reporter of events and that s/he sometimes changed what s/he previously said about events. P1 stated that after s/he initially learned about the VA's concerns about the SP's actions, s/he repeatedly asked the VA about the incidents and the VA told P1 "that there was nothing wrong" between the VA and the SP. P1 told the VA that if s/he was "not comfortable" in a situation the VA should tell P1, but the VA "acted normal." P1 told his/her supervisor about the VA's comments. In the past, the VA "would say things, then change it and say something else, so you can't trust [the VA]."
- P1 stated that s/he had no concerns about the SP's interactions with the residents, including the VA.

The SP provided the following information:

- In January 2023, the SP began working at the facility. The SP stated that on one occasion in February 2023, the VA told the SP about relationship problems two of his/her friends were having and the SP told the VA that s/he needed to take care of him/herself and not become involved in his/her friends' problems. The VA also told the SP that one of the friends wanted to become involved with the VA and that his/her friend showed the VA photographs of the friends genitals. The SP advised the VA that if that bothered the VA, s/he should talk to his/her social worker, but not the SP. The SP stated that s/he was trying to support the VA, but was uncomfortable with the conversation.
- Later that day, the SP drove the VA to a store. During the drive, the VA asked the SP about his/her

relationship with his/her spouse, which made the SP uncomfortable. A week or two later, the VA wanted to show the sexual photographs of his/her friends to the SP, but the SP told the VA that s/he did not want to talk to the VA about his/her friends and their relationship. The SP told the VA that his/her friends had to work through their problems, and it was not up to the VA to solve their problems. If the VA needed to talk to someone about his/her friends, the VA should talk to his/her social worker. The VA became upset with the SP because the SP did not want to talk about the VA's friend's relationship and went to his/her bedroom. The SP stated that s/he should have told his/her supervisor about the conversations but did not do so. The SP believed that the VA "understood" what the SP told the VA about not talking to the SP about his/her friends and "was not sure what to do" about the situation because s/he recently started working at the facility.

- The SP stated that the only photographs s/he showed to the VA were photographs of his/her spouse, children, and parent when they were at a family gathering. The SP denied showing photographs of naked people or photographs of anyone's genitals, including the SP's, to the VA. The SP also stated that s/he never talked to the VA about wanting to have sexual relations with the VA and denied that s/he was ever "aroused" by the VA. The SP did not know why the VA said that occurred.

The CM stated that the VA did not have a history of being an unreliable reporter of events and had not previously told the CM about any similar concerns about any staff person.

According to the facility's *Code of Ethics*, the staff persons were to interact with the residents in a manner that was respectful to the residents and to treat the residents with respect.

According to the facility's *Sexual Harassment Policy*, the staff persons were not to engage in making unwelcome sexual advances or verbal or physical conduct of a sexual nature with the other staff persons or residents. The staff persons were not to display sexually suggestive pictures at the facility.

Facility documentation showed that P1 and the SP each received training on the Reporting of Maltreatment of Vulnerable Adults Act, on the facility's policies, and on the VA's plans prior to the incident.

Conclusion:

Regarding emotional abuse:

On March 21, 2023, the VA told his/her job coach (JC) that the SP showed pornographic photographs to the VA and appeared to be "aroused" by the photographs, which made the VA uncomfortable. On March 23, 2023, the VA told P1 that the SP saw the VA walking from the bathroom to his/her bedroom with only a towel and seemed aroused by seeing the VA. The SP then asked the VA to touch his/her genital area, but the VA refused. When questioned about the incident, the VA told P2 that the SP asked the VA to look at a picture of the SP's "private parts" on his/her telephone. On March 27, 2023, when asked if the SP asked the VA to touch his/her genital area at any time, the VA told P2 that the SP did not ask the VA to touch his/her genitals and the SP did not see the VA wearing only a towel. The VA told this investigator that the SP showed the VA a photograph of his/her genitals and also told the VA that s/he wanted to have sex with the VA.

Given that conflicting information was provided by the VA and the SP about the incidents and that no one else observed the incidents or had concerns regarding the SP's interactions with clients, it was unknown whether the SP showed a photograph of anyone's genitals to the VA or made a comment about wanting to have sex with the VA. However, even if there was a single incident of the SP having done so, there was not a preponderance of the

evidence whether the single incident could reasonably be expected to produce emotional distress.

It was not determined whether emotional abuse occurred (Conduct which is not an accident or therapeutic conduct which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to: the use of repeated or malicious oral, written or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening.)

Regarding sexual abuse:

Given that no information was provided that there was any physical contact between the SP and the VA, there was a preponderance of the evidence that the SP did not engage in sexual contact with the VA.

It was determined that sexual abuse did not occur (any sexual contact or penetration between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility. Sexual contact is defined by Minnesota Statutes, section 609.341, as the intentional touching of the intimate parts with sexual or aggressive intent. 'Intimate parts' includes the primary genital area, groin, inner thigh, buttocks, and breast).

Action Taken by Facility:

The facility completed an internal review and determined that the facility's policies were adequate and were followed by the staff persons. The SP no longer worked with the VA.

Action Taken by Department of Human Services, Office of Inspector General:

No further action taken.