



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON, NJ 08625-0700

CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

ELIZABETH CONNOLLY
COMMISSIONER

FINAL DECISION
OAL DKT. NO. HSL 08268-17
AGENCY DKT. NO. DRA# 17-006

A.M.,

Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES,

Respondent.

A. INTRODUCTION

A.M. brought an appeal of her placement on the Central Registry of Offenders against Individuals with Developmental Disabilities. Following an investigation by the Department of Human Services' (DHS) Office of Investigations, A.M. was substantiated as having committed acts of exploitation against five individuals receiving services from the Division of Developmental Disabilities (DDD). DHS issued a written notice, dated April 27, 2017, informing A.M. that her actions met the statutory and regulatory criteria for placement of her name on the Central Registry of Offenders against Individuals with Developmental Disabilities. By letter dated June 3, 2017, A.M. requested a hearing to appeal the placement. On June 12, 2017, DHS transmitted the matter to the Office of Administrative Law (OAL) where it was filed on June 13, 2017 for hearing as a contested case.

On August 30, 2017, DHS filed a Motion for Summary Decision. In support of the motion, DHS submitted a brief and certification with supporting exhibits. The Administrative Law Judge (ALJ) scheduled the matter for a pre-hearing conference on September 6, 2017. A.M. requested the opportunity to oppose the motion; she filed a letter of explanation on September 20, 2017. After allowing DHS the opportunity to submit a reply, the ALJ closed the record on September 30, 2017.

B. THE INITIAL DECISION

1. ALJ's Findings

Based upon a review of the documentary evidence attached as exhibits to the Certification in Support of Respondent's Motion for Summary Decision, the ALJ found the following to be the undisputed facts:

1. As the result of an April 26, 2016 report and the subsequent investigation by DHS, DHS substantiated allegations against A.M. for committing acts of exploitation against five individuals receiving services from DDD for using her position as a group home manager and cash custodian to access service recipient funds for her own profit.

2. The Middlesex County Prosecutor charged A.M. with Theft by Unlawful Taking, a crime in the third degree, for purposely and unlawfully taking money belonging to disabled clients of the New Jersey Institute of Disabilities in an amount in excess of \$500, contrary to the provisions of N.J.S.A. 2C:20-3(a).

3. A.M. pled guilty to a disorderly person offense for Theft by Unlawful Taking under N.J.S.A. 2C:20-3(a).

4. On August 10, 2017 before the Honorable Benjamin S. Bucca, Jr., J.S.C., A.M., through her counsel, and the Assistant Middlesex County Prosecutor entered into a Consent Judgment wherein A.M. agreed to pay \$4,569 in restitution to the New Jersey Institute for Disabilities and consented to the following: relinquishment of all present and future employment with any State and/or public agencies; relinquishment of all present and future employment in the field of Social Services; and agreement to never accept employment if the job involves working with people with disabilities.

The ALJ stated: "Summary decision may be granted 'if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.'" N.J.A.C. 1:1-12.5(b). The ALJ confirmed that the standard for granting summary decision is the same as that for summary judgment found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). Brill adopted a standard that requires the motion judge to determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Brill, supra, 142 N.J. at 533. The ALJ found that there were no material facts in dispute; therefore, the matter should be decided by way of summary decision.

DHS sought to place A.M. on the Central Registry due to the substantiated act of exploitation. N.J.A.C. 10:44D-4.1(d) provides that "any single act or set of acts that dispossesses a service recipient or group of service recipients of a monetary value of \$100 or more" is sufficient for inclusion on the Central Registry of Offenders. A.M.'s guilty plea of theft by unlawful taking and her agreement to pay restitution in the amount of \$4,569 falls squarely within the definition of "exploitation" and within the bounds of the regulatory provision.

The ALJ compared the instant case to State v. Gonzalez, 142 N.J. 618 (1995), which raised the question of whether a casino employee, in challenging the revocation of his license by the Casino Control Commission for a disqualifying offense, should be permitted to relitigate the facts underlying his criminal conviction. The Supreme Court found that the effect of a guilty plea in a criminal proceeding should be the same for casino employee revocation proceedings and attorney disciplinary proceedings because both of the disqualification proceedings share the common purpose of protecting the public. Id. The Gonzalez court was also "persuaded to reach

the same conclusion based on the doctrine of judicial estoppel” that “bars a party to a legal proceeding from arguing a position inconsistent with one previously asserted.” Id. at 632, citing N.M. v. J.G., 255 N.J. Super. 423, 429 (App. Div. 1992). As noted by the Supreme Court, Gonzalez received the benefit of his guilty plea by accepting a lenient sentence; therefore, allowing him to change his testimony at a subsequent regulatory proceeding should not be tolerated. Id. For all the above reasons, the Supreme Court held “that under the Act, a judgment of conviction may not be collaterally attacked in an employee license revocation proceeding.” Id. at 633.

Similarly, it is the stated policy of this State to provide for the protection of individuals with developmental disabilities. N.J.S.A. 30:6D-73(a). The Central Registry is intended to prevent caregivers who become offenders against individuals with developmental disabilities from working with individuals with developmental disabilities. N.J.S.A. 30:6D-73(d). A caregiver may be placed on the Central Registry in cases of substantiated abuse, neglect or exploitation. N.J.S.A. 30:6D-77(b).

2. ALJ's Conclusions

Because Under N.J.A.C. 10:44D-4.1(d), a substantiated case of exploitation is “any single act or set of acts that dispossesses a service recipient or group of service recipients of a monetary value of \$100 or more.” The ALJ concluded that:

1. A.M.'s guilty plea of theft by unlawful taking, as well as her agreement to pay restitution in the amount of \$4,569, constitute admissions to the charge of exploitation.
2. A.M. is barred as a matter of law from taking an inconsistent position at this regulatory hearing.
3. In the Consent Judgment, A.M. accepted the condition that she would be barred from working with disabled individuals for the rest of her life.
4. Under the circumstances, DHS acted appropriately in its decision to place A.M.'s name on the Central Registry.
5. Based upon the foregoing, DHS's motion for summary decision must be granted.

3. ALJ's Order

The ALJ ordered that DHS's motion for summary decision should be granted and that DHS's determination to place A.M.'s name on the Central Registry should be affirmed.

EXCEPTIONS

No exceptions were filed.

C. FINAL AGENCY DECISION

Pursuant to N.J.A.C. 1:1-18.1(f) and based upon a review of the ALJ's Initial Decision and the entirety of the OAL file, I concur with the Administrative Law Judge's findings and conclusions. I **CONCLUDE** and **AFFIRM** that the Department has met its burden of proving sufficiently that A.M. had dispossessed a group of service recipients of a monetary value of \$100 or more. The ALJ correctly found that there were no material facts in dispute; The certifications showed that A.M. had pled guilty to a lesser offense than had originally been charged in return for her voluntary agreement to pay \$4,569 in restitution to the New Jersey Institute for Disabilities and consented to the following: relinquishment of all present and future employment with any State and/or public agencies; relinquishment of all present and future employment in the field of Social Services; and agreement to never accept employment if the job involves working with people with disabilities. Therefore, the matter was correctly decided by way of summary decision because there were no relevant facts in dispute that would necessitate a hearing, as a matter of law.

I further **CONCLUDE** and **AFFIRM** that there is a preponderance of the evidence demonstrating that A.M. exploited individuals with developmental disabilities of an amount over \$100 and that her placement on the Central Registry of Offenders against Individuals with Developmental Disabilities is correct and proper.

Therefore, pursuant to N.J.A.C 1:1-18.6(d), it is the Final Decision of the Department of Human Services that I **ORDER** the placement of A.M. on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: 12/13/17



Lauri Woodward, Director
Office of Program Integrity and Accountability