



*State of New Jersey*

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

CHRIS CHRISTIE  
GOVERNOR

KIM GUADAGNO  
LT. GOVERNOR

ELIZABETH CONNOLLY  
ACTING COMMISSIONER

**FINAL DECISION**  
OAL DKT. NO. HSL 2418-14  
AGENCY DKT. NO. DHU# 14-004

C.F.,

Petitioner,

v.

**DEPARTMENT OF HUMAN SERVICES,**

Respondent.

**A. INTRODUCTION**

C.F. 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' Office of Investigations, C.F. was substantiated as having neglected individuals with developmental disabilities by leaving four individuals under her care alone in a van with the motor running for an extended period of time. On October 28, 2013, C.F. was notified by the Office of Investigations that it had determined by a preponderance of the evidence that neglect had taken place and that the case had been forwarded for an administrative review of whether or not placement on the Central Registry would be appropriate.

Following a review by designees of the Department of Human Services' Commissioner, C.F.'s actions were found to meet the statutory and regulatory criteria for placement on the Central Registry. A letter notifying C.F. of the determination and the Department's intention of placing her on the Central Registry was sent to her on December 16, 2013. Included in this notification was a description of C.F.'s appeal rights. C.F. requested an appeal in the form of an Office of Administrative Law hearing; the matter was transmitted there as a contested case on January 23, 2014.

At an Office of Administrative Law (OAL) hearing on April 27, 2015, C.F. was represented by Counsel Steven Seigler, Esq. and the Department of Human Services was represented by Deputy Attorney General, Theodore F. Martens. The hearing was conducted before Richard McGill, Administrative Law Judge (ALJ), the record was closed on May 11, 2015, and the initial decision was issued on December 7, 2015.

## **B. THE INITIAL DECISION**

During the hearing, ALJ McGill heard testimony and reviewed documentary evidence. The Initial Decision incorporated the testimony of four witnesses and seventeen documents submitted by the parties. The ALJ's inquiry quite correctly followed the Legislature's two-step protocol for placement of caregivers on the Central Registry by examining each step in order and determining the facts at each juncture and whether an appropriate conclusion had been reached by the requisite preponderance of the evidence standard.

The first issue to be determined was whether C.F. had committed an act of neglect against four individuals with developmental disabilities under her care. The second issue was whether the act met the statutory and regulatory criteria for placement on the Central Registry, which, in the case of neglect, consists of:

1. Acting with gross negligence (a conscious, voluntary act or omission in reckless disregard of a duty and of the consequences to another party),
2. Acting with recklessness (the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for that risk), or
3. A pattern of behavior (a repeated set of similar wrongful acts).

The ALJ found the following to be facts in the case:

1. "As of July 21, 2013, C.F. was employed by Our House as a part-time Counselor.
2. Our House operates a group home and supervised apartments for individuals with developmental disabilities.
3. C.F. was assigned to the supervised apartments, where the residents included E.T., J.B., V.S. and M.M.
4. E.T.'s IHP (Individual Habilitation Plan) states that he cannot be left alone in a vehicle and that Our House has a policy that no resident can be left alone in a vehicle at any time. The IHPs for J.B., V.S. and M.M. contain the same provisions.
5. C.F. reviewed the IHPs for E.T., J.B., V.S. and M.M.
6. At a staff meeting on July 19, 2013, C.F. was told to buy a rug for the men's bathroom.
7. On July 21, 2013, C.F. took E.T., J.B., V.S. and M.M. to a Shop Rite on Route 22 in Hillside, New Jersey for food shopping.
8. After shopping in Shop Rite, C.F. and the four residents returned to the van. The residents got into the van, and C.F. placed the groceries in the back.
9. C.F. started the van and turned on the air conditioning.
10. With the keys in the ignition and the engine running, C.F. left the van and the residents and went into a dollar store, which was approximately thirty feet away.
11. As of July 21, 2013, W. B. was employed by Our House as a Senior Counselor and assigned to the Pineway Group Home.
12. While off duty, Ms. B. observed E.T., whom she recognized as a service recipient from Our House, walk out of the Shop Rite alone.
13. Ms. B. did not see any staff member from Our House.

14. Ms. B. then saw three other service recipients, J.B., V.S. and M.M., from Our House in a van.
15. The keys were in the ignition of the van and the engine was running.
16. The residents were unattended by a staff member.
17. Ms. B. asked the residents about the staff member, and they said that she was in a store, while pointing to the dollar store.
18. One of the residents was becoming upset.
19. Ms. B. assured the residents that she would stay with them until the staff member returned.
20. C.F. returned to the van, and Ms. B. said that C.F. should not have left the residents unattended in the van.
21. C.F. said that she was gone for only five minutes.
22. Ms. B. said that anyone could take the van.
23. C.F. responded that she did not care about Our House.
24. Ms. B. reported the situation to her supervisor, and an investigation was conducted.
25. During the investigation, C.F. stated that she did not leave the residents alone in the van.
26. C.F. later admitted that she left the residents alone in the van.”

The first issue is whether C.F. committed an act of neglect against the four service recipients of the Division of Developmental Disabilities on July 21, 2013. “Neglect” is defined in N.J.A.C. 10:44D-1.2 (the regulations promulgated pursuant to the Central Registry statute - N.J.S.A. 30:6D-73 et seq.) as “willfully failing to provide proper and sufficient food, clothing, maintenance, medical care or a clean and proper home; or failure to do, or permit to be done, any act necessary for the well-being of an individual with a developmental disability.” “Inadequate supervision” may also constitute neglect. N.J.A.C. 10:44D-2.1(e) 1. The ALJ determined that, C.F. left E.T., J.B., V.S., and M.M. alone in a van despite the fact that the IHP for each of those residents contained a provision which stated that they should not be left alone in a vehicle. The keys were in the ignition and the engine was running. The dangers in this situation were obvious. One of the residents could have driven the van away and gotten into an accident. Or, another person could have driven the van away with the residents inside the vehicle. Although the ALJ found that C.F.’s actions were not malicious and the residents were not injured as a result of her actions, the danger to the residents was readily apparent, and an injurious event could have occurred quickly. Under the circumstances, the ALJ concluded that C.F. neglected E.T., J.B., V.S., and M.M. by failing to provide adequate supervision on July 21, 2013.

The second issue is whether C.F. should be placed on the Central Registry. In accordance with N.J.A.C. 10:44D-4.1(a), when an investigation results in substantiation of an allegation of neglect, an additional determination shall be made whether the incident involves the elements set forth in N.J.A.C. 10:44D-4.1(c), which provides as follows:

“In the case of a substantiated incident of neglect, it shall be determined if the caregiver acted with gross negligence, recklessness or evidenced a pattern of behavior that caused harm to an individual with a developmental disability or placed that individual in harm’s way.”

The ALJ determined that none of the four residents was supposed to be left alone in a vehicle. In fact, one of the residents was not even supposed to be left unsupervised in the community. The above-mentioned dangers were substantial and the risk was unjustifiable, in that C.F. could have purchased the rug at a later time. These circumstances amounted to gross negligence and recklessness on the part of C.F. C.F. exhibited seriously poor judgment which created a substantial and unjustifiable risk of harm to the four residents. Additionally, C.F.'s continued belief that her actions were warranted by the circumstances adds to concern about her lack of good judgment. Under the circumstances, the ALJ determined that C.F.'s actions exposed the four individuals with developmental disabilities to substantial and unjustifiable risks of harm – despite the fact that no actual harm occurred – and concluded that that C.F.'s name should be placed on the Central Registry. Accordingly, the ALJ ordered that the determination to place C.F.'s name on the Central Registry was affirmed.

**C. EXCEPTIONS**

No exceptions were filed.

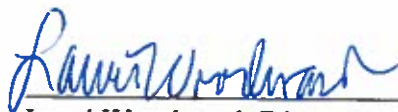
**D. FINAL AGENCY DECISION**

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 neglect of individual with developmental disabilities by C.F. with a showing of a preponderance of the credible evidence in the record. I further **CONCLUDE and AFFIRM** that there is a preponderance of the evidence demonstrating recklessness and unjustifiable risk taking during that act of neglect, representing a sufficient showing for placement of C.F. on the Central Registry of Offenders against Individuals with Developmental Disabilities.

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 C.F. on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: \_\_\_\_\_

3/2/16



Lauri Woodward, Director  
Office of Program Integrity and Accountability