



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES  
OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY  
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**FINAL AGENCY DECISION**

OAL DKT. NO. HSL 17491-16  
AGENCY DKT. NO. DRA#16-004

**L.D.,**

Petitioner,

v.

**OFFICE OF PROGRAM INTEGRITY AND  
ACCOUNTABILITY,**

Respondent.

and

**IN THE MATTER OF L.D.,  
THE OFFICE OF PROGRAM  
INTEGRITY AND ACCOUNTABILITY  
SERVICES, NEW LISBON  
DEVELOPMENTAL CENTER.**

OAL DKT. NO. CSV 00010-17  
AGENCY DKT. NO. 2017-1973  
(CONSOLIDATED)

L.D. appealed the finding of the Department of Human Services (Department or DHS) that she committed an act of physical abuse, as defined in N.J.S.A. 30:6D-73 et seq., against a service recipient of the Division of Developmental Disabilities (Division), and the decision of respondent to place her name on the Central Registry of Offenders against Individuals with Developmental Disabilities (Central Registry), pursuant to N.J.S.A. 30:6D-77. L.D. also appealed the disciplinary actions taken against her by the New Lisbon Developmental Center.

**PROCEDURAL HISTORY:**

**HSL 17491-16**

The Department's Office of Program Integrity and Accountability investigated a report of an unusual incident, occurring on February 29, 2016, involving L.D. and an individual (A.R.) who receives services from the Division. On October 5, 2016, the Department notified L.D. that the investigation had substantiated an allegation of abuse against her and that her name would be placed on the Central Registry. On November 4, 2016, L.D., the petitioner through her attorney at the time, filed an appeal and

the Department transmitted the matter to the Office of Administrative Law (OAL) for a hearing. The contested case was filed on November 17, 2016 at the OAL.

### **CSV 00010-17**

On March 1, 2016, New Lisbon issued a Preliminary Notice of Disciplinary Action, ("PNDA") against appellant/petitioner, suspending L.D. with pay, pending removal. A new PNDA was issued on March 3, 2016, concurrent with an Informal Predetermination Hearing, terminating pay, pending removal. New Lisbon charged Civil Service violations, under N.J.A.C. 4A:2-2.3(a) (6), Conduct unbecoming a public employee, and (11) Other sufficient cause; and violations of C. 3-1, Physical or mental abuse of a patient, C.5-1, Inappropriate physical contact or mistreatment of a patient, and C.8-2, Falsification, intentional misstatement of material fact in connection with work, and sought removal of appellant. On December 6, 2016, New Lisbon issued a Final Notice of Disciplinary Action ("FNDA") repeating all the above charges. On December 21, 2016, then counsel for appellant/petitioner filed the appropriate and timely appeal of the removal.

On May 5, 2017, the Administrative Law Judge, after discussion with counsel and their recommendations, issued an Order of Consolidation and Order Designating Predominant Interest. The Central Registry case was designated as the predominant interest, with the Department of Human Services writing its Final Agency Decision before the Civil Service matter. On November 1, 2017, L.D.'s counsel was relieved of representation pursuant to its motion and appellant/petitioner proceeded pro se.

A hearing took place on May 15, 2018 before Joseph A. Ascione, Administrative Law Judge (ALJ). The ALJ accepted an acquaintance of L.D. as a Liberian English interpreter, noting that his value was questionable to the tribunal. However, his presence provided the petitioner/appellant with a person "who she appeared comfortable assisting her."

The record remained open until June 22, 2018, to allow the parties to submit additional exhibits. The record closed on June 25, 2018. Due to the ALJ's unavailability, the Acting Director of the OAL, granted extensions of time to issue the Initial Decision pursuant to orders, dated August 9, 2018, September 24, 2018, November 8, 2018, December 24, 2018, February 8, 2019 and March 25, 2019. The ALJ issued an initial decision on April 12, 2019.

**EXCEPTIONS:** No exceptions were received.

### **INITIAL DECISION:**

#### **Testimony and Evidence**

The factual issues in this case are whether L.D. abused A.R., an individual with developmental disabilities, causing injury; whether L.D.'s alleged actions demonstrated careless disregard for the health, safety and well-being of A.R.; and whether L.D.'s alleged actions placed A.R. at risk of harm. Respondent presented four witnesses; L.D. testified on her own behalf.

The Department of Human Services (Respondent), presented four witnesses; James David Bowers - Cottage Training Supervisor-New Lisbon, Noreen Riche - Care Giver retired-New Lisbon, Steven J Long - Head Cottage Training Supervisor-New Lisbon, and

Harlan Cannon - Quality Assurance Supervisor Investigator-New Lisbon. L.D. testified on her own behalf. Below are the ALJ's descriptions of the witness testimony presented at the hearing.

**James David Bowers Jr. (Bowers)**

Bowers has three years of experience as an employee of New Lisbon as a Cottage Training Supervisor. Previously he was at Ancora Psychiatric Hospital and was employed as a residential living specialist. In February 2016, he served at Holly Cottage. Holly Cottage houses the highest functioning women population. One of the residents, A.R., who had a history of harming herself, and altercations with other residents. A.R. is a vulnerable individual with developmental disabilities and a prosthetic boot for her right foot. Her protocol required a physical check every ten minutes. A.R. was one of twenty-three residents at Holly Cottage. There were six staff that Bowers supervised, regularly.

L.D. and Bowers had an interaction on February 29, 2016. L.D. complained to Bowers' supervisor, Mr. Steven J. Long, that Bowers followed her around that day. Bowers saw that as his job function. L.D., the Human Service Assistant (HSA), needed to check A.R. every ten minutes. Bowers supervised L.D. L.D. never complained to him. Bowers viewed L.D. as a less than adequate employee, due to attitudinal issues with supervision. Bowers identified the protocol used by New Lisbon regarding resident behavioral issues. He described it as, "Handle with Care." Physical force is prohibited, especially if one can back up to avoid confrontation.

On the evening of February 29, 2016, while Bowers attended to a resident snack distribution, L.D. distributed medications. He heard a commotion at Holly House; the commotion resulted from an interaction between L.D. and A.R. L.D. had been standing over A.R. at the couch. L.D. had grabbed A.R.'s hair and attempted to pull A.R. up from the couch that A.R. had been seated upon. The two women grabbed each other's hair. Bowers had to intervene to separate the two women. On accomplishing the separation, L.D. pivoted around Bowers and struck A.R. with a closed fist in the ribs. When Bowers reprimanded L.D. about the subsequent hitting of A.R., she responded, "Did you see what she did to me?"

**Noreen Riche (Riche)**

Riche is an HSA employee of New Lisbon with six years of service at the time of the incident. She did not observe the incident but acted after the incident to calm down an agitated A.R. by escorting her to the shower. Riche observed a red mark on A.R.'s torso. Riche called in the facility nurse to examine A.R. Riche also heard Bowers describe the incident in front of L.D., and L.D. had no reaction nor did she dispute Bowers' representation of the incident.

**Steven J. Long (Long)**

Long was the Head Cottage Training Supervisor at New Lisbon at the time of the incident, and served in that capacity ten months prior thereto. He views Bowers as a rigid employee, but fair; Long is satisfied with Bowers' services. He viewed L.D. as being great with clients and came to work on time. He viewed L.D. as a good employee. He fielded more than one complaint between Bowers and L.D. over the issue of whether L.D. had been treated unfairly and whether L.D. followed Bowers' directions. He noted to the DHS investigator, Harlan Cannon, that the meeting on the day of the incident was not a formal complaint, but minor. L.D. had previously complained about other supervisors. He described L.D. as having, "selective hearing" she "doesn't hear what you want her to do." Long did not view Bowers and L.D. as having a history. He did advise L.D. that she would be subject to disciplinary action if she did not follow Bowers' directions.

HSA's are to help patients and are trained to apply redirection on agitated residents, verbally or with food offerings. Physical restraint, if necessary, is to be nonaggressive and limited. Striking or grabbing is prohibited. Before an HSA is placed at a cottage, all training regarding resident interaction is completed. L.D. underwent this training.

### **Harlan Cannon (Cannon)**

Cannon is a Quality Assurance Supervisor Investigator with seven years of service in the Department of Human Services, Office of Program Integrity and Accountability. He undertook the investigation of the February 29, 2016 incident. He interviewed the various witnesses who testified at the hearing, as well as some of the residents and others. His report is exhaustive and closer in time to the incident, being conducted in the summer of 2016. He reviewed the records of A.R. and identified her as a resident of the Division of Developmental Disabilities. He concluded that there was substantiation of abuse by L.D. against A.R. He based this despite L.D.'s denial. He interviewed A.R. and he found her to have a history of false reports against employees of New Lisbon, but he found her testimony to be consistent with the testimony of Bowers. Cannon did not find L.D. truthful. He found Bowers credible. His credibility finding related here are to explain his conclusion that abuse was substantiated. During his interviews, L.D. stated that Bowers threatened revenge. Bowers denied that to Cannon. L.D. denied the physical abuse.

### **L.D.**

L.D. denied physical abuse of A.R. She claimed to have returned to work at the end of February 2016, after a proposed twenty-day disciplinary action, which settled for seven days. The action in that matter was based upon L.D.'s complaint that another HSA had physically attacked a resident. That complaint by L.D. resulted in charges against L.D. for filing a false claim.

L.D. claimed Bowers harassed her by following her around and that she was the only one that he followed. She claimed that A.R. was the "tiger." While A.R. attacked her, Bowers allegedly watched and did nothing. He eventually separated them. She does not remember any prior altercation with A.R. She claims it is not in her nature to lie and she never abused a resident before.

The factual findings set forth below are the result of credibility determinations. The ALJ could not conclude Bowers took any "misappropriate actions" against L.D. L.D. had an altercation with a resident and expressed frustration with the resident for numerous reasons. L.D. was specifically being heard to say, "Did you see what she did to me?" Weighing her testimony against the testimony of her supervisor, the preponderance of the evidence supports Bowers' rendition of the facts, and the investigator's viewing of A.R.'s torso and scalp which reflected consistency with Bowers' rendition. The witnesses for the respondent were performing their duties. This tribunal did not accept that the observation of L.D.'s supervisor was questionable. The incident occurred. The ALJ stated that the testimony supports the ultimate findings.

### **ALJ's Findings**

After hearing the testimony, evaluating the documentary evidence, and determining the credibility of the witness, the ALJ found as facts the following:

1. L.D. understood the severity of the proceeding and could communicate effectively with the tribunal without need of an interpreter. (The ALJ allowed his presence, anyway.)
2. On February 29, 2016, L.D., an employee of New Lisbon as an HSA, had an altercation with A.R., one of the residents at New Lisbon.
3. A.R. is a service recipient in the care of the Division of Development Disabilities, within the Department of Human Services.
4. The DHS Office of Program Integrity and Accountability's Office of Investigations commenced its investigation on March 1, 2016 and completed most of the investigation contemporaneously with the incident, although some additional statements were taken as late as June 27, 2016. The initial investigation report was issued on or about May 16, 2016, and concluded on August 17, 2016.
5. The DHS Office of Program Integrity and Accountability's Office of Investigations substantiated a finding of physical abuse by L.D. against A.R. and so notified L.D. by correspondence, dated October 5, 2016.
6. L.D.'s employment included training regarding the redirection of agitated residents, the appropriate restraint of residents, and the prohibition of pulling resident's hair and hitting residents.
7. In the evening of February 29, 2016, despite this training, L.D. did have an altercation with A.R. each pulling the other's hair. Bowers, L.D.'s supervisor, intervened, and separated the women. After the separation L.D. struck A.R. in the torso.
8. The investigation revealed marks to A.R.'s scalp and torso consistent with the facts related by the witnesses.
9. There is no indication, other than L.D.'s words, that the complaint, made by Bowers against L.D., was motivated by retaliation for L.D.'s prior complaint(s) against Bowers. One of those complaints having occurred on the same day, but prior to the incident charged.
10. L.D.'s actions are viewed as a "careless disregard" as to A.R.'s personal safety. L.D.'s actions lacked reasonableness and prudence. L.D. did what a person ought not to do to a person under one's care.
11. L.D.'s actions are a physical abuse of an individual with developmental disabilities under her care.
12. L.D.'s actions include inappropriate physical contact or mistreatment of a resident.
13. L.D. made intentional misstatements of material facts in connection with her work records and in response to investigatory questioning.

The ALJ cited the Central Registry's legislative purpose to protect individuals with developmental disabilities from N.J.S.A. 30:6D-73, as well as the definition of the standard of abuse sufficient to warrant placement on the Central Registry (N.J.A.C. 10:44D-4.1) - that of acting "with intent, recklessness or careless disregard to cause or potentially cause injury." The ALJ correctly acknowledged the Department's preponderance of the credible evidence burden of proof standard. The ALJ determined that L.D., the petitioner, knew A.R. and was familiar with the proper procedures to address aggressive and/or agitated behavior by A.R. The ALJ found that rather than attempting to avoid force, L.D. chose to use unnecessary force.

The ALJ **CONCLUDED** that the Department had shown by a preponderance of the evidence that A.R. is an individual protected by N.J.S.A. 30:6D-73. Upon the report of an incident on February 29, 2016, an investigation took place and concluded petitioner violated N.J.A.C. 10:44D-4.1ff, when she had an altercation with a resident under her care. The

investigation substantiated the finding that L.D. should be placed on the Central Registry of Offenders against Individuals with Developmental Disabilities. Therefore, the ALJ **CONCLUDED**, that the Department's placement of L.D.'s name on the Central Registry of Offenders for physical abuse was within the parameters of the statute. The ALJ **ORDERED** that L.D.'s petition opposing the placement of her name on the Central Registry of Offenders against Individuals with Developmental Disabilities was **DENIED**; and that the Department's actions placing L.D. on the Central Registry of Offenders against Individuals with Developmental Disabilities is **GRANTED**.

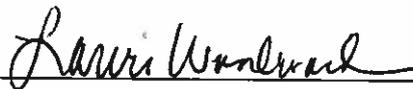
**FINAL AGENCY DECISION:**

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. The ALJ had the opportunity to assess the credibility and veracity of the witnesses; I defer to his opinions concerning these matters, based upon his observations described in the initial decision. **I CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that L.D. committed an act of physical abuse against an individual with developmental disabilities. **I CONCLUDE and AFFIRM** that L.D. acted intentionally, recklessly or with careless disregard to the well-being of that individual, and that L.D.'s placement on the Central Registry is appropriate.

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 L.D.'s name on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Having affirmed the Final Agency Decision to keep L.D.'s name on the Central Registry of Offenders against Individuals with Developmental Disabilities, I submit this decision to the Civil Service Commission for their deliberation of whatever matters, within their purview, may be left unresolved.

Date: May 29, 2019



Lauri Woodward, Director  
Office of Program Integrity and Accountability