



State of New Jersey

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FINAL AGENCY DECISION

OAL DKT. NO. HSL 05675-18
AGENCY DKT. NO. DRA # 18-007

A.E.,
Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES,
Respondent.

Petitioner A.E. appealed the finding of the Department of Human Services (DHS) that she committed an act of physical and verbal abuse, as defined in N.J.A.C. 10:44D-1.2, against a service recipient of the Division of Developmental Disabilities (DDD). Petitioner also appealed the decision of DHS to place her name on the Central Registry of Offenders against Individuals with Development Disabilities (Central Registry).

PROCEDURAL HISTORY

DHS notified A.E. that her actions met the statutory and regulatory criteria for placement of her name on the Central Registry. By letter, dated April 6, 2018, A.E. requested a hearing to appeal the placement. On April 13, 2018, DHS transmitted the matter to the Office of Administrative Law (OAL) where it was filed on April 20, 2018, for hearing as a contested case.

An Order to Seal was placed by the ALJ and a series of telephone conferences were held, with a change in DAGs and witness unavailability problems in between. The hearing in this matter took place on January 9, 2019, January 10, 2019 and January 25, 2019. Upon receipt of summation briefs, the record closed on March 1, 2019.

FACTUAL DISCUSSION AND FINDINGS

Shynice Garcia (Garcia) had been employed by Bellwether for six years (with the last two years as program supervisor) at the residence where N.M. resided. N.M. is an individual receiving services from DDD and became a resident at the Bellwether home in March 2017.

The residents living in this home, require one-on-one supervision. The house is staffed with four direct support professionals supplying the one-on-one care with one additional staff member designated to assist the other staff members. There can also be a program supervisor on site. The one-on-one staff members are required to be within arm's reach of their assigned residents, at all times.

On July 15, 2017, Garcia was on duty as the program supervisor at the group home where N.M. resided. A.E. was the direct support professional who had been assigned to watch N.M. from 7:00 p.m. on July 14, 2017, until 7:00 a.m. on July 15, 2017. Garcia heard a thump and immediately went upstairs to investigate the noise. As she climbed the stairs, Garcia heard A.E. say "don't put your fucking hands on me." When Garcia entered N.M.'s bedroom, N.M. was on the floor and A.E. was standing over him in the bedroom doorway.

Garcia stated that N.M. was calm and told her that A.E. tried to choke him when he asked to go downstairs for breakfast. A.E. stated that N.M. attacked her. Upon examining N.M.'s neck, Garcia noticed three scratch marks and some minor bleeding.

The Initial Decision mentions that Garcia stated that she called her supervisor to report the incident but never spoke to A.E. The Central Registry statute (N.J.S.A. 30:6D-73 et seq.) requires that incidents of abuse, neglect are to be reported to the Department of Human Services and investigated by at least the agency operating the group home. Depending on the classification of the incident, there might be an additional investigation by the Department's Office of Investigation. Garcia had a duty to report the abuse, not to investigate. On July 31, 2017, Garcia provided a written statement to the investigator for DHS about the July 15, 2017 incident.

Garcia testified that all staff received safety training, which included calling for help, using calm soothing language, and talking in a positive way to redirect inappropriate behavior. The use of expletives when speaking with a resident is never permitted; it is considered abuse. Garcia also testified that safety holds are meant to be done from behind or to the side of the resident and the resident's arms are to be held in front and positioned on the waist. The acceptable holds are set forth in the Safety-Care Behavioral Safety Training Trainee Manual.

As a resident, N.M. could walk freely within the house; however, he was not permitted access to the other resident's bedrooms, the laundry room on the first floor, or the basement. N.M. required twenty-four-hour supervision, and he was not permitted to leave the house unaccompanied. If N.M. attempted to leave, the staff would be permitted to block him but should try and redirect him. If N.M. could not be redirected, the staff member would follow him to make sure N.M. did not harm himself.

On cross-examination, Garcia stated that when she heard the thump, another staff member, Amos Fallah (Fallah), went with her to N.M.'s room to investigate the noise. Garcia went up the stairs first and Fallah followed. Garcia reacted to the thump noise. It was not until she was climbing the stairs that she heard A.E. say "don't put your fucking hands on me." Garcia recognized A.E.'s voice.

Garcia prepared a General Event Report (GER) on July 15, 2017, for Bellwether. This is an internal electronic form for documenting any incident involving a resident and staff. Garcia understood the GER would be reviewed by supervisors in Bellwether and individuals who work for the State of New Jersey.

When Garcia entered N.M.'s room, N.M. was sitting on the floor and Garcia described his demeanor as calm. A.E. was standing up, close to the bedroom door. Garcia never asked A.E. what happened, but A.E. stated that N.M. attacked her. Garcia only examined N.M. for injuries; she saw three scratch marks on the back of his neck.

Here, the Initial Decision ponders that Garcia did not examine A.E. for injuries, without citing any reason or duty to do so; it later documents that she left the group home without talking to anyone (ID p.20).

During cross-examination, Garcia was asked about her written statement of July 31, 2017; she wrote that, "I removed N.M. from the room and examined him." Garcia testified that N.M. was calm, so he simply walked downstairs to the living room with her, where she examined him and noticed the scratch marks on the back of his neck. Garcia called and reported the incident to her supervisor, but she received no instructions. N.M. ate his breakfast and reported with the other residents and staff to the day program. Although Garcia did not recall talking to A.E., she wrote in her written statement that A.E. said N.M. "tried to attack her." Garcia claimed it was not her responsibility to ask A.E. what happened. Garcia questioned N.M. in the living room about what happened, but she did not ask him whether he tried to attack A.E. Garcia stated that it would have been improper for A.E. to block N.M. from leaving his room. If N.M. became aggressive, then A.E. would have to use the safety techniques or call for help.

On re-direct examination, Garcia stated that all employees are trained in safety care prior to beginning work. Garcia testified about employing the one-person stability hold to deal with aggression. Because the manual stated that the one-person stability hold may not be safe when the individual is larger or stronger than the staff member, the tribunal asked Garcia about N.M.'s height and strength. Garcia stated she believed N.M. was about five feet five inches tall and he was not that strong. On re-cross examination, Garcia refreshed her recollection by referring to N.M.'s behavior program where N.M. is listed as being five feet ten inches tall.

It was noted that Garcia testified that N.M. attended his day program after the incident. July 15, 2017 was a Saturday and the residents do not attend the day program on the weekend.

Amos Fallah (Fallah) is a lead staff member at Bellwether. As a lead staff member, he is the supervisor when the program supervisor is not present. His shift on the morning of the incident had been from 11:00 p.m. on July 14, 2017, to 7:00 a.m. on July 15, 2017. During his shift, he was not assigned to work in direct supervision with a resident. At the end of his shift, he was at the computer inputting data when he heard screaming from upstairs. He ran upstairs with the supervisor, Garcia, and saw N.M. on the floor with his head towards the hallway. Fallah stated that N.M. was crying. Garcia asked what happened. A.E., N.M.'s assigned direct support professional, said N.M. was aggressive and attacked her. N.M. said he did not do anything. N.M. got up and walked downstairs to the living room, where Garcia rendered first aid to N.M.'s neck.

The first thing Fallah heard was the noise, but after, he heard a voice in a high tone saying, "you are fucking with the wrong person." Fallah does not regularly work with A.E. because they have different schedules. He testified that he does not know A.E. well, but he recognized her voice as the one who was screaming. On July 31, 2017, Fallah prepared a written statement for DHS. He was asked to write what he witnessed, and he wrote what he saw on the morning of July 15, 2017.

On cross-examination, Fallah stated that he was doing paperwork at the computer before the end of his shift on July 15, 2017. He was not sure who else was present, but Garcia was also working downstairs. He heard screaming and the words “stop, stop fucking with the wrong person.”

Fallah wrote his statement on July 31, 2017. In his written report, Fallah did not identify the staff who was yelling, but stated that he heard a female voice as he ran up the stairs. Fallah deferred to Garcia, who was the supervisor, he was more focused on N.M. Fallah saw the scratches on N.M.’s neck that looked like fingernail marks, but he did not look at N.M.’s fingernails.

In other earlier circumstances, Fallah had seen N.M. try to run away and become aggressive. During those times, it had required more than one staff member to subdue him. When asked to identify the voice, Fallah stated that it was a high pitch voice that also sounded angry. This was his first investigation and the first time that Fallah was called to testify. Fallah did not regularly work with A.E. and believed that July 15, 2017, was only the second time that they worked together.

Carol Dowd (Dowd) is the supervisor of investigation for DHS. As part of her duties, she oversees investigations, reviews reports, conducts interviews, and prepares investigation reports. When an incident of abuse is reported, DHS prepares an Unusual Incident Report (UIR) for DDD that summarizes the nature of the allegations. In this case, it was alleged that:

On 7/15/2017 at approximately 7:00 a.m., Program Supervisor, Shynice Garcia was in the living room of the group home. Ms. Garcia heard staff member, A.E. state “I will f*** you up,” and immediately went to investigate. Ms. Garcia immediately ran upstairs and witnessed A.E. standing over service recipient, N.M., as he was lying on the floor. Ms. Garcia immediately intervened and excused A.E. from her duties.

Ms. Garcia assisted [N.M.] to a chair and performed a body check. Ms. Garcia observed three small scratches on the left side of N.M.’s neck. Ms. Garcia performed basic first aid in the form of cleaning the area with soap and warm water. N.M. stated that he asked A.E. if he could go downstairs to eat his breakfast and was told he needed to wait. N.M. stated that he attempted to walk out of his room, A.E. blocked him from leaving and attempted to choke him.

N.M. had an approved Level III Behavior Support Plan that identifies PICA, physical aggression, and verbal aggression as behaviors identified for decrease.

Dowd received an alert on July 21, 2017, assigning her to the investigation of the physical and verbal allegations of abuse against N.M. The initial response was completed by Karen Young (Young), who went to the group home on July 21, 2017 and spoke with N.M. and Gabrielle Warren (Warren). Young prepared an investigator’s note, dated July 21, 2017, of her interview with N.M. In the interview, N.M. stated that his watcher grabbed his neck and pushed his head into the mattress. Young took photographs of N.M.’s neck, pictures of the group home, and a picture of the floor plan.

On July 21, 2017, Young also interviewed Warren and typed a summary of her statement. Warren prepared a hand-written, signed statement. After Dowd reviewed the information provided by Young, she began her investigation. On July 31, 2017, Dowd toured the group home but did not interview anyone at the group home. She went to the day program to conduct her interviews.

Dowd interviewed N.M. at the day program. She described him as quiet and soft-spoken. N.M. stated that his watcher put her hands on his neck to prevent him from leaving his room. Dowd documented her July 31, 2017 interview with N.M. by handwriting her questions and handwriting N.M.'s answers. N.M. is not capable of writing his own statement, so Dowd used the written question and answer format. N.M. wrote his signature at the bottom of the page.

Dowd had a follow-up interview in December, 2017, to clarify certain information, but N.M. could not recall the incident. According to Dowd, N.M. provided consistent accounts that his neck was grabbed, he felt fingernails on the back of neck, and he was prevented from leaving his room.

On July 31, 2017, Dowd interviewed Garcia, Fallah, Warren, and Akeice Sample (Sample) while they were working at the day program.

Garcia said she heard yelling and heard A.E. state "What the fuck is wrong with you, don't put your fucking hands on me." When she got to N.M.'s bedroom, N.M. was on the floor and A.E. was standing over him. N.M. told Garcia that A.E. choked him and prevented him from leaving his room. Garcia prepared a handwritten statement.

Fallah stated that he heard a noise, ran upstairs, and heard A.E. state, "I am not the fucking one." Fallah saw scratches on N.M.'s neck and noted that N.M. was crying. Fallah prepared a handwritten statement.

Warren was in the basement and she heard loud voices and a female voice yelling, "I will fuck you up." When she went upstairs to the living room, she saw N.M. crying and he had scratches on his neck. She also said she saw a female staff member come into the room who appeared to have been in a fight. Garcia also came into the living room to administer first aid. Dowd wrote the statement using the same question and answer format she employed with N.M. Warren signed the statement.

Sample is the program manager for the group home. He told Dowd that he received a telephone call from Garcia on July 15, 2017, about the incident. Sample went to the group home about an hour later. He saw scratches on N.M.'s neck. Sample provided a written statement in his own handwriting.

In August, 2017, Dowd sent a letter to A.E. She also called her on the telephone. It was not until September 17, 2017, that they were able to speak on the telephone. Dowd asked A.E. to tell her what happened. A.E. told Dowd that N.M. was fine during the night, but when he woke up, he tried to leave his room. A.E. prevented him from leaving his room, and N.M. became aggressive and started hitting her all over. She managed to take him down and they both fell to their knees. A.E. denied uttering any profanity. The interview was conducted telephonically because A.E. had issues with transportation. Dowd stated that A.E. recited her answers in a neutral voice and answered all her questions. In describing the hold, A.E. stated that she was able to hold

his hands behind him. A.E. also told Dowd that she was concerned because she was pregnant, and she went to the hospital after the incident. Dowd did not take a written statement.

Dowd prepared notes after her telephone conversation with A.E. In December, 2017, Dowd attempted to contact A.E. for a second interview, but they were never able to connect. There was no second interview.

Dowd followed up with Bellwether about whether A.E. reported her injuries. There was no documentation. Bellwether reported the July 15, 2017 incident to the police on July 25, 2017. Dowd reviewed the report. Bellwether also conducted its own investigation of the incident and terminated A.E. on July 31, 2017.

Dowd reviewed a training document, listing prohibited practices, from Bellwether that was signed by A.E. on March 21, 2017, documents about N.M.'s medical condition and N.M.'s Individual Habilitation Plan (IHB), dated March 2, 2017.

Dowd completed DHS Investigation Report (IR) on December 13, 2017. Based on the investigation, DHS determined substantiation of verbal and physical abuse. It was noted that A.E. had a prior incident report for neglect for failing to provide an appropriate level of supervision. N.M. had an extensive history of documented incident reports wherein he was either the victim or the perpetrator.

On cross-examination, Dowd stated that she was the assigned investigator as of July 21, 2017, but Young conducted the initial response. Young is retired. Dowd requested documents from Bellwether; staff schedules, behavior plans, and incident reports. Bellwether had no availability to conduct interviews until July 31, 2017.

After Dowd finalized the IR on December 13, 2017, it was reviewed by her supervisors on December 20, 2017 and December 21, 2017. Dowd's supervisor, Seth Bassion (Bassion), instructed her to speak with Trooper Miller on January 3, 2018, to follow up about his interview with A.E. Dowd spoke with Trooper Miller on January 3, 2019, but never followed up the outcome of his interview with A.E. The police investigation, and the fact that no charges were filed, did not factor into Dowd's civil investigation.

When Dowd was assigned as the investigator, she reviewed T-Logs from Bellwether, behavior data sheets from Bellwether, and staff training records. Prior to conducting her interviews, Dowd had the investigation reports from Young, the photographs taken by Young, and the UIR. On July 31, 2017, Dowd walked through the home. Dowd took her own photographs of the home.

On July 31, 2017, Dowd's first interview was with N.M., who was accompanied by Sample. Prior to this interview, she reviewed the statement N.M. gave to Young on July 21, 2017.

Dowd interviewed Garcia on July 31, 2017. On August 1, 2017, Dowd received the GER authored by Garcia immediately following the incident. The GER listed the injury type to be scratches, minor in nature, and the cause as undetermined. The GER was entered on July 15, 2017 at 8:31 a.m. by Garcia.

Supervisor Bassion asked Dowd to do another interview with N.M. to clarify the discrepancies between his first and second interviews. On the first interview with Young, N.M. said his watcher held his head down to the mattress, but he did not state that to Dowd. At Dowd's second interview of N.M. in December, 2017, N.M. did not remember anything about the incident. Dowd was unable to get any clarification from N.M. whether A.E. held his head down on the bed.

Dowd had read that N.M. had aggressive, self-injurious, and had elopement behaviors. She did not recall N.M.'s physical attributes and had no information of A.E.'s physical attributes, as she never met her. During their telephone conversation on September 13, 2017, A.E. told Dowd that she never received training on how to handle N.M.'s aggressive behavior. A.E. also told Dowd that N.M. had told her he was going to tell everyone that she choked him to get her fired.

The determination of physical abuse in the IR is based on the three scratch marks photographed by Young and N.M.'s statement that he felt fingernails scratch his neck. Although Dowd never documented the length of N.M.'s nails and she was aware of his self-injurious behaviors, she ruled out that N.M. scratched himself.

During the telephone interview with A.E., Dowd stated she did not take notes but typed a statement after the call ended. Dowd wrote that A.E. told her that she did not hit, or choke N.M. and that N.M. makes false allegations when he does not get his way. A.E. also stated that she documented N.M.'s behavior on the data sheets immediately following the incident. Dowd reviewed data sheets, showing documentation that at 6:55 a.m. N.M. was non-compliant because he was asked to sit down and relax before shift change, and he became aggressive by pushing, punching, and scratching staff as he attempted to leave his room.

Cross examination explored problems with the internal Bellwether investigation (The Initial Decision did not point out that under the Central Registry statute (N.J.S.A. 30:6D-73 et seq.) the agency is required to perform such an inquiry but that it cannot be used in a determination of whether or not to place a person on the Central Registry) including:

- Bellwether submitted its investigation on September 28, 2017. Bellwether terminated A.E. on July 31, 2017, before completing its investigation.
- On December 13, 2017, Dowd contacted Bellwether representative, Slavin, about whether A.E. was ever interviewed. Slavin claimed that A.E. was interviewed but, for some reason, it was not included in Bellwether's investigation. Dowd was never able to determine whether Bellwether interviewed A.E.
- After Dowd completed the IR, her director asked her to find out whether A.E. had gone to the hospital after the incident. On December 13, 2017, Dowd contacted Slavin at Bellwether and was told they had no information. (The Initial Decision states that "she never contacted A.E. The Director was looking for corroboration of A.E.'s statements. Dowd did not follow up to retain the records." R - 3, p.3, documents that Dowd spoke to A.E. by phone on 12/12/17 and A.E. said that she was unable to talk, but would call back in the afternoon. A.E. failed to call back and Dowd left a message requesting a call back on 12/12/17. On 12/13/17, Dowd called A.E. again and left a message requesting a call back.)

- On December 13, 2017, Dowd asked Slavin at Bellwether for information about Deja Hamilton (Hamilton) because her name was mentioned as a person who was present at the home on the day of the incident. Slavin informed Dowd that Hamilton resigned from Bellwether. (Previously in August 2017, Dowd had attempted to interview Hamilton, but Hamilton did not cooperate.)

Dowd had made attempts to contact A.E. but was unable to arrange a follow-up interview. The additional questions concerned A.E.'s interview with the New Jersey State Police and whether A.E. had documentation from the hospital. On re-direct examination, Dowd stated she tried in December to contact A.E. but was unsuccessful. A.E. wanted to meet at her home, but DHS has a policy against that for safety reasons. Dowd understood from Bassion that his goal was to complete the IR before the new year even though follow-up interviews were not completed. Bassion issued the letter of substantiation against A.E. on December 26, 2017.

A.E. testified on her own behalf. A.E. began working for Bellwether in 2015 as a direct support professional. Her shift was from 7:00 p.m. to 7:00 a.m. She had been assigned to N.M. numerous times. N.M. would get aggressive if he did not get his own way. When aggressive, N.M. would yell, scratch, push, and hit his support professional. N.M. does not like rules and he gets mad that his support person follows him. The direct support professional's goals are to redirect his behavior and talk calmly. A.E. had safety training from Bellwether about the different restraints as part of her initial training when she started work.

Before July, 2017, N.M. had acted aggressively towards A.E. At the end of her shift, A.E. would write up any aggressive behavior on the behavior data sheets for her supervisors to review. A.E. had write-ups for N.M. because he had punched her, pushed her, and scratched her. N.M. had long nails and his scratches would leave marks. A.E. stated that no one ever asked her about her prior write-ups.

At the start of her shift on July 14, 2017, at 7:00 p.m., A.E. reported to the basement for her assignment chart. She was five months pregnant and Bellwether knew about her pregnancy. She was assigned to N.M. and she stated that they had a smooth night. N.M. watched television downstairs and went to bed around 11:00 p.m. The next day was Saturday, and since there is no day program on Saturday, N.M. could sleep later. N.M. is a late sleeper, which is why they were the only people upstairs. He woke up at 6:40 a.m. and told A.E. that he wanted to get in the tub, which is in the next room. N.M. usually liked to take a bath in the morning. For some reason, N.M. changed his mind. Because A.E. had to follow him out of the room, N.M. turned around and became aggressive, punching and pushing A.E. A.E. yelled for help and attempted to put N.M. in a one-person hold, but they both ended up on the floor by the door. A.E. is five feet four inches tall. N.M. is five feet ten inches tall and very strong when he is angry. When they landed on the floor, N.M. calmed down. When Garcia and Fallah appeared, A.E. was just standing up, but N.M. was still on the floor. A.E. told Garcia that N.M. had been aggressive. N.M. went downstairs with Fallah. Right before Garcia and Fallah arrived, when N.M. was attacking A.E., he yelled that he was going to get her fired and said he "would fuck her up." A.E. maintained that she never cursed at N.M., but that N.M. had cursed at her that morning and many times before. After telling Garcia that N.M. was aggressive, A.E. went to the living room to make sure there was coverage for N.M. After finding out that N.M. had supervision, A.E. went to the basement to write up N.M.'s aggressive behavior on the behavior data sheets and put the sheet in the bin for the supervisor to

check. A.E. was finished her shift, so she clocked out without having a conversation with anyone about what occurred.

Before going home, A.E. went straight to the hospital to make sure her baby was fine. While waiting in the emergency room, A.E. received a telephone call on her cell phone from a male supervisor telling her she was on administrative leave pending an investigation of the morning's incident. On July 31, 2017, Greg Bryant (Bryant), Assistant Program Director for Bellwether, called her to tell her she was fired. A.E. asked why she was never interviewed, and he told her that they had enough information and did not need anything further.

No one ever asked to see her hospital records from Inspira Medical Center in Vineland.

The only person that A.E. ever spoke to about the incident was her one telephone conversation with Dowd in September 2017. A.E. was also contacted by a New Jersey State Trooper in December, 2017, and they arranged a face-to-face interview.

On cross-examination, A.E. stated that while she was in N.M.'s bedroom, she had to be in arm's length of N.M. and keep him in her line of sight. She also stated her understanding that N.M. should be treated with respect and dignity, even when he became aggressive. As his direct support professional, A.E. was familiar with N.M.'s behavior. She reviewed N.M.'s behavior support plan with a supervisor after N.M. moved to the home. When she was first hired, Bellwether conducted a two-week training program. A.E. was taught how to use restraints and that it was never acceptable to use expletives or hold someone by the neck.

N.M. is permitted to move freely about the house. A.E. never attempted to block him from leaving his room. When N.M. first became aggressive, he started to walk out his bedroom door with A.E. beside him and he turned around and attacked her without provocation. He originally wanted to take a bath, but then he wanted to go downstairs. A.E. followed him. When he became aggressive, A.E. attempted to put him in a hold. She grabbed his arms and attempted to place them in front of him but they both fell to the floor. A.E. did not see N.M. scratch himself or engage in any self-injurious behavior. A.E. was worried about her baby, but she was not sure if she was injured. She testified that she called for help.

In the hospital records, it was recorded that "patient states that she is unsure if she was hit in the abdomen because it all happened so fast."

N.M.'s aggressive behavior lasted about two or three minutes. A.E. reiterated that, N.M. started yelling at A.E. about getting her fired and he would "fuck her up." He also said that he would tell staff that N.M. attempted to choke him. N.M. pushed, kicked, scratched, and punched A.E.

On redirect examination, A.E. stated there was no specific training demonstrating how to place N.M. in a hold. The training was done at the time of hire and the staff demonstrated on each other. In the heat of the moment, there was yelling by both parties. A.E. recalled that the July 15, 2017 incident was the worst incident she had with N.M.

The Initial Decision admitted into evidence, but did not compare or attempt to reconcile the inconsistencies in the statement that A.E. gave to Dowd on the morning of September 13, 2017. That statement (R-15, p.2 and 3), as transcribed by Dowd reads:

“A.E. stated that N.M. was calm during the shift until he woke up at approximately 6:45 a.m. A.E. stated that N.M. went upstairs to bed around 11:00p.m. and she remained in his room to watch him. A.E. stated N.M. slept through the night and was fine. A. E. stated N.M. woke up and wanted to go down stairs. A.E. stated he did not know why he wanted to go downstairs and that she did not tell him he could not go. A.E. stated that she suggested to N.M. that he take his shower first. A.E. stated N.M. seemed okay with the suggestion but then he tried to leave the bedroom. A.E. stated she was standing in the doorway of the room with the door open and N.M. tried to push her out of the doorway. A.E. stated that N.M. “hit her everywhere.” A.E. stated that N.M. scratched her right arm, kicked her legs, and hit her on the side of her stomach. A.E. stated that she was alone upstairs with N.M. during this time and that she screamed for help. A.E. stated she told N.M. to calm down and she “tried to take him down” and was able to do so. A.E. stated that someone did come upstairs in response to her screaming for help, but by that time she already had N.M. in “some kind of hold.” [Dowd] asked A.E. to explain how she tried to take down N.M. and to describe the hold. A.E. stated it was hard to describe and that she was able to put N.M.’s arms behind his back and get him to go down on the floor on his knees. A.E. said it was hard to explain but she was eventually able to get him to the floor and that she went to the floor on her knees beside him. A.E. stated that N.M. then “calmed down on his own.” [Dowd] asked A.E. why she did not allow N.M. to leave his bedroom and follow N.M. downstairs. A.E. stated, “He can’t leave without staff. When an individual AWOLs we are trained to interrupt them.” [Dowd] asked A.E. what AWOL means. A.E. stated it means leaving the area..... A.E stated she went to the hospital to get checked because she was concerned due to being pregnant and hit by N.M.....A.E. was asked why N.M. had scratches on his neck. A.E. stated that N.M. self- injury and that he has long nails. [Dowd] asked A.E. if she saw N.M. engage in self-injury and scratch himself. A.E. stated that she did not witness N.M. scratch himself.”

The Initial Decision stated that the hospital records had never been requested from A.E. (ID, p20). Dowd was questioned about obtaining verification of the hospital visit (ID, p18). The hospital records were supplied as Exhibit P-2 and cited to in the Initial Decision (ID, p.21). The Initial Decision admitted into evidence, but did not compare or attempt to reconcile the inconsistencies in the statement that A.E. gave to Dowd on the morning of 9/13/17 or any of A.E.’s testimony during the hearing. The hospital record read, in part:

“Nurses notes: (p.8)

8:43 “Patient states: Pregnant, got into fight at work. Unknown if struck in abd, but now feels crampy and wants the works. Pt. eating and drinking at pivot desk, arrives with 5 family members.

8:44 “Denies threats or abuse. Denies injuries from another.”

8:45 “This is not a work related injury.”

9:48 “in no apparent distress.”

12:28 “in no apparent distress.”

Physician's Documentation: (p.1)

9:30 s/p physical altercation at work at 7:00 today. Pt states that she is unsure if she was hit in the abdomen because 'it all happened so fast' and she was very angry..."

13:44 "Patient here s/p questionable assault at work. Patient states that she got into an altercation with a coworker, there was hitting involved, but she was not sure if her abdomen was punched or hit." (N.B. "s/p" is a medical term standing for "status post" . . . it means a patient's condition after something.)

ALJ's Findings

The ALJ made a single finding of fact and then went on to assess the credibility of each witness. After hearing the testimony and reviewing the evidence, the ALJ **FOUND** as **FACT** "that on July 15, 2017, N.M., a resident known to be aggressive and engage in self-injurious behavior, was involved in a brief altercation with his direct support professional, A.E. There were no witnesses in the bedroom, no one could determine how N.M.'s neck was scratched, and the accounts of the language allegedly used by A.E. are not consistent."

The ALJ found Garcia's credibility was undermined by her behavior during cross-examination. The ALJ's overall assessment of her testimony was that she was disinterested and not concerned with the truthfulness of her answers.

The ALJ stated that Fallah's testimony was deliberate and thoughtful. He testified consistent with his July 31, 2017 statement.

The ALJ noted the abusive language, recorded in the UIR, is consistent with the statement of Warren in her July 21, 2017 written report (R-10.) and her second interview and statement. Warren did not testify, and the ALJ did not assess her credibility, but cited her statements.

Garcia and Fallah were running up the stairs, one behind the other, after hearing a thump, they had different recollections of what was allegedly said.

N.M. gave three interviews about the incident. In his interview of July 21, 2017, he never mentioned abusive language, but he said his watcher held his head down on his bed (R-5 and R-6.). In his second interview, on July 31, 2017, N.M. stated that his watcher did not let him take a shower and pushed him saying, "you don't know who you are fucking with." There was no mention about his head being held down. (R-7.) In the third interview, on December 11, 2017, N.M. had no independent recollection of the incident. When prompted by Dowd, who reminded him about the time the staff grabbed him by the neck, all N.M. remembered was the staff put her nails on his neck. There was no mention of abusive language.

Dowd's testimony was very credible. Her superiors questioned the inconsistencies in the IR and had asked for follow-up interviews. Her follow-up interview with N.M. had not produced any clarification. She was not able to arrange with A.E. for a follow-up interview.

A.E. testified in a sincere straightforward manner. During the altercation with N.M., she was obviously concerned about her unborn child. She stated that N.M. had been aggressive with her in the past, but those statements were not included in this investigation. [The Initial Decision did not clarify if these statements were internal Bellwether log entries or incidents, which are required to be reported under the Central Registry statute (N.J.S.A. 30:6D-73 et seq.) The Office

of Investigation noted and considered 120 of Unusual Incident Reports that it had received concerning N.M., 26 of them had listed N.M. as the perpetrator (R-3, p.3)]. She also went straight to the hospital because she was concerned that she may have been punched in her abdomen. (P-2.)

The Initial Decision's failure to comment on the credibility of the documents it cited is problematic. The hospital records, made the day of the incident, show A.E. being untruthful about the reason for her visit, telling the nurse it was due to a fight at work and that it is not a work-related injury. The physician documented a "questionable assault at work" after A.E. was in an altercation with a co-worker. Nowhere in the hospital record is any notation of A.E. being scratched ("Skin: Appearance: Color: normal in color" p.2), despite her statement to Dowd that she was scratched on her right arm by N.M. who had "long fingernails" and that she was "hit all over." In her live testimony, A.E. had stated "N.M. had long nails and his scratches would leave marks." The statement that A.E. gave to Dowd over the phone was given two months after the incident – a month after all of the other witnesses' statements had been taken. That statement describes A.E. as being in the doorway, preventing N.M. from going downstairs, where he is allowed to move freely about the house. The hold described in the statement was not properly executed, as it describes her putting N.M.'s arms behind his back. A.E.'s testimony was taken a year and a half from the incident.

The ALJ **FOUND** that the IR contains inconsistent statements about what abusive language, if any, was directed at N.M. [The Initial Decision seems to believe that an exact recitation of every profanity in the tirade is necessary from each witness. Bellwether's internal policy forbids profanity. The Central Registry statute (N.J.S.A. 30:6D-73 et seq.), has a different definition of verbal abuse that does not mention profanity. Regardless of the exact script, every person in the house that morning testified to, or made statements consistent with each other involving – a loud thud; a screamed, angry, profanity-laced tirade; A.E. and N.M. on the floor; scratches on N.M.'s neck; and N.M. telling staff who were present that he was choked and grabbed by the neck and wound up on the floor.]

The ALJ **FOUND** that the information supplied by Bellwether in the UIR was inconsistent with Garcia's testimony and the documents that she authored. [The Initial Decision misunderstands that Garcia has a duty to report incidents of abuse. Bellwether has the duty to perform its own internal investigation and Bellwether must report the incident of abuse to the Department of Human Services, which, in specific types of abuse will make a determination concerning the Central Registry. Again, Garcia's testimony was consistent with every other person in the house that morning - a loud thud; a screamed, angry, profanity-laced tirade; A.E. and N.M. on the floor; scratches on N.M.'s neck; and N.M. telling staff who were present that he was choked and grabbed by the neck and wound up on the floor.).

The ALJ **FOUND** that the investigation did not determine that A.E. scratched N.M. or used abusive language. [The Initial Decision displays a profound misunderstanding of the burden of proof in this matter. Every person in the house testified to the same general elements - a loud thud; a screamed, angry, profanity-laced tirade; A.E. and N.M. on the floor; scratches on N.M.'s neck; and N.M. telling staff who were present that he was choked and grabbed by the neck and wound up on the floor – with the exception of A.E. who testified that she never swore; she did say that N.M. swore during the incident, however. There were two other witnesses who gave sworn testimony that specifically stated that A.E. used some form of the fuck word. N.M. gave two statements to two different investigators that A.E. threatened to fuck him up. Warren gave two

statements that she specifically heard a very loud female voice say, "I will fuck you up N.M." from the basement. There is clearly a preponderance of evidence that A.E. used abusive language. As will be explained later, there is also sufficient proof that A.E. scratched N.M.]

The Initial Decision's Law and Analysis

The Initial Decision cited that the policy of this State is 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).

The issue in a Central Registry is two-fold. First, did A.E. commit an act of abuse against N.M. Second, were A.E.'s actions intentional, reckless or with careless disregard to the well-being of N.M. which resulted in injury to him or potentially exposed him to an injurious situation.

"Abuse," defined in N.J.A.C. 10:44D-1.2, means "wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse or verbal or psychological abuse or mistreatment by a caregiver upon an individual with a developmental disability." "Physical Abuse," defined in N.J.A.C. 10:44D-1.2, means "a physical act directed at an individual with a developmental disability by a caregiver of a type that causes one or more of the following: pain, injury, anguish or suffering. Such acts include, but are not limited to, the individual with developmental disability being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged or stuck with a thrown or held object." "Verbal Abuse" defined in N.J.A.C. 10:44D-1.2, means any verbal act that inflicts: "emotional harm; mental distress; or invocation of fear, humiliation, intimidation, or degradation to an individual with a developmental disability."

For inclusion on the Central Registry, due to an act of physical or verbal abuse, "the caregiver [shall have] acted intentionally, recklessly, or with careless disregard to the well-being of the service recipient resulting in injury to an individual with a developmental disability or by exposing the latter to a potentially injurious situation." N.J.A.C. 10:44D-4.1(b).

A.E. denies that she blocked N.M. from leaving his room or that she put him in an improper hold. She denies choking him and verbally abusing him. As stated in N.M.'s behavior plan, N.M. has a history of aggressive, self-injurious behavior. He is also known to make invalid medical claims. Regardless of N.M.'s behavior, A.E. must always treat him with respect and keep him safe from harm.

There are no eye witnesses. Garcia, the supervisor in charge on the morning of the incident, provided inconsistent statements about what she heard, and how she responded. The injury to N.M. was noted as minor and there was no determination as to who caused the injury. DHS bears the burden of establishing an allegation of abuse by a preponderance of the credible evidence.

The ALJ **CONCLUDED** that the DHS had failed to meet its burden that A.E. committed an act of verbal or physical abuse against N.M and that there is no justification to include A.E.'s name on the Central Registry. The ALJ sent the Initial Decision to the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** for consideration.

OPIA's REVIEW OF THE INITIAL DECISION

The Initial Decision contained errors of law and of fact. Due to these errors, the decision must be rejected. The Initial Decision completely ignored or disregarded the Central Registry Statute and failed to act as a finder of fact. The hearings in this matter had testimony from four witnesses, taking place over three days. There were twenty-six documents entered into evidence. The Initial Decision was twenty-eight pages long. The decision contained an expansive recounting of the testimony, interspersed with a series of questioning of various processes of the investigation, which showed a lack of understanding concerning the statute's provisions and the delegation of responsibilities.

The tribunal failed to act as a finder of fact. The Initial Decision contained a single finding of fact – basically that the victim was developmentally disabled and, incredibly, that there was no witness to the injury, when the perpetrator had testified. The three “findings” added at the end were unsupported, redundant of the first, and showed a misunderstanding of the investigatory roles in the case. The Initial Decision discharges a huge amount of information, but without an understanding of the statute, the decision fails to organize the evidence coherently, applies an improper standard of proof, and creates more confusion than confidence. The tribunal abdicated its duty as a finder of fact with its single inane finding and lapsed from there into an unfounded conclusion. The Office of Program Integrity and Accountability must use the documents and testimony elicited at the hearing to create a modified Final Agency Decision, that properly applies the appropriate law and relevant facts.

Placement on the Central Registry is a two-step inquiry. First, it must be determined if petitioner committed an act of abuse against N.M. Second, it must be determined if petitioner's actions were intentional, reckless, or done with careless disregard to the well-being of N.M.

The Office of Administrative Law was sent this Central Registry matter to determine, by a preponderance of the evidence, whether physical and verbal abuse occurred in the upstairs bedroom on July 15, 2017. Preponderance of the evidence is described as, the greater weight of the evidence (that may not be sufficient to eliminate all reasonable doubt) that is sufficient to incline a fair and impartial mind to one side of the issue, rather than to the other.

The overwhelming evidence at the hearing established the following facts. On the morning of 7/15/19, a loud thud was heard in the group home accompanied by a string of profanities (including conjugations of the word fuck), shouted in a high-pitched, female voice, coming from the upstairs bedroom. A.E. and N.M. were the only persons on the second floor. A.E. testified that she had attempted to put N.M. in a hold. She grabbed his arms and attempted to place them in front of him, but they both fell to the floor (ID, p.22). In response to the commotion, Garcia ran upstairs and testified that upon finding N.M., she noticed three scratches on the back of his neck (ID p.7). Fallah next came upon the scene and found N.M. crying and further testified to later witnessing Garcia apply first aid to N.M.'s scratched neck (ID p.9). Fallah testified that the scratches on N.M.'s neck looked like fingernail marks (ID p.10). In two written statements given on 7/21/17 and 7/31/17 and admitted into evidence, Gabrielle Warren (R9, R10, and R11) stated that she heard the profanity and the ruckus, while she was in the basement. When she came upstairs to the common area, Warren found N.M. crying with bleeding scratches. Warren asked N.M. what happened. “He said he woke up to go to the bathroom. He said [A.E.] pushed him down by his neck and held him down on the bed.” (R 11)

In a 7/21/19 interview with Office of Investigations investigator Karen Young, N.M. stated that his watcher grabbed his neck and pushed his head into the mattress (R 6). In the statement that N.M. gave to the NJ State Police on 7/25/17, he stated that while in his bedroom, A.E. told him, "you don't know who you're fucking with," put her hands on his neck, threw him to the ground and he crawled out the door (R 17). In a 7/31/17 interview with Dowd, N.M. said that he was standing by his bed when his staff worker "had her nails in me and pushed me. She said you don't know who you're fucking with." He stated that he was not on the bed at that time, but somehow got out of the bedroom by crawling. (R 7) By 12/11/17, N.M. could not remember the incident.

Akeice Sample is the program manager for the group home. He told Dowd and gave a written statement that he received a telephone call from Garcia on July 15, 2017, about the incident. Sample went to the group home about an hour later. He saw scratches on N.M.'s neck. Sample's written statement of 7/31/17 recounted being told by Garcia that there had been a tussle upstairs with A.E. shouting "I will fuck you up," and standing over N.M. – Garcia noted scratch marks on N.M.'s neck (R 14).

During the hearing, two sworn witnesses testified that they saw bleeding scratches, that needed first aid attention, on N.M.'s neck immediately after the commotion between N.M. and A.E. The Initial Decision cites statements by another staff member present who heard the fracas and found N.M. crying with fresh scratches on his neck. Shortly after the incident, a program manager came by the residence and documented the scratches in a written statement. A.E. testified that she laid hands on N.M. in a failed restraint attempt and caused them both to fall to the floor. The record has three separate statements from N.M. given at three different times (all within sixteen days of the incident) to three different investigators (two DHS and one NJ State Police). N.M. mentions A.E.'s hands around his neck in two of them and A.E.'s nails in the third.

Although the Initial Decision recited the definitions found in the Central Registry regulations, it did not give proper consideration as to whether or not an individual with disabilities had been the object of a physical act which could cause him pain, injury, anguish, or suffering. N.M., the victim, an individual with developmental disabilities, is portrayed as difficult and aggressive. Despite the statute not requiring any actual physical injury to substantiate an allegation of abuse, the confirmation of abuse – the three scratch marks on N.M.'s neck, that were noted by four witnesses and appear in photographs - was dismissed in the Initial Decision as "minor." It was a physical act that caused pain; and is prohibited by the Central Registry statute.

The Initial Decision mistakenly declared that there was no witness to the injury; its juxtaposed mention of a possibility that the injury might have been self-inflicted contradicts the three days of testimony and twenty-six documents entered into evidence. The solitary finding of fact in the Initial Decision was that N.M. had a history of self-injury. The next sentence asserts that there was no witness to how N.M.'s neck was scratched and that the witnesses had variations of the words used in the profane tirade. The first sentence was true but was never shown to be relevant to the hearing, merely that the incident involved an individual with a developmental disability. The second sentence was not true; there were two eye witnesses to the scuffle in the bedroom – N.M. and A.E. These two sentences cannot logically stand together in the face of the enormous weight of the evidence and testimony presented at this hearing.

The fact that N.M. had a history of self-injury was noted in his Individual Behavior Plan, as was his pervasive developmental disorder, age, and other medical information. There was no testimony from any witness that the bloody scratches were self-inflicted by N.M. On the contrary,

the record contains three instances of direct evidence that absolutely conflicts this as a causation. Most importantly, one of the two eye witnesses to the altercation, A.E. testified that she did not see N.M. scratch himself or engage in any self-injurious behavior during the incident (ID, p.22). No incidents of self-injurious behavior were recorded in the regularly kept group home's logs that A.E. testified to assiduously keeping, between 7/13/17 and 7/16/17 for N.M. (R 3, p.7). Garcia testified that she never personally observed N.M. engaging in self-injurious behavior (ID, p.6). Even mentioning the possibility of self-abuse during the incident is unwarranted because it is so antithetical to three items in evidence – particularly the testimony of the eye witness involved in the incident. Given that three, different sources showed self-injury was not a factor, its mention in a finding demonstrates that the proper burden of proof was not used in the Initial Decision. The preponderance of the evidence standard permits reasonable doubt to co-exist in the presence of convincing evidence; it does not, however, consider imaginary scenarios. The Initial Decision's finding of no probable cause for N.M.'s injuries is erroneous and must be rejected.

The Office of Program Integrity and Accountability, having carefully reviewed the record, the testimony described in the Initial Decision, and all of the exhibits admitted into evidence must amend the findings in this matter.

There are three cited instances on the record that there was no self-injury caused by N.M., one of which was the testimony of A.E. The likelihood of self-injury being the source of N.M.'s scratches is insignificant. Two witnesses testified to observing fresh scratches on N.M.'s neck immediately after the commotion. The record has three other statements from two other staff members that document seeing the fresh scratches immediately or shortly after the commotion. One of the eye witnesses to the commotion, A.E. testified to grabbing N.M. and causing the both of them to fall to the ground. The other eye witness to the altercation, N.M., gave three separate statements to investigators, even more contemporaneous to the event, twice asserting that A.E. had held his neck during the altercation.

The preponderance of the evidence – “the reasonable probability of the fact,” “such as to lead a reasonably cautious mind to the given conclusion” – in this matter shows that A.E. caused a physical injury to an individual with a developmental disability, N.M. It was A.E.'s confrontation with N.M. and her attempt to place him in a restraining hold that caused them both to fall to the floor and which resulted in the scratches on N.M.'s neck noted by the group home staff.

The Office of Program Integrity and Accountability, having carefully reviewed the record, the testimony described in the Initial Decision, and all of the exhibits admitted into evidence must amend the findings pertaining to the matter of verbal abuse.

Every person, except A.E., that gave evidence on the record cited A.E.'s use of profanity, particularly variations of the word “fuck,” during the confrontation between A.E. and N.M. Garcia heard it on her way upstairs and attributed it coming from A.E. Fallah heard it on his way up the stairs saying that it was an angry, high-pitched, female voice. Warren heard the profanity in the basement as she clocked in for work. Warren estimated that the altercation lasted three and a half minutes. (R-10, p.1) N.M. gave statements that A.E. told him that he didn't know who he was fucking with. Only A.E. denied the use of profanity, but at the hearing said that “in the heat of the moment, there was yelling by both parties. A.E. recalled that the July 15, 2017 incident was “the worst incident she had with N.M.” (ID, p.22) A.E.'s testimony was at trial, far removed from the more contemporaneous, documented accounts by the others, who had no motive to dissemble.

Bellwether has a policy against verbal abuse, defining it as “demeaning or ridiculing an individual with personal, racial or ethnic slurs threatening to do physical harm, using profanity with a student.” (R 20) A.E. testified that it was never acceptable to use expletives. (ID p.21) Garcia testified that the use of expletives when speaking with a resident is never permitted; it is considered abuse by Bellwether’s standards. (ID, p.4) For purposes of the Central Registry, “Verbal Abuse” is defined in N.J.A.C. 10:44D-1.2, as any verbal act that inflicts: “emotional harm; mental distress; or invocation of fear, humiliation, intimidation, or degradation to an individual with a developmental disability.” It should be noted that the use of profanity is not an element in the Central Registry definition; it is Bellwether’s policy that prohibits it.

There is a preponderance of evidence that A.E. shouted profanities at N.M. during their altercation in the upstairs bedroom. The words were loud enough to be heard and understood downstairs on the first floor, as well as in the basement. There were only two people upstairs at the time. The person using the “fuck” word was identified by one witness as A.E. and by another witness as being a high toned, female voice. The third witness, in the basement, heard the profanity addressed directly at N.M. – “I will fuck you up N. I’m not the fucking one.” The tone, volume, and content of A.E.’s speech was beyond the pale and meant to intimidate or demean N.M. There is a preponderance of the evidence that A.E. directed this verbal act at N.M. Such actions would inflict “emotional harm, mental distress,” or “invoke fear.” A.E. committed an act of verbal abuse against N.M. within the Central Registry definition.

The Office of Program Integrity and Accountability, having carefully reviewed the record, the testimony described in the Initial Decision, and all of the exhibits admitted into evidence must amend the findings pertaining to the placement on the Central Registry of Offenders against Individuals with Developmental Disabilities. As found above, A.E. committed an act of physical abuse against N.M. causing a physical injury. Also, A.E. committed an act of verbal abuse against N.M. in a profane verbal onslaught that would cause emotional harm, invoke fear and mental distress. The question now becomes whether A.E. acted intentionally, recklessly, or with a careless disregard for safety.

A.E. gave two conflicting statements concerning how the incident began. In her live testimony, she said that N.M. turned back at her while she was inside the bedroom and ineffectively attempted to place N.M. in a hold, bringing the two of them to the floor. A.E. did not testify to using any of the verbal calming techniques that she had been taught to lessen N.M.’s behaviors. She did not mention any de-escalation attempts at all. A.E. went directly to a physical restraint technique. In her telephone statement, A.E. said she was in the doorway improperly preventing N.M. from moving about the house, as he is permitted to do. In this scenario, A.E. used an unapproved hold and brought N.M. and herself to the floor. As presented in this statement, the hold should never have been attempted and N.M. should have been allowed to proceed downstairs; instead, A.E. approached him from the wrong direction and improperly held his hands behind his back. In either scenario, the hold was improvidently attempted. The altercation lasted for three and a half minutes, sufficient time to disengage from the initial contact and retreat. The lower two floors of the home were alarmed and concerned by the verbal tirade. The shouting was profane, protracted, angry and loud. It was estimated to have lasted over three minutes. A.E. consciously decided to put a restraint hold on N.M. The hold was an intentional act on her part, that she did not immediately break off and retreat from contact displayed recklessness. She was essentially in a wrestling match for more than a full three minutes without extricating herself. Not only was A.E. reckless with her physical actions – inflicting scratches on N.M.’s neck, she continued to be verbally abusive. A.E.’s actions showed a careless disregard for N.M.’s and her own safety. A.E.’s

actions were intentional and reckless and meet the requirements for placement on the Central Registry.

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 **REJECT and MODIFY** the Administrative Law Judge's findings and conclusions, due to the noted errors of fact and of law. Although the ALJ had the opportunity to assess the credibility and veracity of the witnesses, there was such unanimity of the witnesses and the documentary statements that the general sequence of events could be summed up in single sentence by any of the witnesses, except the Petitioner. The Petitioner's statement was reluctantly taken over the phone well after all of the other witnesses had given their statements. The Petitioner's only face-to-face testimony was given almost a year and a half after the incident. Petitioner's telephone statement was never reconciled with the live testimony, but in the general sequence of events, matched all of the other testimony and evidence. I can defer to the ALJ's observations of the evidence gathered in the Initial Decision, but not the conclusions based upon a need for a word-for-word unanimity concerning a profane rant. The exact words are not as important as the volume, anger, and unrelenting duration over which it occurred during a physical altercation. The proper burden of proof – the preponderance of evidence – was cited, but irrationally applied. A hypothetical possibility that was disproven at the hearing was conflated to a probability which demanded that the entire set of findings and conclusions be rejected and all evidence re-analyzed. The Central Registry statute and regulations were quoted, but not properly applied. Because of the Department's expertise and experience, it was necessary to bring forward the testimony and documentary evidence from the hearing assign it the credence due, as previously explained.

I **CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that A.E. committed an act of physical abuse against an individual with developmental disabilities.

I **CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that A.E. committed an act of verbal abuse against an individual with developmental disabilities.

I **CONCLUDE and AFFIRM** that A.E. acted intentionally, recklessly and with careless disregard to the well-being of that individual, and that A.E.'s placement on the Central Registry is appropriate.

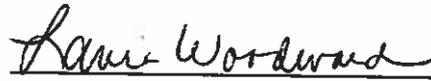
Therefore, pursuant to N.J.A.C 1:1-18.6(d), it is the Final Decision of the Department of Human Services that I **ORDER** the placement of A.E.'s name on the Central Registry of Offenders against Individuals with Developmental Disabilities.

An Order to Seal was entered in this case on May 24, 2018. The Department of Human Services maintains that initial decisions and final-agency decisions involving the Central Registry Act, N.J.S.A. 30:6D-77 to -82, were never intended to be sealed from the public. Where, as here, initials as opposed to full names are used, that practice suffices to safeguard the identities of victims and petitioners. Making initial and final-agency decisions available in Central Registry cases promotes transparency in the adjudicatory process, educates the public and members of the

bar on this developing area of the law, and provides an invaluable precedential resource for use in the Office of Administrative Law.

Therefore, it is **ORDERED** that the order to seal is removed and all parties privy to this case shall continue to refer to the Petitioner and the victim in this case by their initials in all public documents concerning this case.

Date: July 11, 2019



Lauri Woodward, Director
Office of Program Integrity and Accountability