



State of New Jersey
Department of Human Services
Office of Program Integrity and Accountability

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Governor

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Sheila Y. Oliver
Lt. Governor

Lauri Woodward
Director

FINAL AGENCY DECISION

OAL DKT. NO. HSL 17490-18

AGENCY DKT. NO. DRA# 18-014

L.S.,

Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES,

Respondent.

Cynthia D. Sora, Esq., for petitioner

Francis X. Baker, Deputy Attorney General, for respondent Department of Human Services
(Andrew J. Bruck, Acting Attorney General, attorney)

STATEMENT OF THE CASE

Petitioner L.S. appeals the finding of respondent 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 an individual with developmental disabilities who resides at New Lisbon Developmental Center (NLDC). Petitioner appeals the decision of respondent to place her name on the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry) due to a substantiated act of physical abuse. N.J.S.A. 30:6D-77. L.S. denies the allegation.

PROCEDURAL HISTORY

The Department's Office of Program Integrity and Accountability investigated a report of an unusual incident involving L.S. and D.L., an individual who receives services from the DHS. By letter dated July 25, 2018, the Department notified L.S. that the investigation substantiated an allegation of

abuse against her and that her name would be placed on the Central Registry. On November 15, 2018, L.S. requested a fair hearing, and the contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on or about November 30, 2018, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The court initially entered an Order to Seal on January 2, 2019. On October 28, 2019, the court entered a confidentiality and protective order which vacated and replaced the prior Order to Seal. The matter was heard on October 24, 2019 and October 31, 2019, and the record remained open for the parties to submit post-hearing briefs and responses. Thereafter, written post-hearing summations were filed on February 3, 2020. The record then closed on February 4, 2020. Due to the public health emergency, the Governor's Executive Order 127 authorized the extension of time for the completion of administrative decisions. The initial decision was issued on November 12, 2021.

On March 9, 2020, the Governor of the State of New Jersey issued Executive Order 103, declaring a public health emergency, due to the COVID-19 pandemic. The Governor's Executive Order 127 authorized the extension of time for the completion of administrative decisions, after the public health emergency. Subsequent Executive Orders extended the public health emergency.

EXCEPTIONS TO INITIAL DECISION

No exceptions have been received by the Office of Program Integrity and Accountability.

INITIAL DECISION'S FACTUAL DISCUSSION AND FINDINGS

The parties set forth the following joint stipulation of facts:

1. L.S. was employed by the DHS prior to July 21, 2003, when she worked as a human services assistant (HSA) at Woodbridge Developmental Center until that location closed.
2. She then transferred to NLDC.
3. She worked at Woodbridge with K.H., who also transferred to NLDC after L.S. had begun working at NJDC.
4. D.L., a female resident of NLDC, has a developmental disability as defined in N.J.S.A. 30:6D-25(b).
5. D.L. suffered an injury as a result of the alleged incident.

INITIAL DECISION'S CREDIBILITY DETERMINATION

It is the Administrative Law Judge's (ALJ) obligation and responsibility to weigh the credibility of the witnesses in order to make a determination. After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, the ALJ found inconsistencies in the testimony.

RESPONDENT'S TESTIMONY

K.H.'s testimony consisted of her statements regarding the two sounds she heard before coming out of her office to investigate. She had a straight view to the hallway and stated she saw DL was dragging herself along the wall. She then saw the petitioner hit D.L. once with a closed fist on the back of the head and twice with a closed fist to her back area. She ran toward them yelling at the

petitioner to stop hitting D.L. K.H. asked petitioner why she was hitting D.L., and L.S. responded, “I’m not going to let her hit me, shit”. K.H. then saw blood on D.L.’s lip while D.L. was yelling, crying and upset. Petitioner was holding clothing in her hand and pressed the clothing against D.L.’s lip to wipe off the blood, stating that D.L. was not bleeding. K.H. testified that D.L. engages in self-injurious behavior which was corroborated by other witnesses. K.H. did testify to a prior disagreement but stated she did not have any issues with the petitioner.

C.J. stated she heard a loud striking sound while she was in her room. She heard D.L. saying stop hitting me and then heard K.H. asking the petitioner “why are you hitting her.” C.J. then emerged from her room and saw the petitioner holding D.L.’s pajamas and saw that D.L. was crying and had blood on her face and on her mouth, as well as on the floor. She had not seen D.L. with blood on her face when she had seen her in the hallway moments before the incident. C.J. also testified that D.L. will sometimes hit her and then say that someone else hit her although in a joking manner and immediately apologizes.

M.R. heard D.L. and L.S. arguing. D.L. was asking for her clothes after a few minutes she heard a quote “skin on skin” sound followed by D.L. saying, “she hit me.” She went to investigate but when she saw K.H. approaching, she returned to her assigned rooms. She did confirm the observation of D.L. having swollen lips and what appeared to be blood coming off the middle of her top lip which was not present prior to the incident.

M.E. stated that when she had gone to Vine Cottage, D.L. told her “the lady with the boots” had hit her and that she had been hit on her lip. M.E. observed blood on the inside of D.L.’s upper lip and observed that the lip was swollen and puffy. She knew D.L. from prior incidents but had never previously seen an injury to her lip like the injuries she observed at that time. She did not believe that the injury was caused by skin picking or banging her head against the wall as those actions would result in different damage.

PETITIONER’S TESTIMONY

The petitioner stated that K.H. was simply lying about the incident because they did not get along. Petitioner also claimed that the other staff members in Vine Cottage who testified that they heard slapping sounds that evening were mistaken and that the entire incident was fabricated.

DISCUSSION OF TESTIMONY

Inconsistencies arose from the number of sounds and the activities of the parties. All respondent’s witnesses testified that they heard at least one sound which could be construed as a slap. K.H., C.J., and M.R. all testified that they heard D.L. state something to the effect that she was being hit. The petitioner stated that there were no slapping sounds and that the incident was fabricated by those in Vine Cottage and K.H.

Based on the entirety of the testimony of respondent’s witnesses (although there were inconsistencies, in the details), the ALJ found that the majority of their stories hung together. Therefore, the ALJ **FOUND** that the respondent’s witnesses were more reliable witnesses than the petitioner, who denies any contact with D.L. and, although petitioner acknowledges a swollen lip, does not know how that occurred.

FINDINGS

The Initial Decision **FOUND** the following additional **FACTS**:

On April 8, 2018 petitioner struck resident D.L. at least one time. The resulting contact was evidenced by a swollen bleeding upper lip and the impact later revealed blood on the inside of D. L.'s upper lip and swelling.

INITIAL DECISION'S LEGAL ANALYSIS AND CONCLUSIONS

The Initial Decision **CONCLUDED** that the DHS has proved by a preponderance of the credible evidence that L.S. committed an act of abuse against D.L., an individual with developmental disabilities.

In order to be included on the Central Registry, it must be determined whether the caregiver acted with intent, recklessness, or careless disregard to cause or potentially cause injury to an individual with a developmental disability. N.J.S.A. 30:6D-77(b)(1); N.J.A.C. 10:44D-4.1(b). The regulation defines each mental state:

1. Acting intentionally is the mental resolution or determination to commit an act.
2. Acting recklessly is the creation of a substantial and unjustifiable risk of harm, to others by a conscious disregard for that risk.
3. Acting with careless disregard is the lack of reasonableness and prudence in doing what a person ought not do or not doing what ought to be done.
[N.J.A.C. 10:44D-4.1(b).]

From the testimony heard and the documentary evidence reviewed, petitioner struck D.L., resulting in injury to D.L.'s lip.

The Initial Decision **CONCLUDED** that the DHS had sustained its burden of proving, by a preponderance of the evidence, that L.S.'s actions rise to the level of abuse as defined in N.J.A.C. 10:44D-2.1(c), physical acts of aggression including, but not limited to, slapping, or hitting. Further, The Initial Decision **CONCLUDED** that L.S. acted intentionally, recklessly, or with careless disregard to the well-being of D.L., an individual protected by N.J.S.A. 30:6D-73, justifying that her name shall be entered onto the Central Registry.

Based on the finding above that L.S. hit a resident of New Lisbon Developmental Center, thereby violating rules regarding care of individuals with developmental disabilities, The Initial Decision **CONCLUDED** that the Department of Human Services had met its burden of proof on this issue.

INITIAL DECISION'S ORDER

The ALJ **ORDERED** that the determination of abuse by respondent Department of Human Services against L.S. is hereby **AFFIRMED**.

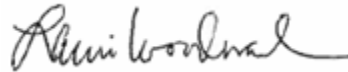
The ALJ further **ORDERED** that L.S.'s name be placed on the New Jersey Central Registry of Offenders Against Individuals with Developmental Disabilities.

The ALJ **FILED** his initial decision with the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** (who may adopt, modify, or reject its findings) for consideration. The **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** is authorized by law to make the final decision in this matter.

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 - including the entire transcripts of all testimony, the post hearing submissions of the petitioner and the respondent, and the documents entered into the record – 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 the ALJ’s 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.S. committed an act of physical abuse against an individual with developmental disabilities. **I CONCLUDE and AFFIRM** that L.S. acted intentionally, recklessly, or with careless disregard to the well-being of D.L., an individual protected by N.J.S.A. 30:6D-73, and that L.S.’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.S.’s name on the Central Registry of Offenders Against Individuals with Developmental Disabilities.



Date: 12.6.2021

Lauri Woodward, Director
Office of Program Integrity and Accountability