



**State of New Jersey
Department of Human Services
Office of Program Integrity and Accountability
P.O. Box 700
Trenton, NJ 08625-0700**

PHILIP D. MURPHY
Governor

SARAH ADELMAN
Acting Commissioner

SHEILA Y. OLIVER
Lt. Governor

DEBORAH ROBINSON
Director

FINAL AGENCY DECISION

S.C.,

OAL DKT. NO. HSL 14516-19

Petitioner,

AGENCY DKT. NO. DRA# 19-009

v.

DEPARTMENT OF HUMAN SERVICES,

Respondent.

S.C., petitioner, appearing pro se

Jessica Sampoli, Deputy Attorney General, for respondent (Matthew J. Platkin, Acting Attorney General, attorney)

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

S.C. appealed from a determination by the Department of Human Services to place her name on the Central Registry of Offenders against Individuals with Developmental Disabilities (Central Registry) based upon a substantiated act of neglect and abuse against K.M., an individual with developmental disabilities, and verbal abuse of V.S., an individual with developmental disabilities. S.C. denied that her conduct constituted abuse or neglect. Further, S.C. denied that the circumstances warrant placement of her name on the Central Registry.

S.C. was terminated from her employment with Our House, Inc., following its investigation of allegations of physical and verbal abuse. The Office of Investigations conducted its own investigation into the incident involving S.C. and two service recipients. The investigation substantiated abuse and neglect of K.M., as well as verbal abuse of V.S. by S.C. Upon reviewing the completed investigation, the Office of Program Integrity and Accountability recommended that S.C. be placed on the Central Registry and notified S.C. of its intention, offering S.C. rights of appeal. S.C. requested an Office of Administrative Law hearing to contest her placement. As a

result, the matter was transmitted to the Office of Administrative Law for determination as a contested case and the record was sealed. Initially the case was assigned to Gregory J. Sullivan, Deputy Attorney General, and then transferred to Jessica Sampoli, Deputy Attorney General, and later to Laura Morson, Deputy Attorney General, for closing. A hearing was conducted on October 16, 2020. The parties agreed to schedule another hearing date. Several adjournments were requested by both sides and granted with consent. The last day of hearing was conducted via Zoom. S.C. decided to proceed pro se on June 23, 2021 and through the conclusion of the matter. The last day of testimony concluded on June 23, 2021. As discussed in the hearings, the respondent chose not to pursue the allegation of verbal abuse of V.S. by S.C. A brief, on behalf of the state, was received on November 12, 2021. S.C. had the opportunity to reply within two (2) weeks. In an email dated February 15, 2022, S.C. noted her delay was due to her having been sick with COVID-19 and recovering from surgery. The Administrative Law Judge (ALJ) allowed two (2) more weeks to allow the State to reply, but no reply was sent. After that time, the record was closed.

EXCEPTIONS TO INITIAL DECISION

Within thirteen days from March 8, 2022, the date that the initial decision was mailed to the parties, any party might have filed written exceptions with the Office of Program Integrity and Accountability, copying the ALJ and the other parties. No exceptions were received.

INITIAL DECISION'S FACTUAL DISCUSSION AND FINDINGS

The first issue in this proceeding is whether S.C. committed substantiated acts of abuse, either physical and/or verbal abuse, against an individual with developmental disabilities, K.M. The second issue is whether S.C. should be placed on the Central Registry.

FACTS

The parties stipulated to the following facts and the ALJ found them as facts:

1. On or about June 16, 2018, K.M., an individual with developmental disabilities, was a resident of a Somerset County group home operated by Our House, Inc.
2. On or about that date, K.M. was a service recipient of the Division of Developmental Disabilities (“DDD”).
3. Also, on or about that date, S.C. was a counselor employed by Our House, Inc., at the group home where K.M. resided.
4. On or about June 16, 2018, Cindy Obare was a direct-care worker employed by Our House, Inc., where K.M. resided.
5. On or about June 16, 2018, S.C., Cindy Obare, and K.M. were all in an agency vehicle together on a scheduled house activity of going to see a movie. (Also traveling with these three was E.P., another individual with developmental disabilities from the group home. None of the allegations in this case involve her in any way.) S.C. was the driver of the vehicle on the way to the movie.
6. It was during this trip in the agency vehicle that the alleged incident involving physical and verbal abuse took place.

7. On June 28, 2018, S.C. was terminated from her employment with Our House, Inc., following an investigation of allegations of physical and verbal abuse with respect to K.M. and V.S.

After hearing the testimony of witnesses, the ALJ stated the following to be **FACTS**:

1. K.M.'s BSP and IHP describe a DDD resident as a 32-year-old woman, who among other residents, suffers from Autism Spectrum Disorder and Severe Intellectual Disorder.
2. K.M. is non-verbal and described as "sweet but uncomfortable with change." When feeling discomfort or stress, K.M. will bite her forearms, pull her hair, flick her ears, and cry.
3. K.M.'s IHP indicates that when she gets upset, she "needs to be redirected and given space" and possibly given snacks or sensory rich objects such as bean bags or music-making toys. K.M.'s IHP further notes that she "responds best to staff that are calmer and more compassionate in their approach."
4. S.C. admitted to rushing K.M. and triggering her behaviors. She also did not employ any de-escalation techniques outlined in K.M.'s BSP or IHP that she signed as part of her job responsibilities as a Senior Counselor or Direct Support Professional.
5. S.C. put K.M. in harm's way by proceeding with the trip to the movies without first calming K.M. down.
6. S.C.'s version of events of K.M. opening the door is not plausible. However, assuming arguendo that she could open the door, her reaction to pull over after yelling at her with her cell phone admittedly in hand and hitting her or pushing her showed careless disregard for her physical and/or emotional well-being.
7. S.C. was not forthcoming with Investigator Podobed with regard to prior UIRs.
8. House Manager, Helen Kehinde, noted in her remarks during the investigation that if there were behaviors while the car was in motion, pulling over would be to calm down K.M, give her verbal praise, give her snacks or any de-escalation methods outlined in her plans, not to hit or yell at her.

The ALJ found respondent's testimonies much more credible than the petitioner's, thus supporting the ALJ's conclusion that C.S. physically and verbally abused K.M. In her description of the respondent's credibility, the ALJ wrote:

"As Investigator Podobed credibly testified, he took good care to interview the witnesses and note their demeanor. I found his testimony to be highly credible and I **FIND** that S.C. acted unreasonably in attempting to "reposition," "push" or in her characterization, keep K.M. "safe". I **FIND** that the investigation was thorough and involved the more credible version of events as S.C.'s testimony was self-serving, intentionally vague, and included crucial admissions including her being off premises thereby violating the ratio of caretakers to residents and admitting that rushing K.M. was likely a trigger and was not the way to start the outing or venture out at all that day. I appreciated her candor on this point. To that end, I **FIND** that Ms. Obare saw the hitting and heard the yelling at K.M. as such was proved here by a preponderance of the credible evidence." ID p.22

In contrast, the petitioner's credibility was described by the ALJ:

“Petitioner, S.C., contends that she pushed K.M., but was merely protecting her and the individuals in the car when she allegedly opened the door of a moving car. Petitioner also argued that K.M. was not intentionally or recklessly abused. S.C. also denied any verbal abuse of K.M. or V.S. Her version of events with regard to the contact is overborne by the credibility of the Respondent’s highly credible witness and corresponding documentary evidence from the resulting investigation. It is more likely than not, that based upon a preponderance of the credible evidence that S.C. did what Respondent claims in hitting her over the head with a cell phone while yelling at her.” ID p.22

The ALJ, in her Initial Decision, **CONCLUDED** the Department had met its burden as to physical and verbal abuse, in that it is more likely that S.C. turned around and hit K.M. due to her continued behaviors, rather than S.C.’s story of K.M. opening the door. In addition, S.C.’s admission that she triggered those behaviors by being off the premises for a personal errand speaks to the escalation and therefore put K.M. at risk. The ALJ **CONCLUDED** that S.C. did not employ any of the de-escalation techniques outlined in the very detailed BSP and IHP; S.C. was familiar with K.M.; and knew, as she admitted, that quick changes would trigger these behaviors. S.C. should have attempted to avoid the known triggers and if not, at least attempted de-escalation before any excursions.

Given the findings of facts above, the ALJ **FURTHER CONCLUDED** that the DHS had met its burden that Petitioner S.C.’s verbally and/or physically abusive actions were taken with careless disregard to K.M.’s well-being. The ALJ added that DHS had not pursued its abuse charges as to V.S.

ANALYSIS AND FINAL AGENCY DECISION

Finding that it is in the public interest for the State to provide for the protection of individuals with developmental disabilities by identifying those caregivers who wrongfully caused them injury, in 2010, the New Jersey Legislature enacted legislation creating the Central Registry. N.J.S.A. 30:6D-73 et seq. The intent of the legislation is to ensure that the lives of individuals with developmental disabilities are safeguarded from further injury and possible death and that the legal rights of such persons are protected. N.J.S.A. 30:6D-73(c).

The legislation sets forth the standards by which individuals are determined to warrant placement on the Central Registry. If a caregiver’s name is placed on the Central Registry, that caregiver is barred from working or volunteering for any DHS-funded programs.

The Legislature provided for inclusion on the Central Registry in the case of a substantiated incident of physical abuse. Examples of physical abuse include, but are not limited to, the service recipient being kicked, pinched, punched, slapped, hit, pushed, dragged or struck with an object. N.J.S.A. 30:6D-74. The caretaker must act 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. Verbal abuse means “any verbal or non-verbal act or omission by a caregiver that inflicts one or more of the following: emotional harm; mental distress; or invocation of fear, humiliation, intimidation or degradation to an individual with a developmental disability. Examples include, but are not limited to: bullying; ignoring need; verbal assault; use of racial or ethnic slurs; or intimidating gestures, such as shaking a fist at an individual with a developmental disability.”

N.J.A.C. 10:44D-1.2. The caretaker must act 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; N.J.A.C. 10:44D-4.1(b).

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 her opinions concerning these matters, based upon her observations, as described in the initial decision. I **CONCLUDE and AFFIRM** that S.C. intentionally, recklessly, or with careless disregard to K.M.'s well-being, physically abused K.M. I **CONCLUDE and AFFIRM** that S.C.'s placement on the Central Registry is appropriate.

An Order to Seal was entered on December 16, 2021, by the Administrative Judge. 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, it is stipulated in a protective order, the decisions, the initials of the petitioner and service recipients - as opposed to full names - are used, that practice suffices to safeguard the identities of victims and petitioners. Having Initial Decisions 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 abide by the protective order, return all discovery materials, and continue to refer to the Petitioner and the victim in this case by their initials in all public documents concerning this case.

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 S.C.'s name on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: March 22, 2022

Deborah Robinson

Deborah Robinson, Director
Office of Program Integrity and Accountability

Petitioner has the right to appeal this Final Order within 45 days to the New Jersey Superior Court, Appellate Division, Richard J. Hughes Justice Complex, PO Box 006, Trenton, New Jersey 08625-0006.