



**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

OAL DKT. NO. HSL 09145-2020

AGENCY DKT. NO. DRA# 20-007

J.T.,

Petitioner,

v.

**DEPARTMENT OF HUMAN SERVICES,
THE OFFICE OF PROGRAM INTEGRITY
AND ACCOUNTABILITY,
Respondent**

J.T., petitioner, pro se

Mark D. McNally, Deputy Attorney General, for respondent Department of Human Services, Office of Program Integrity and Accountability (Andrew J. Bruck, Acting Attorney General of New Jersey, attorney)

Record Closed: January 24, 2022

Decided: February 4, 2022

STATEMENT OF THE CASE

Petitioner-appellant, J.T., appeals her placement on the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry), pursuant to N.J.S.A. 30:6D-73 et seq., on charges that she physically abused an

individual receiving services from the Division of Developmental Disabilities (DDD) on June 1, 2019. After an investigation, respondent, Department of Human Services, Office of Program Integrity and Accountability (DHS), substantiated the charges and placed J.T.'s name on the Central Registry. J.T. denied that her actions constituted abuse or were intended to cause harm.

PROCEDURAL HISTORY

By letter, dated June 4, 2020, DHS notified J.T. of its investigative findings and its determination to place her name on the Central Registry. J.T. filed a timely appeal and DHS transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case on September 29, 2020, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The Administrative Judge (ALJ) entered an Order to Seal on November 17, 2020. Due to the COVID-19 pandemic and the public health emergency declared in Executive Orders issued by the Governor of New Jersey, in-person proceedings at the OAL have been suspended since approximately March 19, 2020. The hearing was held on May 17, 2021, via Zoom remote platform by consent of the parties. The respondent requested additional time to submit its closing brief. After granting the request, the ALJ advised both parties by email that all summations briefs must be received by no later than January 20, 2022. The ALJ received respondent's brief by email on January 20, 2022. The ALJ held the record open until January 24, 2022, for petitioner to either submit her brief or request an extension. After not hearing from petitioner, The ALJ closed the record on January 24, 2022.

EXCEPTIONS

Within thirteen days from the date on which the initial decision was mailed to the parties (February 4, 2022), a party could file written exceptions with the Office of Program Integrity and Accountability, 222 South Warren Street, 4th Floor, PO Box 700, Trenton, NJ 08625-0700, marked "Attention: Exceptions." A copy of any exceptions must also be sent to the judge and to the other parties. No exceptions to the initial decision have been received by the Office of Program Integrity and Accountability.

INITIAL DECISION'S FACTUAL DISCUSSIONS AND FINDINGS

The ALJ **FOUND**:

J.T. is a direct support professional employed by Bancroft. She worked there for approximately three years and was well acquainted with C.M. On May 31, 2019, J.T. reported to work at 11:00 p.m. for a shift that ended at 9:00 a.m. on June 1, 2019. She worked a second shift on June 1, 2019, from 11:00 a.m. until 5:00 p.m.

Bancroft submitted an Incident Report (IR) to DHS reporting that a staff member witnessed J.T. squirting water at C.M., a developmentally disabled individual under her care, during the early morning hours on June 1, 2019.

Nicole Ried, a quality assurance specialist with the Office of Investigations for DHS, conducted the investigation. She prepared the initial investigation report which included her findings and related concerns. Ried conducted interviews and reviewed the video footage from the cameras installed by Bancroft in the group home from the dates and times pertinent to the investigation.

As part of her investigation, Ried interviewed J.T., and two other staff members, Nateara Evans, who worked the overnight shift with J.T., and Egypt Leavy, who arrived at 9:00 a.m. on the morning of June 1, 2019. J.T., Evans, and Leavy provided handwritten statements that Ried included in her investigation report.

Evans reported seeing C.M. trying to run away from J.T. who was chasing him with a water bottle and squirting him. She also claimed to have heard a slap sound coming from the den area where J.T. and C.M. were sitting. Evans was in the kitchen when she heard the sound.

In her interview with Ried, J.T. admitted to using a water bottle to squirt C.M. as a redirection technique. J.T. also watched the videos with Ried. After watching, Ried asked J.T. to rate the level of force she used with C.M. on a scale from one to five with five being the most forceful. J.T. rated her use of force at a level five and acknowledged that her actions appeared forceful on the videos. However, J.T. maintained that her actions were not intended to hurt C.M.

C.M.'s Individualized Service Plan (ISP) listed his self-injurious behaviors and indicated that he did not like being wet. C.M. is non-verbal and it was also noted on his ISP that when trying to communicate, he may grab or scratch his caregivers.

C.M. also had a Behavior Plan to alert staff to his behaviors and provide staff with techniques on how to handle C.M. during these behaviors. There is nothing in the Plan that sanctioned the use of a water bottle as a redirection technique.

Bancroft video recordings were played at the hearing while Ried provided commentary. In the first scene, J.T. and C.M. are in the den and C.M. appeared to be grabbing at J.T., while she was moving away from him. J.T. is seen raising her hand in the air and forcefully dropping it down as she grabbed C.M.'s wrist. Using both her hands, J.T. twists C.M.'s forearm above his wrist. While keeping both her hands on C.M.'s wrist area, J.T. used her foot to keep C.M. from touching her with his other arm. She then used her foot to prevent C.M. from using his arm. When J.T. let go of C.M.'s wrist, he pulled away from her. C.M. extended his arm, so J.T. using her hand forcefully pushed C.M.'s hand away causing him to hit the front of his head. J.T., then using her hand, pushed C.M.'s head to the side. It did not appear from viewing the video, that C.M. was engaged in any disruptive or aggressive behavior during these encounters. Moreover, J.T. admitted to Ried that her actions appeared on the video to be forceful.

The video also captured footage of J.T. squirting C.M. in the face with water from a water bottle in the den. The video footage from the kitchen area, showed J.T. squirting C.M. with a water bottle to keep him out of the kitchen. The video footage from the living room area showed J.T. following C.M. into the exercise room while squirting him with the water bottle.

J.T. received training in preventing physical abuse and exploitation. As C.M.'s caregiver, she was responsible for knowing and following C.M.'s Behavior Plan. She was

also required to adhere to Bancroft's policy and procedure on preventing abuse, neglect, and exploitation.

According to the schedule maintained by Bancroft, J.T. worked from 11:00 p.m. on May 31, 2019, until 9:00 a.m. on June 1, 2019. She worked a second shift from 11:00 a.m. to 5:00 p.m. on June 1, 2019. Evans worked from 11:00 p.m. on May 31, 2019, until 11:00 a.m. on June 1, 2019. (R-17.) In her defense, J.T. stated that she was overwhelmed and frustrated by the lack of support she received from Bancroft. She claimed that other staff members refused to deal with C.M. and left her to care for him without support.

J.T. was terminated by Bancroft. Following Ried's investigation, J.T. was substantiated for physical abuse with minor injury.

Deborah Robinson is the Director of the Office of Performance Management within the Office of Program Integrity and Accountability. She reviewed Ried's Investigation Report. She was especially troubled by J.T.'s failure to follow the techniques in the Behavior Plan. J.T. purposely designed a water bottle with the intent to use it to squirt water at C.M. to control his behaviors without authorization. Robinson also reviewed the videos which showed J.T.'s actions to be purposeful and deliberate.

After deliberation and reviewing the investigation report, DHS sent J.T. a letter informing her of their intention to place her name on the Central Registry and advised her of her rights to an appeal.

INITIAL DECISION'S ANALYSIS AND CONCLUSIONS OF LAW

DHS asserted petitioner's actions resulted in abuse and neglect of an individual with developmental disabilities. Petitioner does not dispute her actions. Rather, she contended that her actions did not constitute abuse because she never acted to harm C.M. She maintained that Bancroft was aware that individual caregivers devised techniques to keep safety and order within the home. On June 1, 2019, J.T. admitted that she was overwhelmed by the number of hours she had worked without relief or support from other caregivers. J.T.'s excuses do not justify her actions.

It is well settled that the policy of the State of New Jersey is to protect individuals with developmental disabilities. N.J.S.A. 30:6D-73. As part of its measures to protect such individuals, the New Jersey Legislature created the Central Registry to identify caregivers who have wrongfully injured individuals with developmental disabilities and to prevent such caregivers from working with such vulnerable individuals. N.J.S.A. 30:6D-73(a), 30:6D-73(d); N.J.S.A. 30:6D-77; N.J.A.C. 10:44D-1.3. An offending caregiver's name will be placed on the Central Registry if they are found to have abused or neglected a developmentally disabled individual. N.J.A.C. 10:44D-4.1.

Abuse is defined as "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." N.J.S.A. 30:6D-74; N.J.A.C. 10:44D-1.2. To be placed on the registry "in the case of a substantiated incident of abuse, the caregiver shall have 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-77b (1). In the

situation of abuse, the statutes and regulations define the mental states of intent, recklessness, and careless disregard to cause or potentially cause injury to an individual with a developmental disability as follows:

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.S.A. 30:6D-77(b); N.J.A.C. 10:44D-4.1(b).

Neglect is defined as consisting of “any of the following acts by a caregiver on an individual with developmental disability: willfully failing to provide proper and sufficient food, clothing, maintenance, medical care, or a clean and proper home; or failing to do or permit to be done any act necessary for the well-being of an individual with a developmental disability.” N.J.S.A. 30:6D-74; N.J.A.C. 10:44D-1.2. “For inclusion on the central registry in the case of a substantiated incident of neglect, the caregiver shall have acted with gross negligence, recklessness, or in a pattern of behavior that causes or potentially causes harm to an individual with a developmental disability.” N.J.S.A. 30:6D-77b (2). In the situation of neglect, the statutes and regulations define gross negligence, recklessness, and a pattern of behavior as follows:

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

N.J.S.A. 30:6D-77(c); N.J.A.C. 10:44D-4.1(c).

The burden is upon DHS to establish, by a preponderance of the evidence, that petitioner’s actions constituted abuse and neglect, requiring placement on the central registry. N.J.S.A. 30:6D-77(b); N.J.A.C. 10:44D-3.2; See, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); and Cumberland Farms, Inc., v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). Evidence is said to preponderate “if it establishes ‘the reasonable probability of the fact’.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

The record clearly reflects that J.T. physically and psychologically abused C.M., a nonverbal developmentally disabled individual, by using a water bottle to frighten him and control him. J.T. acted with careless disregard to C.M.’s behavior plan. J.T. was grossly negligent in failing to attend to C.M.’s needs and her conduct demonstrated a total disrespect for the rights and dignity of C.M.

The ALJ **CONCLUDED** that J.T. acted intentionally, with the mental resolution to control C.M.'s behavior by squirting him with a water bottle and using physical force against him. Despite J.T.'s assertion that water was used to calm C.M. or divert him from his behaviors, there was no justification for her actions in using a water bottle as a means of intimidation and control. J.T. admitted that she was overwhelmed; it was inexcusable for her to take out her frustrations by using physical force against C.M. The ALJ **CONCLUDED** J.T.'s actions were intentional, reckless, and constituted mistreatment of C.M. The ALJ **CONCLUDED** that petitioner consciously acted to use a water bottle to control C.M. Her actions constituted a failure to provide proper care, as J.T. knew of C.M.'s fear of water and his dislike of being wet. J.T. was responsible for providing one-on-one care for C.M. on May 31, 2019, into June 1, 2019. Rather than employing the techniques in his behavior plan, when warranted, or asking for help, if needed, she employed physically forceful tactics meant to frighten, control, and degrade C.M.

The ALJ **CONCLUDED** that the DHS has sustained its burden of proving, by a preponderance of the credible evidence, that petitioner's actions rise to the level of abuse as defined in N.J.A.C. 10:44D-1.2. Further, The ALJ **CONCLUDED** that J.T. acted with careless disregard for the well-being of C.M. resulting in injury to an individual with a developmental disability, justifying that her name be entered onto the Central Registry.

INITIAL DECISION'S ORDER

The ALJ **ORDERED** "that the determination of the Office of Program Integrity and Accountability to place petitioner J.T. on the Central Registry of Offenders Against Individuals with Developmental Disabilities for the incident on June 1, 2019, is hereby and the same is **AFFIRMED**. Petitioner's appeal is **DISMISSED**."

The ALJ **FILED** her initial decision with the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** for consideration.

The recommended initial decision may be adopted, modified or rejected by the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY**, who by law is authorized to make a 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, 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 reasoned observations as described in the initial decision. **I CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that J.T. acted intentionally, with the mental resolution to control C.M.'s behavior by squirting him with a water bottle and using physical force against him. Despite J.T.'s assertion that water was used to calm C.M. or divert him from his behaviors, there was no justification for using a water bottle as a means of intimidation and control. J.T. admitted that she was overwhelmed; yet, it is inexcusable for her to use physical force against a service recipient in her care. I

CONCLUDE and AFFIRM that J.T.'s actions were intentional, reckless, and constituted mistreatment of C.M. I **CONCLUDE and AFFIRM** that petitioner consciously acted to use a water bottle to control C.M. Her actions constituted a failure to provide proper care. J.T. was responsible for providing one-on-one care for C.M. on May 31, 2019, into June 1, 2019. Rather than employing the techniques in C.M.'s behavior plan, J.T. employed physically forceful tactics to frighten, control, and degrade C.M. I **CONCLUDE and AFFIRM** that J.T.'s placement on the Central Registry is appropriate.

An Order to Seal was entered on November 17, 2020, 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, as 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 J.T.'s name on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: 2/25/2022

Deborah Robinson

Deborah Robinson, Director

Office of Program Integrity and Accountability