



State of New Jersey

**PHILIP D.
MURPHY**

Governor

Department of Human Services

Office of Program Integrity and Accountability

P.O. Box 700

Trenton, NJ 08625-0700

SARAH ADELMAN

Commissioner

**TAHESHA L.
WAY**

Lt. Governor

**DEBORAH
ROBINSON**

Director

FINAL AGENCY DECISION

OAL DKT. NO. HSL 08868-21

AGENCY DKT. 21-016

M.G.,

Petitioner.

v.

**NEW JERSEY DEPARTMENT
OF HUMAN SERVICES,**

Respondent.

M.G., petitioner, pro se

Laura N. Morson, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: October 5, 2023

Decided: November 17, 2023

BEFORE **EDWARD J. DELANOY, JR.,** Deputy Director & ALAJ:

INITIAL DECISION

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

M.G. (M.G. or petitioner) appealed the decision of the respondent, the Department of Human Services (Agency/DHS), placing M.G. on the Registry of Offenders against Individuals with Developmental Disabilities. Placement on the Central Registry prohibits the listed offenders from working for or volunteering in DHS funded programs, including employment in developmental centers, community agencies and other programs licensed, contracted, or regulated by DHS.

This matter was transmitted to the Office of Administrative Law (OAL) where it was filed on October 27, 2021, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to-13.

The essence of the decision is founded on the agency's determination that on January 6, 2021, M.G. "accompanied [an] individual to LabCorp for fasting blood work. [M.G.] repeatedly ignored the individual's request to eat breakfast and subsequently punched the individual in the face and chest with a closed fist. [M.G.] continued to ignore the individual while he was attempting to speak to [M.G.] and touched [M.G.'s] shoulder. [M.G.] yelled at the individual and stated that [M.G.] told him not to touch [M.G.] and that if he did, [M.G.] would touch him and told him to not touch [M.G.] again." The individual was C.W. (patient or C.W.), who was a long-term care resident of a group home where petitioner was employed as a caregiver.

A hearing was held February 28, 2023. The record was left open for submission of transcripts and post hearing briefs. Subsequent to the hearing, M.G. requested permission to submit character reference letters. M.G. was permitted to submit reference letters on a limited basis. As a result of those submissions, The ALJ scheduled a conference with the parties to complete the record for submissions by petitioner. The conference was held on August 24, 2023. Respondent submitted her closing submission on October 5, 2023, and on that date, the record closed. At some point in time, the record, as noted in the Initial Decision, was sealed. DHS maintains that Initial Decisions and Final Agency Decisions involving the Central Registry Act, N.J.S.A. 30:6D-77 to 82, should not be sealed from the public. Confidentiality Agreements are put in place prior to discovery and the Initial Decision and the Final Agency Decision use initials, as opposed to full names, to safeguard the identities of victims and petitioners.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Debra Melyan was at the LabCorp in Howell, New Jersey, on January 6, 2021, for a blood test. She had arrived there in the morning and had been waiting for approximately thirty minutes for a technician to take her blood sample. While she was sitting and waiting in a blood draw room for the technician, she observed C.W. walk into an adjacent blood draw room and sit down. C.W. was also there to provide a blood sample. C.W. was seated in a chair facing Melyan, approximately eight feet away. Melyan and C.W. were both in rooms with open curtains, and Melyan had a clear view of C.W. Melyan initially did not

see M.G.; Melyan then overheard C.W. loudly stating, "I am hungry," and "I want to eat," and "I want to go home." C.W. appeared agitated, and he repeated this many times. No one was responding to these statements. Melyan then observed M.G. in the room with C.W. M.G. was not responding to C.W. Melyan then observed C.W. touch M.G.'s shoulder. M.G. responded by jabbing or punching C.W. twice in his nose. C.W. did not react to this strike. Melyan then heard M.G. say "If you touch me, I'm touching you." Melyan then observed C.W. again jab or tap M.G. on her shoulder. M.G. responded by punching C.W. in his chest; the impact making a sound like a thump. M.G. then repeated, "I told you, if you hit me, I'll hit you." At that point Melyan gasped in shock, and M.G., realizing someone had observed her actions, quickly tried to close the room's curtain. At first, the curtain would not close, but it did eventually. M.G. then began speaking quietly to C.W. After gathering herself, Melyan reported what she had observed to a LabCorp employee, who reported it to Ms. Hagen, a LabCorp supervisor.

Carla English has worked for the Office of Investigations for seven years. She is a Quality Assurance Specialist Investigator. Her job is to investigate abuse, neglect, and exploitation allegations. She has handled approximately 130 cases. English undertakes her investigations using a preponderance of evidence standard to define whether abuse has been committed, and to determine if the individual committing said abuse should be placed on the central registry.

This matter was assigned to her within one to two days when she received the incident report. (R-3.) A video conference was undertaken with C.W. C.W. did not appear to be injured. C.W. reported that M.G. took him for blood work, and that he was agitated and mad because he could not eat and needed to fast. C.W. stated that M.G. was upset with him because he was fooling around with the screen by the window at LabCorp. He stated that M.G. made a fist at him and that she hit him in the face with her fist.

English interviewed Latoya Dangler, who was a support staff member at the group home where C.W. resided and M.G. worked. Dangler reported that C.W. was agitated when he left the home on the morning at issue, and that all was normal when he returned back to the home after the blood work. Dangler reported that no injuries were observed on C.W.

English subsequently interviewed Melyan, who reported that M.G. appeared angry with C.W. C.W. was not violent and he only touched M.G.'s shoulder. Melyan reported this incident to Hagan.

English also interviewed Leah Cinman, a LabCorp technician. Cinman reported that she was with another patient in the room next to C.W.'s room. While drawing that patient's blood, she could hear C.W. say something like, "I am hungry," and "I want breakfast," and "When am I going to eat?" Cinman reported hearing a nasty tone of voice from a woman in that same adjoining room. Cinman also reported hearing a thump, but she had no idea what it was. Cinman did not hear M.G. tell C.W. that if he hit her, she would hit him. However, Cinman did confirm that the tone of the voice of the woman in the adjacent room, was harsh and nasty. (R-4.)

A police report was taken. (R-10.) The police interviewed C.W. as did English. C.W. reported that M.G. was mad at him because he had to wait to eat. C.W. stated that M.G. did strike him on his nose, but he did not comment about being hit on his chest. C.W. stated that M.G. was mad at him.

English determined that C.W. is developmentally disabled and that he has an

Individual Service Plan (ISP). (R-9.) The ISP outlines the health issues of C.W. and details how staff should talk to him. A Person-Centered Planning Tool report is done annually and details that caregivers must be kind to their residents. (R-5.) A Behavioral Intervention Plan (BIP) sets forth that the goal in caring for C.W. is to support him, and it is tailored to his needs. Staff should give him one-to-one attention and readjust his attention. When he is having behavioral issues, the token system is used to reward his behavior. When C.W. is behaving badly staff should “wait it out.” M.G. successfully completed her training under the BIP. (R-6; R-12.)

English interviewed M.G. on two occasions. The first interview was a January 19, 2021, telephone interview. M.G. stated that C.W. was upset in the van and that he was hungry when he got into the lab. M.G. stood between C.W. and the empty vials because she was afraid that he might strike the vials and break them. She denied hitting C.W. in the face or chest, and she denied seeing Melyan that morning. On June 23, 2021, English again interviewed M.G. At this time, M.G. agreed that she was properly trained but that the training was only to be followed and used in the home, and not in the community.

English reported that M.G. did prepare a written statement. (R-11.) In the statement, M.G. reported that C.W. was very physical and that he had been destroying property, causing scenes, and had been violent. This report was different than what M.G. had previously told English.

English completed her final report and concluded that abuse was substantiated for both physical and verbal actions. (R-2.) The verbal abuse was for ignoring C.W. and the physical abuse was for striking him rather than redirecting him from his behavior. There was also psychological abuse in threatening to call the home manager, yelling at C.W., and telling him that if he hit M.G., she would hit him back. Four people who reviewed these conclusions agreed on the findings of substantiation.

M.G. testified that on January 6, 2021, she went to work on her day off because she was needed due to a staff shortage. She was assigned to take C.W. for his fasting blood work at a nearby LabCorp. C.W. got in the van and he began becoming disorderly. He has a history of breaking things, and so while M.G. was driving him, she told him to calm down and stop his behavior. When they arrived at LabCorp, C.W. did not want to get out of the van. C.W. eventually calmed down and went into the LabCorp building. M.G. signed him in and at that time he was hitting the windows in the waiting area. She told him to stop, and he finally calmed down. They waited a long time to get into the room to draw the blood. When they arrived in the draw room, M.G. did not see anyone else in the area. M.G. sat down and waited for the technician. C.W. was hungry and he was complaining.

M.G. was talking to him. M.G. noted that one witness said that she was ignoring C.W., while another said she was talking in a nasty tone to him. C.W. was asking questions and M.G. was answering them. M.G. had been taught to ignore bad behaviors and to turn the conversation away from the issue at hand. C.W. is manipulative and will ask questions until he gets the answer he wants. M.G. was taught to ignore behaviors but not the person. M.G. never left C.W.’s area, rather she stood between C.W. and the empty vials. The technician came into their room several times and told C.W. to put his mask over his nose. He was not aggressive. C.W. wanted his way so someone would get him food. M.G. reported that she told C.W. that she would tell “Jen” how he was behaving. This was not a threat because she must report every fifteen minutes regarding C.W.’s behavior. M.G. did not ignore C.W. M.G. did

not say that if you hit me, I will hit you back. M.G. did not hit or ignore C.W. In addition, C.W. did not say, “I am hungry.” He simply stated, “Why do I always have to wait to eat?”

M.G. reported that she should not have taken C.W. to LabCorp that morning, and that if she knew he was upset, she would not have taken him to get the blood work. When C.W. got in the van, he started stomping and moaning. M.G. thought that C.W. might break the vials in the draw room. M.G. agreed that she stepped out of the room one time to get air. M.G. has never had an issue with C.W., and she is the individual who takes all the blood work appointments to LabCorp. M.G. has known C.W. since 2018, she has worked in the group home since 2012. “Jen” is the manager of the group home.

M.G. submitted character reference letters from Kenise Troy (P-1), Christal V. Gadson (P-2), Sandra Howard (P-3), and Theresa N. Tardibuono (P-4). To paraphrase, each reference letter speaks glowingly about the dedication, loyalty, compassion and pride that M.G. takes in her work. They detail how M.G. works hard and goes above and beyond the call of duty to ensure the proper care, safety and well-being of those under her watch. The patients love M.G., and always request that she be their caregiver. M.G. believes the disabled should be treated with care and respect.

Discussion

Based on the differences in the testimony of the witnesses, it is ALJ’s obligation and responsibility to weigh the credibility of the witnesses in this matter in order to make a determination. Credibility is the value that a fact finder gives to a witness’s testimony. The word contemplates an overall assessment of a witness’s story in light of its rationality, internal consistency, and manner in which it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The term has been defined as testimony that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone’s Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact finder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. In re Perrone’s Estate, 5 N.J. 514.

The respondent’s evidence was the testimony of Melyan, Cinman and English. The respondent’s position is that the petitioner’s actions warrant placing M.G. on the Registry of Offenders against Individuals with Developmental Disabilities. Petitioner had a responsibility to refrain from this type of action. The altercation was sufficiently egregious as to require placing M.G. on the Registry of Offenders against Individuals with Developmental Disabilities.

M.G.’s evidence was her own testimony, in which she disagreed with the testimony of Melyan and English. She argued that inconsistencies in the testimony of Melyan and English should diminish their testimony.

Melyan was credible, and no evidence was produced as to why she may have been untruthful in her testimony, or that she exaggerated the same. There was no evidence, nor was any detected in the testimony, of any animosity between Melyan and M.G. Melyan admitted

when she could not properly recall, or if she did not know an answer. In addition, Melyan's testimony was partially corroborated by the statements of Cinman, as given to English. Cinman reported that she was with another patient in the room next to C.W.'s room. While drawing that patient's blood, she could hear C.W. say something like, "I am hungry," and "I want breakfast," and "When am I going to eat?" Cinman reported hearing a nasty tone of voice from a woman in that same adjoining room. Cinman also reported hearing a thump, but she had no idea what it was. Cinman did state that she did not hear M.G. tell C.W. that if he hit her, she would hit him. However, Cinman did confirm that the tone of the voice of the woman in the adjacent room, M.G., was harsh and nasty. Nothing in the record supports a determination that Melyan or Cinman were anything but credible. C.W. himself corroborated that M.G. did strike him in the face.

Conversely, M.G.'s account of the events must be considered in light of what she has at stake. Because M.G. is faced with having her name placed on the Registry of Offenders against Individuals with Developmental Disabilities, she has some motivation to remember the facts in a light more favorable to her. As a result, I believe the version of events as detailed by Melyan and Cinman are the more credible.

The character reference letters submitted by M.G. are also helpful, but they offer only general observations of M.G.'s character, and no direct evidence was offered by any character witness to prove that petitioner did not commit the acts alleged. As such, the character letters were not persuasive in considering petitioner's proofs that she did not act as she did with C.W. on the day in question, or that her name should not be placed on the Registry of Offenders against Individuals with Developmental Disabilities.

FINDINGS OF FACT

After reviewing the transcripts and exhibits from the hearing, as well as the testimony of the witnesses, **THE ALJ FOUND** the following **FACTS**:

C.W. is developmentally disabled with an ISP. The ISP outlines the health issues of C.W. and details how staff should talk to him. A Person-Centered Planning Tool report is done annually and details that caregivers must be kind to their residents. A BIP sets forth that the goal in caring for C.W. is to support him, and it is tailored to his needs. Staff should give him one-to-one attention and readjust his attention. When C.W. is having behavioral issues, the token system is used to reward his behavior. When C.W. is behaving badly staff should "wait it out." M.G., a staff member who cares for C.W., successfully completed her training under the BIP.

M.G. never had an issue with C.W. prior to January 6, 2021. M.G. is the individual who takes all the blood work appointments to LabCorp. M.G. has known C.W. since 2018; she has worked in the group home since 2012.

On January 6, 2021, M.G. had a day off. Notwithstanding, she reported to work because she was needed due to a staff shortage. She was assigned to take C.W. for his fasting blood work at a nearby LabCorp. C.W. was agitated when he left the home that morning. C.W. got in the van and he began becoming disorderly. He has a history of breaking things, and so while M.G. was driving him, she told him to calm down and stop his behavior. When they arrived at LabCorp, C.W. did not want to get out of the van. C.W. eventually calmed down and went into the LabCorp building. M.G. signed him in and at that time he was hitting

the windows in the waiting area. She told him to stop, and he finally calmed down. They waited a long time to get into the room to draw the blood. When they arrived in the draw room, M.G. did not see anyone else in the area. M.G. sat down and waited for the technician. C.W. was hungry and he was complaining.

C.W. loudly said, "I am hungry," and "I want to eat," and "I want to go home."

C.W. was agitated, and he repeated this many times. No one responded to those statements. M.G. was not responding to C.W. C.W. touched M.G.'s shoulder. M.G. responded by jabbing or punching C.W. twice in his nose. C.W. did not react to this strike. M.G. said "If you touch me, I'm touching you." C.W. again jabbed or tapped M.G. on her shoulder. M.G. responded by punching C.W. in his chest, the impact making a sound like a thump. M.G. then repeated, "I told you, if you hit me, I'll hit you." M.G. told C.W. that she would tell the house manager "Jen" how he was behaving. The tone of M.G.'s voice was harsh. M.G. heard a noise from an adjoining room, and realizing someone had observed her actions, quickly tried to close the room's curtain. At first the curtain would not close, but it did eventually. M.G. then began speaking quietly to C.W.

C.W. reported that M.G. took him for blood work, and that he was agitated and mad because he could not eat and needed to fast. C.W. stated that M.G. was upset with him because he was fooling around with the screen by the window at LabCorp. He stated that M.G. made a fist at him and that she hit him in the face with her fist.

LEGAL ANALYSIS AND CONCLUSIONS

Under the Central Registry Act, N.J.S.A. 30:6D-73 (b):

"The safety of individuals with developmental disabilities receiving care from State operated facilities or programs . . . licensed contracted or regulated by the Department of Human Services or from State-funded community-based services shall be of paramount concern."

The Act is designed to prevent, neglect, abuse, and exploitation of developmentally disabled individuals by prohibiting employment of those responsible for such conduct in the Division of Developmental Disabilities, its facilities, and programs. N.J.A.C. 10:44D.

Under the Act, physical abuse is defined as "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, being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged, or struck with a thrown or held object." N.J.S.A. 30:6D-74. The caregiver must have "acted with intent, recklessness or careless disregard to cause or potentially cause injury . . ." N.J.S.A. 30:6D-77(b)(1). Acting with careless disregard "is the lack of reasonableness and prudence in doing what a person ought not to do, or not doing what ought to be done." N.J.A.C. 10:44D-4.1(b). The burden of proof falls on the agency in enforcement proceedings to prove a violation. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). In this matter the Department bears the burden of establishing the proof by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). 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 a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275

(1958). Precisely what is needed to satisfy this burden must be judged on a case-by-case basis.

While one can sympathize deeply with M.G.'s predicament, which was, as must often be the case, initiated by a developmentally disabled patient who was hungry and agitated, M.G.'s actions of striking the patient to confront his aggression constituted "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." N.J.S.A. 30:6D-74. See also N.J.A.C. 10:44D-1.2. As M.G. clearly did not attempt to avoid confronting the patient's aggression by retreating or creating space between herself and him, her actions, which clearly caused pain, injury and suffering to the patient, cannot be justified.

Further, M.G. clearly was not only trained to avoid such confrontations but was or should have been hyper-aware of the patient's aggression towards her, as he had been provoking her beginning with the van trip to LabCorp. While M.G. stated that C.W. had never been a problem for her on previous occasions, his behavior was known to be or should have been known by M.G. to be "unpredictable" and, at times, aggressive and agitated with staff. M.G. was trained in how to avoid confrontations and escalations of aggressive and agitated behaviors by patients. Sadly, despite M.G.'s unquestioned dedication, loyalty, compassion and pride that she takes in her work; how M.G. works hard and goes above and beyond the call of duty to ensure the proper care, safety and well-being of those under her watch; how patients love M.G., and always request that she be their caregiver; and how M.G. believes the disabled should be treated with care and respect, M.G. had a bad day on January 6, 2021, and her lapse in judgment cannot be overlooked.

Even C.W., with his developmental disabilities, admitted that he was agitated and mad because he could not eat and needed to fast. C.W. stated that M.G. was upset with him because he was fooling around with the screen by the window at LabCorp. As a caregiver, M.G. was charged with having at least the same common-sense C.W. showed in admitting his part in the altercation. Straining credibility, M.G. stated that she did not say that if you hit me, I will hit you back. M.G. argued that she did not hit or ignore C.W., and that C.W. did not say, "I am hungry." He simply stated, "Why do I always have to wait to eat?" M.G. takes no responsibility for her actions while failing to follow her training in the face of what amounted to agitated gestures by a futile attention seeking disabled and agitated patient. This lapse in judgement and her inappropriate and unnecessary engaging with the patient clearly shows M.G. acted with "careless disregard to the service recipient resulting in injury to an individual with a developmental disability." N.J.A.C. 10:44D-4.1(b). Abuse is substantiated for both physical and verbal actions. The verbal abuse was for ignoring C.W. and the physical abuse was for striking him rather than redirecting him from his behavior. There was also psychological abuse in threatening to call the home manager, yelling at C.W., and telling him that if he hit M.G., she would hit him back. Accordingly, the placement of M.G. on the Central Registry was permitted.

Accordingly, **THE ALJ CONCLUDED** that the DHS has sustained its burden of proving, by a preponderance of 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 M.G. acted with careless disregard for the well-being of C.W. resulting in injury to an individual with a developmental disability, justifying that her name be entered onto the Central Registry.

ORDER

Consistent with the above findings and conclusions, **THE ALJ ORDERED** that the determination of abuse by respondent Department of Human Services against petitioner M.G. is hereby **AFFIRMED**.

It was further **ORDERED** that M.G.'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 (OPIA)** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF OPIA**, who by law is authorized to make a final decision in this matter. If the Director of the Office of Program Integrity and Accountability does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party was permitted to file written exceptions with the **OPIA ADMINISTRATIVE HEARINGS COORDINATOR**.

FINAL AGENCY DECISION

Exceptions: No exceptions were received.

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 the ALJ's opinions concerning these matters, based upon the detailed and reasoned observations described in the Initial Decision. I **CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that M.G.'s action's rise to the level of abuse, as defined in N.J.A.C. 10:44D-2.1(c). As the ALJ detailed in his decision, "the verbal abuse was for ignoring C.W. and the physical abuse was for striking him rather than redirecting him from his behavior. There was also psychological abuse in threatening to call the home manager, yelling at C.W., and telling him that if he hit M.G., she would hit him back." I **CONCLUDE and AFFIRM** that that M.G. acted intentionally, recklessly, or with careless disregard to the well-being of C.W. that could have caused injury to C.W., an individual with developmental disabilities. I **CONCLUDE and AFFIRM** that M.G. acted intentionally, recklessly, or with careless disregard to the well-being of C.W., an individual protected by N.J.S.A. 30:6D-73. I **CONCLUDE and AFFIRM** that M.G.'s placement on the Central Registry is appropriate.

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 M.G.'s name on the Central Registry of Offenders Against Individuals with Developmental Disabilities, having committed the enumerated abusive acts against A.C., with intention, recklessly or with careless disregard for A.C.'s safety.

Date: December 11, 2023

Deborah L Robinson

Deborah Robinson, Director
Office of Program Integrity and Accountability