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FINAL AGENCY DECISION

OAL DKT. NO. HSL 10926-20
AGENCY DKT. NO. DRA #20-013

V.R.,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
HUMAN SERVICES,**
Respondent.

Ronald B. Thompson, Esq., for petitioner
Andrew C. Munger, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: August 5, 2024

Decided: September 17, 2024

BEFORE **SARAH H. SURGENT**, ALJ

INITIAL DECISION

STATEMENT OF THE CASE

V.R. appeals from the decision of respondent, the Department of Human Services (DHS), to place her name on the Central Registry of Offenders Against Individuals with Developmental Disabilities (Registry), N.J.S.A. 30:6D-73 to -82. DHS maintains that V.R. punched K.C., a protected disabled individual, on the top of her head, thereby physically abusing K.C. without injury, which V.R. denies.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on November 12, 2020, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A plenary hearing was held at the OAL on May 20, 2024. V.R. had notice of the hearing through her attorney and chose to absent herself due to alleged medical and work issues. (T5-T7).¹ V.R.'s attorney proceeded in her absence. The parties ordered the hearing transcript and, after extended deadlines, filed their post-hearing Summations. The record

¹ T denotes the May 20, 2024 hearing transcript.

closed on August 5, 2024.

FACTUAL DISCUSSION AND FINDINGS OF FACT

V.R. absented herself from the hearing and presented no witnesses or documentary evidence² DHS presented the credible testimony of Crystal Martin (Martin), a DHS Quality Assurance Specialist Investigator, (T15), and Takia Williams (Williams),³ the facility Assistant Manager at the time of the incident, (T92). These salient points are therefore not in dispute, and I **FIND** the following **FACTS**, incorporating the above statement of the case and procedural history herein.

K.C. is a developmentally disabled woman receiving services from the Division of Developmental Disabilities (DDD) at Bellwether Behavioral Health (BBH), a group home and day program. (J-2; T64). She is diagnosed with an intellectual disability, personality disorder, impulse control disorder, bipolar disorder, seizure disorder, pervasive developmental disorder, depression, and attention deficit/hyperactivity disorder. (J-5). She has the intellectual and behavioral capacity of a four-year-old child. (T126). Because of her multiple disorders, she struggles with aggression, agitation, tantrums, elopement, property destruction, noncompliance, and self-injurious behaviors (e.g., biting herself, throwing herself to the floor, scratching herself). (J-5; T126).

K.C. can perform many activities of daily living (ADLs) independently or with verbal prompting but requires line-of-sight supervision at all times, including when using the restroom or sleeping. (J-2; T125). She has had an individual behavior plan (IBP) since October 2, 2018. (J-1). Under K.C.'s IBP, staff are instructed to use appropriate strategies for decreasing inappropriate behaviors, including verbal redirection and stability holds. (J-5). Stability holds can be performed with K.C. in a chair or on the floor, by one to four staff members. The holds are meant to prevent K.C. from injuring herself and/or others. (J-5). K.C. may be released from a hold after thirty seconds of calm behavior. (J-5). Although stability holds carry some possibility of injury, they are used with the least restrictive means possible. (J-5). All BBH staff were trained on K.C.'s IBP. (J-9; T94-T95). V.R. received training on preventing abuse and neglect of DDD consumers on May 21, 2018, and completed her training on K.C.'s IBP on October 23, 2018. (J-1; T125:6-11). V.R. has one prior substantiated incident of neglect with no injury from March 31, 2017. (J-9).

On May 21, 2019, V.R., then a BBH direct support professional or vocational support specialist, reported for her 8:00 a.m. to 4:30 p.m. shift at the BBH day program, and was assigned to care for K.C. (J-9). Sometime after 3:00 p.m., K.C. and V.R. were in a classroom and V.R. asked another staff member, Anna Llabres (Llabres), to watch K.C. (J-9). K.C. asked Llabres if she could use the restroom, but Llabres asked K.C. to wait because K.C. requires line-of-sight supervision, and Llabres was unable to leave the other individuals she was assigned to care for that day. (J-9). K.C. then ran into the restroom located in BBH's medicine room. (J-9; T115). Llabres called for her supervisor, Williams, and they followed K.C. into the restroom. (J-9). Roneka Gould (Gould), another staff member, was already present in the restroom. (J-9).

K.C. began to swing her arms at Williams, which caused Williams, Llabres, and Gould to perform a three-person stability hold on K.C. (J-9). Gould was positioned at K.C.'s feet, while Williams and Llabres were holding K.C.'s arms down. (J-9). Moments later, V.R. entered the restroom and positioned herself at K.C.'s feet, without participating in the hold. (J-9). At that point, staff member Rebecca Elwell (Elwell) walked into the restroom and remained in the doorway, observing. (J-9). After some time, K.C. became calm, so Gould, Williams, and

² At the hearing, V.R. adopted DHS' exhibits as joint exhibits, and did not produce any independent evidence. (T9-T10).

³ Williams' first name is variously spelled Takia or Tkeyha in the record. (J-9; T91).

Llabres attempted to release K.C. from the hold. (J-9). K.C. immediately bit down on her own left hand, causing herself injury. (J-9).

K.C. was then placed in a four-person hold on the floor, face up. (J-9; T58). Gould held down her right leg, Llabres held down her right arm, Williams held down her left leg, and V.R. held down her left arm and shoulder. (J-9). K.C. cursed and cried. (J-9). K.C. broke loose from the hold and began to grab and bite at V.R.'s dress. (J-9; T98; T111). Elwell and Williams watched as V.R. made a fist and punched K.C. once in the middle of the top of her head. (J-9; T58-T59; T98-T99). Although Llabres did not see the punch, she reported hearing a loud noise that sounded like a punch and, on a scale from one to five, with five being the loudest, the sound was a "four or five." (J-9; T76). Elwell and Williams rated the sound of the punch at "two" and "five" for loudness, respectively. (J-9).

After V.R. punched K.C.'s head, Williams immediately stated, "No Snow, don't," and "You cannot hit her." (J-9; T99-T100). "Snow" was V.R.'s nickname at the facility. (T78; T114-T115). Elwell, Llabres, and V.R. herself all reportedly heard Williams' statement. (J-9; T76). V.R. "looked at [Williams] and stopped." Ibid. Although K.C. later reported that she had been punched in the ribs, she confirmed that V.R. made intentional physical contact that upset her. (J-9; T34; T65; T77). Consistent with having been struck on the top of the head, Elwell heard K.C. say, "Snow, you hurt my neck." (J-9). Llabres, Williams, Elwell, and K.C. all saw and/or heard the punch. (T78-T79).

After an ambulance came to take K.C. to the hospital, Elwell reported the incident to her supervisor, Jaime Mudge (Mudge), including that V.R. had punched K.C. in the head. (J-9). Elwell then called the police via 911, who arrived at 3:47 p.m. to take statements. (J-3; J-9; T100-T101; T106). Police Officer Eric Starke took statements from Williams, Elwell, and V.R. Ibid. V.R. denied punching K.C. and denied being anywhere near K.C.'s upper body during the restraint. (J-3). However, V.R. later told Investigator Martin that she was near K.C.'s head and shoulder and was attempting to calm her down. (J-9). She again denied punching K.C. at all. (J-3; J-9; T81).

All staff/consumer interactions of note throughout the day must be recorded in the facility individuals' "Therap" logs, including behaviors and trips to the hospital. (T133). V.R. entered a notation into K.C.'s Therap log at 4:17 p.m. on the day of the incident. (J-8). V.R.'s notation included reports of assisting K.C. with her ADLs, drawing, reading, and fitness, but V.R. made no mention of the incident that had occurred approximately one hour before V.R. made the log entry. (J-8; T134).

On May 23, 2019, DHS received a report about V.R.'s alleged abuse of K.C., and Martin was assigned to investigate, (J-1 at 1). Through documentary evidence and witness statements, Martin substantiated a finding that V.R. abused K.C. without injury on May 21, 2019. (T26-T27). On September 26, 2019, DHS sent a letter to V.R. informing her of its decision to place her on the Registry and of her opportunity to appeal that decision. (J-1; J-2). This appeal followed.

LEGAL ANALYSIS AND CONCLUSIONS

The Legislature has declared that "[t]he 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." N.J.S.A. 30:6D-73b. "It is in the public interest for the State to provide for the protection of individuals with developmental disabilities by identifying those caregivers who have wrongfully caused them injury." N.J.S.A. 30:6D-73a. Thus, the Central Registry Act (Act) is intended "to assure that the lives of innocent individuals with developmental disabilities are immediately safeguarded from further injury and possible death and that the legal rights of such individuals are fully protected," N.J.S.A. 30:6D-73c, by "prevent[ing] caregivers who become offenders against individuals with developmental disabilities from working with individuals with developmental disabilities," N.J.S.A. 30:6D-73d.

Under the Act, an investigation is conducted upon allegations of abuse, neglect, or exploitation of developmentally disabled individuals. N.J.S.A. 30:6D-76. The Commissioner or their designee shall then decide whether to place the name of a caregiver who has been found to be a substantiated perpetrator of abuse, neglect or exploitation of an individual on the Registry. N.J.A.C. 10:44D-5.1(a). DHS bears the burden of proving abuse against a DDD consumer by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

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.” N.J.S.A. 30:6D-74. Such abusive acts include, but are not limited to, kicking, pinching, biting, punching, slapping, hitting, pushing, dragging, or striking an individual with a thrown or held object. Ibid. “For inclusion on the central 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). “Acting intentionally is the mental resolution or determination to commit an act.” N.J.A.C. 10:44D-4.1(b)1. “Acting recklessly is the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for that risk.” N.J.A.C. 10:44D-4.1(b)2. “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)3.

Applying the law to the above findings of fact, **the ALJ CONCLUDED** that DHS has proved by a preponderance of the competent credible evidence that V.R. intentionally, recklessly, and/or carelessly physically abused K.C. by punching K.C. in the middle of the top of her head, and that V.R.’s name should therefore be placed on the Registry. V.R. offered no evidence whatsoever to the contrary, aside from her self-serving denial that she punched K.C. Numerous eye/ear witnesses observed the assault, V.R. exclaimed an excited utterance and present-sense impression that V.R. had hurt her neck after V.R. punched her, and Elwell made a contemporaneous report to the police about the incident.

Contrary to V.R.’s post-hearing protestation that there were minor discrepancies in the witnesses’ statements, the ALJ determined that they were of no moment to her; as it is common and to be expected whenever a group of people commonly perceive an upsetting, sudden incident, such as a car accident or an assault. The lack of any evidence of an injury to the top of K.C.’s head was also of no moment—no proof of a physical injury was required. Causing pain to K.C.’s neck, which she immediately complained of, was more than sufficient to sustain a finding of abuse without injury. N.J.S.A. 30:6D-74.

ORDER

The ALJ therefore **ORDERED** that DHS’s determinations that V.R. physically abused K.C., and that V.R.’s name should be placed on the Registry were **AFFIRMED**; and further **ORDERED** that V.R.’s name shall be placed on the Registry.

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

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 **ADMINISTRATIVE HEARINGS COORDINATOR**, copying the ALJ and the other parties.

FINAL AGENCY DECISION

EXCEPTIONS

No exceptions were received by either party.

Pursuant to N.J.A.C. 1:1-18.1(f) and based upon a review of the extensive factual and legal record in the ALJ's Initial Decision and the entirety of the OAL file (including the transcripts and exhibits); I concur with the Administrative Law Judge's findings and conclusions. **I CONCLUDE and AFFIRM** that the Department has met its burden of proving, by the preponderance of the evidence, that V.R. committed an act of physical abuse against K.C., an individual with developmental disabilities, by punching K.C. in the middle of the top of her head. **I FURTHER CONCLUDE and AFFIRM** DHS has proved by a preponderance of the evidence that V.R. acted intentionally, recklessly, and/or carelessly during the incident. **I FURTHER CONCLUDE and AFFIRM** that V.R.'s placement on the Central Registry was 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 V.R. on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: 10/2/2024



Deborah Robinson, Director

Office of Program Integrity and Accountability