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Director

FINAL AGENCY DECISION

OAL DKT. NO. HSL 02655-22
AGENCY DKT. NO. DRA #22-002

D.C.,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF HUMAN SERVICES,
Respondent.

D.C., petitioner, pro se

Jessica A. Sampoli, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

INITIAL DECISION

STATEMENT OF THE CASE

D.C. appealed from the decision of 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 maintained that D.C. struck J.W., a protected disabled individual, with a cell phone charger, thereby physically abusing and causing minor injury to J.W., which D.C. denies.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on April 7, 2022, 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 via Zoom on March 6, 2024. The parties ordered the hearing transcript and, after extended deadlines, DHS filed its post-hearing summation. D.C. declined to do so. The record closed on September 19, 2024.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Pursuant to the parties' joint stipulation of facts, (J-1), The Administrative Law Judge (ALJ) found that these salient points are not in dispute:

D.C. was hired as a Direct Support Professional (DSP) by the Woods Services Redwood group home (Woods) in Langhorne, Pennsylvania, in 2018. J.W. is an individual receiving services through the Division of Developmental Disabilities (DDD) who resides at Woods. A Woods DSP is responsible for the supervision, safety, welfare, and whereabouts of assigned DDD individuals by actively supervising them in accordance with each individual's needs. J.W. requires one-on-one supervision from a DSP.

On December 3, 2021 a Woods employee reported to DHS that D.C. had abused J.W. The report alleged that on November 29, 2021, D.C. straddled J.W. and struck her multiple times with a cell phone charger, resulting in multiple bruises. Crystal Martin (Martin), an investigator for DHS' Office of Program Integrity and Accountability (OPIA) investigated the allegation.

D.C. was working at the time the incident was alleged to have happened. D.C. was not trained in J.W.'s individual Behavioral Support Plan (BSP). D.C. was familiar with J.W. and her specific needs. On August 2, 2021, D.C. was trained in preventing the abuse of DDD clients.

On March 23, 2022, DHS' OPIA sent D.C. a letter informing her that the allegation of abuse was substantiated and of its intention to place her name on the Registry. This appeal followed.

ALJ'S SUMMARY OF RELEVANT TESTIMONY, CREDIBILITY DETERMINATIONS, AND FURTHER FINDINGS OF FACT

I.

Martin testified on behalf of DHS, and D.C. testified on her own behalf.

Crystal Martin, DHS Office of Investigations, Investigator:

Martin has been working for DHS' OPIA for the past nine years. (T10)¹. She is an investigator/quality assurance specialist who investigates abuse, neglect, and exploitation allegations of mistreatment committed against DDD group-home clients. (T10-T13). Woods is a Pennsylvania group home for DDD clients. (T20).

Martin authored the investigation report concerning the alleged November 29, 2021 incident with J.W. (T22; T25; R-4). She found that allegations of physical abuse with minor injuries, verbal/psychological abuse, and neglect without injury were all substantiated. (R-4 at 1). Although there were four alleged perpetrators, the only charge against D.C. was physical abuse with minor injury. (T29).

J.W.'s bruises were discovered by staff member Amber Goldstein (Goldstein) on December 1, 2021. (R-4 at DHS23). J.W. informed Goldstein that DSP A.M. had struck her with a broom until it broke. (R-4 at DHS23). J.W. did not mention D.C. at all, and DSP Asha Davis-Chives (Davis-Chives) witnessed the conversation between J.W. and Goldstein. (R-4 at DHS23).

The incident was reported to DHS on December 2, 2021 and received by Martin's department on December 3, 2021. (T25; R-4 at 1). One anonymous caller, later identified as Davis-Chives, reported that J.W. had been beaten with a broomstick by A.M. at the facility causing multiple bruises on both of J.W.'s legs, while another anonymous caller, later identified as DSP Saeyee Lyons (Lyons), reported that D.C. had hit J.W. with a phone charger. (T25-T26;

¹ T indicates Transcript and the number is its page number.

T29; R-4 at DHS11). Davis-Chives also reported that J.W. informed her that D.C. had hit her with a white phone charger, although Davis-Chives did not witness that alleged assault by D.C., and D.C. was never mentioned in J.W.'s conversation with Goldstein in Davis-Chives' presence describing what had happened to her. (T30-T31; T69; R-4 at DHS23). A third DSP was also reported to have threatened to "beat [J.W.'s] ass" if J.W. reported the alleged beatings of November 29, 2021, thus, leading to the verbal/psychological abuse charge against that staff member. (T27; R-4 at 2).

On December 21, 2021, Martin interviewed Lyons about what she had witnessed on the day of the incident, and Lyons reported that she was in the hallway outside of J.W.'s room completing her "Care[L]ogic" notes,² and witnessed that A.M. and D.C. were in J.W.'s room straddled over her, and that D.C. was striking J.W.'s legs multiple times with a white cell phone charger cord while A.M. was hitting J.W.'s legs multiple times with a broom until the broomstick broke. (T32-T33; R-4 at DHS22). J.W. was screaming loudly for approximately twenty seconds as she was being beaten. (T33; R-4 at DHS22).

Martin reviewed medical reports related to the incident. (T34). On the morning of December 1, 2021, a Woods Registered Nurse (RN), Danielle Fetting-Vickery (Fetting), completed a body check of J.W., and reported and diagrammed multiple dark purple-blue bruises on J.W.'s lower extremities, ranging from one to five inches in size with a large concentration on J.W.'s left shin and calf and on J.W.'s lateral upper right thigh/hip, as well as green and blue bruising to J.W.'s nose area, all with "no edema."³ (T34-T35; T63-T64; R-4 at DHS14; R-5 at DHS268) (emphasis added). J.W. did not state where the bruises came from. (R-4 at DHS14). Fetting stated that J.W. had a history of bumping into things, but not to the extent of having multiple bruises ranging in different sizes and colors and, "although she could not definitively identify the shape of a broom in the bruises, she opined that the probability of the bruising resulting from abuse [wa]s 'very high.'" (R-4 at 51). No whip marks or slashes were identified or noted. Another Woods RN, Pamela Hughs (Hughs), reported that on December 1, 2021, J.W.'s legs had multiple bruises that were "pinkish, reddish and some purple to blue coloring." (T85; R-4 at DHS51). The bruises appeared to be one to two days old and some of them "looked circular in shape, like a softball or as if someone punched [J.W.]." (T85; R-4 at DHS51). J.W. was not treated at a hospital for her injuries, and received "just basic medical first aid." (T60).

Martin also reviewed December 2, 2021 photographs of J.W.'s injuries, which she believed were consistent with the allegations of abuse, with the exception of J.W.'s nose injuries, which were believed to be unrelated to the incident. (T35-T36; T65-T66; R-4 at DHS15; R-5 at DHS296-DHS298). Again, no whip marks or slashes were noted and, contrary to Martin's report, which indicates that she observed "a linear mark, dark purplish in color that was located in between [J.W.'s] hip and knee area on the right outer thigh," no such mark appears in the photographs of J.W.'s bruises. (R-4 at DHS17; R-5 at DHS296-298). It appears that Martin mistook a large fatty-like deposit on J.W.'s right thigh with a corresponding linear shadow beneath it for a bruise. (R-5 at DHS296-298). J.W.'s knees show similar deposits and shadows without any documented corresponding injuries. (Compare R-5 at DHS 268, with R-5 at DHS296-298).

On December 2, 2021, Martin interviewed J.W. (T36; R-4 at DHS16). J.W. was thirty-eight years old at the time of the incident, and she is intellectually and psychiatrically disabled.

² CareLogic is a "web-based electronic health record (EHR) designed specifically for behavioral health and human services organizations."

³ That is, no swelling.

(T38-T39; R-4 at DHS13). J.W. stated that during the incident, she was in her room and was hit by A.M. with a broom “a lot of times,” while D.C. had her knee on J.W.’s body and struck her multiple times with a white phone cord. (T36; R-4 at DHS16). J.W. screamed and cried during the incident. (R-4 at DHS16). J.W. was an extremely unreliable reporter and, contrary to the photographs and diagram of her bruises, J.W. claimed that she was hit all over her body – on her legs, arms, and buttocks. (R-4 at DHS16-17). On February 25, 2022, Martin interviewed another resident of the facility, D.L., who reported that she saw J.W. being struck with a broom, but did not think that she saw J.W. being struck with a cell phone charger, and did not even recall whether D.C. was in the room at the time of the incident. (T39-T40; R-4 at DHS18).

On December 21, 2021, Martin interviewed D.C., who was a program supervisor at the time, overseeing the DSPs providing care to Woods’ clients. (T42-T43; R-4 at DHS41). D.C. stated that she did not hit J.W. with a phone charger, she did not witness anyone else abusing J.W., she did not observe any bruises on J.W., and no one reported any bruising to her. (T44-T45; T47). D.C. did not recall any abusive event involving J.W. at approximately 3:00 p.m. on the date of the incident, and speculated that J.W. may have obtained her bruises while sleepwalking. (T46; R-4 at DHS41). Contrary to her own report, Martin testified that D.C. did not report that J.W. had a habit of sleepwalking, when D.C. did in fact advise Martin that J.W. “has a habit of sleepwalking.” (T46; R-4 at DHS41). D.C. speculated that the younger staff in the unit may have been lying about her because she was not well-liked by them, although there was no documented evidence of that with Woods’ human resources department. (T47; R-4 at DHS41).

Martin stated that no cell phone charger or broken broom were found at the scene of the alleged assault, but then stated that a housekeeper, Jacqueline Clark (Clark), reported that she had found a broom that was broken in half in J.W.’s room on the night of the incident and had thrown it in the trash. (T57-T58; T83-T85). However, according to Martin’s report, Clark found the broken broom in the hallway laundry room, not in J.W.’s room. (R-4 at DHS31, DHS51).

Martin conceded that she would not know what an injury caused by being struck with a phone charger cord would look like. (T74). Martin also conceded that J.W.’s bruises could have been caused by being struck with a broom. (T76). Martin stated that her substantiated finding against D.C. was based on the statements of J.W., Lyons, and the photographs and diagram detailing J.W.’s bruises. (T77). However, Martin opined that the circular bruises on J.W.’s legs could have been caused by the end of a broomstick handle or by “a phone charger,” assuming that the charging block was still attached to the charging cord. (T78-T79; R-5 at DHS 298).

D.C.

D.C. testified that she worked the 3:00 p.m. to 11:00 p.m. shift on the day of the incident, and was instructed the following day to suspend A.M., because J.W. had reported the alleged broom incident to Goldstein. (T68-T69; R-4 at DHS51). J.W. did not indicate to Goldstein that D.C. was involved in any way. (T99; R-4 at DHS24, 51). Two days later, D.C. was informed that Lyons reported that she had seen D.C. hit J.W. with a cord, which D.C. found hard to credit, as Lyons had to have been stationed at the far end of the hallway while completing CareLogic notes at a computer station by the supervisors’ office, and therefore could not have been in the hallway outside of J.W.’s room. (T69- T71). D.C. opined that if a phone charger cord were attached to its electrical block that plugs into a wall outlet, the block would have become detached from the cord if the cord were being used to lash someone. (T74-T75).

On the day of the incident, D.C. did possess an iPhone and possibly a charger with a square charging block, when viewed from the end, but she would not have been carrying her cord and charging block with her, because her phone would have been fully charged at home before the start

of her shift, as was D.C.'s usual custom. (T94-T97). Indeed, D.C. typically did not bring her phone charger to work, because the residents had iPads and the supervisors' office had a charging closet where the chargers were stored— if D.C. needed to charge her phone at work, she would have just plugged it in in the closet and borrowed the supervisors' phone while her phone was charging. (T97-T98). J.W.'s iPad/Phone charger was kept in the staff office, not in her bedroom, because J.W. would otherwise stay on her iPad all of the time, which interfered with her sleep schedule. (T98). Thus, J.W. was not permitted to have a charger in her room. Ibid.

D.C. described the Woods' Redwood residence as having A, B and C halls, with a center in the middle of the three-spoke unit. (T87). Her shifts were from 3:00 p.m. to 11:00 p.m. Ibid. Upon arrival for her shifts, D.C. would go to the center and check the schedule to ensure that the shifts were properly staffed. Ibid. J.W. resided in the A hall. Ibid. From 3:00 p.m. to 4:00 p.m., D.C. was "not technically" in the A hallway—she was either in the center or moving around the facility because there were staff who had to pick up clients from the facility's day programs which ended at 3:00 p.m., and they were roaming the facility collecting their assigned clients. Id. at 88, 92, 108-109. J.W. never reported to D.C. on the day of the incident that anything had happened to her. Id. at 88.

After D.C. worked her 3:00 p.m. to 11:00 p.m. shift on the day of the incident, a Monday, she worked the overnight shift until 7:00 a.m., and then returned for her regular shift at 3:00 p.m. on Tuesday. Ibid. On that day at approximately 3:00 p.m., D.C. was told of the alleged abuse of J.W. with the broom and was instructed to "pull" A.M. from her floor duty and suspend her. Id. at 89, 93. D.C. then had to cover A.M.'s schedule until further notice. Id. at 89. D.C. had a day off on Wednesday. Ibid. When she went back to work on Thursday, she was called into her supervisor's office and informed that she was being suspended because a staff member (Lyons) had reported that they saw D.C. hit J.W. with a charger cord. Id. at 89-90. D.C. maintained that she did not know what had happened to J.W., and that she had no part in it. Id. at 90.

D.C. noted that she is a "mandated reporter," and that if J.W. had reported the incident to her, D.C. would have had to report it. Id. at 91. D.C. noted that Davis-Chives and Lyons, the two independent "anonymous" reporters, were close friends, that J.W. could be highly motivated and manipulated by food, and that J.W. was not fond of D.C. and preferred another supervisor who was less strict than D.C. (T99-T100). D.C. speculated that she may have been belatedly implicated as a result of undue influence on J.W. and a combination of the above factors. (T99). D.C. also noted that J.W. had physically assaulted her on numerous occasions, and that D.C. had never retaliated against J.W. (T100). D.C. had never been disciplined for abusing any DDD client, and reiterated that she was not in J.W.'s room on the date of the incident, and had no first-hand knowledge of what took place. (T102-T103).

D.C. conceded that there was a Woods report from the date of the incident documenting that at 5:30 p.m., approximately two and one-half hours after the alleged assault, J.W. was either in her room or the dining room and was upset about her meal and the way staff had warmed her food, so she threw her food in the trash and attempted to flush her charger down a toilet, but was then "redirected" by the staff her to her room. (T126-T132; R-5 at DHS 211). Although there was some debate about whether J.W. was in the dining room or her own room during the attempted flushing incident, it seems apparent that J.W. was in the dining room during that incident, as indicated by the "exact location of the incident" — "dining room" — and the fact that residents were not permitted to have food in their own rooms. (T129-T130; R-5 at DHS211).

II.

The ALJ, then, weighed the credibility of the witnesses to determine the ultimate issues.

Credibility is the value that a factfinder gives to a witness's testimony. An Administrative Law Judge's findings of fact as to issues of credibility of a witness' testimony may not be rejected or modified unless the record demonstrates that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, credible evidence in the record. N.J.S.A. 52:14B-10(c).

"Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in 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)).

A fact finder is expected to base credibility decisions on their common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and a fact finder "is not bound to believe the testimony of any witness, in whole or in part," State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted). Rather, they "may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible." Ibid. Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511, 523 (App. Div. 1962). "The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their] testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (internal quotation marks omitted).

III.

Having heard the witnesses' testimony, observed their demeanors, and independently reviewed the evidence, **The ALJ FOUND** that Martin's testimony was credible on some points, but not on others. For instance, Martin's testimony was often inconsistent with her own report and with the photos of J.W.'s bruises. Martin testified that she observed a linear mark on J.W.'s right thigh, but no such mark appears in the photographs of J.W.'s legs. Contrary to her report, Martin testified that D.C. did not report J.W.'s sleepwalking habit to her, when D.C. had in fact reported that. Martin testified that the broken broom was found in J.W.'s room, when it was actually found in the hallway laundry room. Martin intimated that J.W. tried to flush her cell phone charger down the toilet in J.W.'s room two and one-half hours after the incident, but it is clear from the evidence that J.W. was in the dining room for a meal when she attempted to flush her cell phone charger down a toilet. Martin conceded that she did not know what kind of mark a cell phone charging block would make, but opined that such a block could have caused J.W.'s circular bruises, assuming it was attached to the charging cord.

On the other hand, **The ALJ FOUND** that D.C.'s testimony was credible, straightforward, and extremely logical.

The ALJ FOUND the following as **FACTS**:

On November 29, 2021, at 3:00 p.m., J.W. was assaulted with the round handle end of a broom, and J.W.'s bruises are consistent with having been struck with such a weapon. D.C. had just commenced her shift, and was busy supervising the other DSPs. D.C. was not present in J.W.'s

room when the assault occurred, and she knew nothing of it until she was informed of it the following day and instructed to suspend A.M. It is unclear why Lyons lied about D.C.'s alleged behavior, but it is clear that Lyons could not have been completing CareLogic notes in the hallway outside of J.W.'s room at the time of the assault, because the computer station where CareLogic notes are entered by DSPs is at the other end of J.W.'s hallway, such that Lyons could not possibly have been looking into J.W.'s room. It is also clear that Lyons made her false allegation against D.C. only after D.C. suspended A.M., as instructed, for abusing J.W. with the broom. Indeed, as noted by another DSP, this appears to be "a setup between staff not liking certain staff and also personal issues outside of work being brought into the work place." (R-5 at DHS195).

THE ALJ'S 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 my above findings of fact, **The ALJ CONCLUDED** that DHS had not proved by a preponderance of the competent credible evidence that D.C. intentionally, recklessly, and/or carelessly physically abused J.W. by striking her with a cell phone charger or cord, and that D.C.'s name should not be placed on the Registry.

The ALJ'S ORDER

The ALJ ORDERED that DHS's determinations that D.C. physically abused J.W., and that D.C.'s name should be placed on the Registry were **REVERSED**; and further **ORDERED** that D.C.'s name shall not be placed on (or shall be expunged from) the Registry.

The ALJ FILED an initial decision with the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** for consideration. This 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. 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-10.⁴

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ADMINISTRATIVE HEARINGS COORDINATOR, OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY**.

FINAL AGENCY DECISION⁵

EXCEPTIONS:

No exceptions were received from the petitioner.

The following exceptions were received from the respondent's DAG:

"Please accept this letter brief as Respondent, the New Jersey Department of Human Services' (the Department), written exceptions to the Order reversing the Department's placement of D.C. on the Central Registry (the Initial Decision) by the Honorable Sarah H. Sargent, A.L.J., October 16 2024. The Department asks that the Initial Decision filed in this matter be rejected.

Legal Standard

Upon consideration of an Initial Decision, an agency head may accept, reject, or modify the recommended decision of the Administrative Law Judge (ALJ). N.J.S.A. 52:14F-7(a). The deciding agency is not required to accept an ALJ's findings of fact or credibility findings when they "are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). The agency is further expressly authorized to "reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision." Ibid.; see also N.J.A.C. 1:1-18.6(b); N.J.A.C. 1:1-18.1(c).

A reviewing court shall accord "great deference to an agency's interpretation and implementation of its rules enforcing the statutes for which it is responsible." In re

⁴ An order to extend the filing of a Final Agency Decision to January 14, 2025 was entered.

⁵ All citations to the Initial Decision in this Final Agency Decision are made based upon the pagination of the version Initial Decision contained above - for ease of referencing the documents without having to refer to the originals version. The contained Initial Decision is complete, but the spacing has been reduced.

Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 488-89 (2004) (citing In re Distrib. of Liquid Assets, 168 N.J. 1, 10-11 (2001)). “A court will not substitute its judgment for the expertise of the agency.” Dougherty v. Dep’t of Human Servs., Div. of Med. Assistance & Health Servs., 91 N.J. 1, 6 (1982) (citing N.J. Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 (1978)). Furthermore, a strong presumption of reasonableness attaches to the actions of administrative agencies. In re Vey, 272 N.J. Super. 199, 201 (App. Div. 1993), *aff’d*, 135 N.J. 306 (1994).

Statement of the Case

Petitioner D.C. was employed as a Direct Support Professional (DSP) at Woods Services in 2018. (T62:7-9). A DSP is responsible for the supervision, safety, welfare, and whereabouts of assigned patients. J.W. is an individual receiving services from the Division of Developmental Disabilities (DDD) who resides at the Wood Services Redwood group home. On November 29, 2021, an employee of Woods reported to DHS that D.C., along with other employees, abused J.W. After an investigation, the allegations of physical abuses were substantiated, and Petitioner was placed on the Central Registry for caregivers who have abused or neglected individuals with developmental disabilities, and Petitioner was terminated from her employment at Woods Services. Petitioner requested a fair hearing to appeal her placement on the Central Registry.

Procedural History

The hearing was conducted on March 6, 2024. DHS presented the testimony of Crystal Martin, an Investigator from DHS’s Office of Program Integrity and Accountability (“OPIA”), who investigated this specific incident. Petitioner testified on her own behalf.

At the conclusion of the testimony, the court and parties moved exhibits J-1, R-4 and R-5 into evidence. The Court invited DHS to obtain the transcript and then allowed the parties time to submit Post-Hearing Submissions. The record was closed on September 19, 2024. On October 16, 2024, the Honorable Sarah H. Surgent issued an Initial Decision reversing the Department’s substantiation of abuse.

March 6, 2024 Relevant Testimony

This matter involves a physical altercation that ensued on November 21, 2021 at Woods Services Redwood group home between Petitioner D.C. and DDD client J.W. On the day of the incident, D.C. was working as a DSP.” (T43:1-5). J.W. has a moderate intellectual disability, pervasive developmental disorder, mood disorder due to static encephalopathy and attention deficit hyperactivity disorder (ADHD). (R-5 at DHS 0069). J.W. requires a behavior support plan that addresses increasing pro-social behavior and decreasing physical aggression and self-injurious behaviors. (R-5 at DHS 0069).

The incident was reported on December 2, 2021 and received by OI through the Critical Incident Management Unit (CIMU) on December 3, 2021. (T72:20-25). The initial report was made by two anonymous callers to their Wood Services HR department indicating that J.W. was hit a broom and a phone charger. Id. After speaking with Ms. Candice Perez-Gomez, the Wood Service’s own investigator, it was discovered the anonymous callers were staff members Saeyee Lyons and Aisha Chives-Davis. (T29-18-25).

Crystal Martin, DHS Office of Investigations (OI) Investigator, was assigned to investigate the altercation. Investigator Martin interviewed Ms. Davis-Chives who stated that J.W. told Ms. Davis-Chives she was hit by D.C. (T30:4-10). Ms. Davis-Chives was outside the room at the time, with D.C. being inside with the victim with the door closed. (T31:1-17). Consistent with her initial report of the incident, Ms. Lyons stated that at around 3:00pm on December 21, 2021, she witnessed D.C. straddled over J.W. in J.W.'s room. J.W. was screaming and crying. *Id.* She witnessed D.C. hit J.W. with a phone charger while another employee struck J.W. with a broom. (T32:3-25, T33:1-10). The witness' testimony was consistent with the injuries noted on J.W.'s injury report.

During the course of the investigation, Investigator Martin also interviewed J.W. J.W. corroborated both of the Witness's recollection of events. (R4 at DHS0022). Despite the fact that J.W. and two other witnesses testified that D.C. was in J.W.'s room on the day of the incident, D.C. testified that she was not aware this event took place and that there was no way that there could have been a phone charger in J.W.'s room. (T98:7). According to D.C., J.W. was not allowed to have a phone charger in her room. (T98:16-18). However, there was an Incident Report from the same day of the incident. (R-5 at DHS 0211). The Incident report states that, about 2.5 hours after the assault incident, J.W. got upset and attempted to flush her phone charger in the toilet. (T129:1-8). Staff redirected her to her room from the bathroom that is connected to her room back to the bedroom. (T131: 18-19). Clearly, J.W. did have a phone charger in her room at some point. The obvious presence of the phone charger, evidence of bruising that the nurse found consistent with a phone charger, and witness testimony that D.C. was, at the very least inside the room and at the very worst seen striking J.W., makes D.C.'s placement on the Central Registry of Offenders not only reasonable but necessary.

Legal Analysis and Argument

Placement upon the Central Registry is governed under N.J.S.A. 30:6D-73 et seq., and N.J.A.C. 10:44-1.1 et seq. The two inquiries under the regulation are: (1) whether Petitioner abused J.W.; and (2) whether Petitioner injured J.W. or exposed her to potential injury.

With respect to the first issue: "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.A.C. 10:44D-1.2. "Physical abuse" is further defined in the regulation 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, the individual with a developmental disability being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged or struck with a thrown or held object." *Ibid.*

Here, there is no question that Petitioner directed a physical act at J.W., causing pain, injury, and suffering. The evidence demonstrates that D.C. engaged in a physical altercation with J.W. that could have been avoided. However, contrary to D.C.'s claims, a phone charger was in fact located in the room at the time of the incident, as J.W. attempted to flush her charger down the toilet approximately two and a half hours after the alleged assault. (T130:19-22).

D.C. claims that she was not in the room when J.W. was allegedly being abused with a broom by another staff member. However, this contention is contradicted by witness testimony from another staff member who was immediately outside the room where the incident took place.

(T70:18-20). This contention is also contradicted by D.C.'s own testimony that she may have been in J.W.'s room on the day of the incident.

Perhaps most telling is that D.C. claims that the injuries to J.W. were a result of her own sleepwalking, but J.W. herself claims she was hit by D.C. with a phone charger. (T31:1-5). Another staff member also stated that she heard screaming from J.W. while she was being beaten with the phone charger. (T33:2-10). These facts taken together point towards D.C. having abused J.W. with a phone charger. D.C. further alleges that there was no phone charger in the room, because J.W. is not allowed to keep a phone charger in her room. (T124:15-17). However, contrary to D.C.'s claims, a phone charger was in fact located in the room at the time of the incident, as J.W. attempted to flush her charger down the toilet approximately two and a half hours after the alleged assault. (T130:19-22).

Upon review of medical reports, a registered nurse for Wood Services completed an injury diagram which revealed multiple bruises to the lower extremities. (R-5 at DHS0014). While the bruises do not exactly imitate the shape of a phone charger, there is still an unmistakable injury to J.W.'s legs. Depending on how D.C. may have used the phone charger and the fact that J.W. was also hit with a broom, coupled with various other medical factors, J.W.'s bruising patterns are not likely to perfectly mimic a phone charger. The fact that there was significant bruising on J.W. is a clear indication that she was physically abused and neglected by D.C., who owed a duty of care to J.W. It was also noted in the investigation that while J.W. has a tendency of bumping into things, her injuries were never to the extent of having multiple bruises ranging in different sizes and blueish to purple in color. (R-5 at DHS0108). The significant bruising, witness testimony and Petitioner's own contradicting statements all point to a substantiated finding of abuse.

As to the second issue: N.J.A.C. 10:44D-4.1(b) permits placement of a caregiver upon the Central Registry if the allegations of physical abuse have been substantiated and the caregiver "acted intentionally, recklessly or with careless disregard to the well-being of the service recipient resulting in injury to an individual with a developmental disability or by exposing the latter to a potentially injurious situation." 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 the risk
3. 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)].

Here, the evidence demonstrates that Petitioner, at a minimum, acted recklessly or with careless disregard to the well-being of J.W. The evidence shows that, on December 21, 2021, D.C. was identified by witnesses as having hit J.W. with a phone charger while in J.W.'s bedroom and while another employee struck J.W. with a broom. See R4 at DHS0011. The incident was reported to OI.

Crystal Martin, OI Investigator, was assigned to investigate the matter. At the time of the alleged incident, D.C. had been an employee at Woods for more than three years. The evidence shows that she was familiar with the victim, but she denies having struck her. R4 at DHS0039. D.C. instead suggests that any bruises on J.W. were the result of sleepwalking. R4 at DHS0040. However, the evidence suggests otherwise. Aside from discussing the incident with witnesses, Investigator Martin reviewed several reports including the initial incident report and the body

check report. The body check report noted bruising to J.W.'s ranging from one to five inches long. Id.

The fact that multiple witnesses to the altercation, coupled with the medical evaluation and J.W.'s own testimony of what occurred clearly demonstrates that D.C. abused her duties as a direct support professional. This lapse by D.C. was unreasonable, inconsistent with the training and best practices, and created a substantial and unjustifiable risk of harm to J.W.

As a result of this lengthy and thorough investigation performed by OI, D.C.'s abuse allegation was substantiated based upon a preponderance of the testimonial and documentary evidence obtained and reviewed. R4 at DHS 0050. Based on the facts and evidence presented, DHS's finding of abuse and placement of D.C. on the Central Registry of Offenders must be affirmed.

Exceptions to the ALJ's Conclusions and Analysis

1. In the Initial Decision, the ALJ states that J.W.'s bruises were first discovered by staff member Amber Goldstein on December 1, 2021. (R4 at DHS23) (Initial Decision at 4). Ms. Goldstein was one of two of the individuals who reported the incident to OI. The ALJ found as fact that in the conversation between J.W. and Ms. Goldstein regarding the bruises, J.W. did not mention D.C. at all. The ALJ also noted that DSP Davis-Chives witnessed the conversation. (R4 at DHS23) (Initial Decision at 2). Though the ALJ is correct that Ms. Goldstein's interview with Investigator Martin does not seem to mention D.C., this fact alone is not dispositive of D.C.'s involvement. This conclusion ignores the fact that both Ms. Davis-Chives and J.W. herself both identify D.C. as a perpetrator in this abuse. In fact, in her interview with Investigator Martin, Ms. Davis-Chives, who witnessed the conversation between J.W. and Ms. Goldstein, told the investigator that D.C. was holding J.W.'s feet down to keep her from moving while another employee struck her with a broom. R4 at DHS19. On December 7, 2021, J.W. told Investigator Martin explicitly that D.C. had her knees on her and "hit her multiple times with a white phone cord." R4 DHS16. Ms. Goldstein stated in her interview to Investigator Martin that she believes J.W. to be credible and that she does not tell lies. R4 at DHS 24.
2. The ALJ improperly concludes that Saeyee Lyons, another individual who reported that incident, was ultimately lying in her report of abuse. (Initial Decision at 7). Lyons' testimony to Investigator is consistent with both Davis Chives and J.W. Lyons told Investigator Martin that she could see Ms. Williams' room from the outside hallway where she saw D.C. hitting J.W. with a phone charger. She also reported another individual striking J.W. in the legs. R4 at DHS22. Here, the ALJ seems to find parts of Davis-Chives, J.W. and Lyons' testimony credible as she finds that J.W. *was* abused by a broomstick. However, as to the abuse at the hands of D.C., which all the same individuals testified to, the ALJ simply concludes that this appears to be "a setup between staff not liking certain staff and also personal issues outside of work being brought into the work place." This conclusion is without any factual underpinnings.
3. The ALJ further bases her decision on the fact that she did not believe the bruises on J.W.'s body were indicative of bruising caused by a cell phone charger. (Initial

Decision at 6). The ALJ's decision is based on her own assumptions of what bruising caused by a phone charger should look like. (Initial Decision at 6). During Ms. Martin's testimony, the ALJ questioned her about the photographs of J.W.'s bruising and asked "well, you would agree that there are no square or rectangle markings on J.W.'s leg with respect to bruising? They appear to be all more or less circular except down on her, I guess, halfway between her right shin and calf, those look to be more oval, is that correct?" T79:18-20. Martin opined that the bruises on J.W.'s leg could have been caused by the end of a broom stick handle or by a phone charger, assuming the charging block was still attached to a cord. (Initial Decision at 6). Here, the ALJ holds that the bruises, though all different sizes and shapes, were caused only by a broom. (Initial Decision at 6). The decision, however, is not supported by the record. The facts here show that J.W. had dark bruises to her lower extremities. R4 at 14. The body check revealed that sizes of the bruises ranged all different sizes, from one inch to five inches with a large concentration on the left shin and calf and on the lateral upper right thigh and hip. *Id.* The facts also show that J.W., Ms. Lyons, and Ms. Davis-Chives report that J.W. was struck with a broom *and* a phone charger. R4. Those same reporters state that the D.C. wielded the phone charger. *Id.* The facts also show that J.W. states that she bruises easily, making it more likely that the bruise size and shape may not correspond to the item responsible for the bruise in the way the ALJ assumes it should. T81:14-24. The facts presented support the Department's substantiation of abuse. Therefore, the Initial Decision should be rejected.

Conclusion

Applying the controlling regulations to the facts presented, it is clear that Petitioner D.C.'s placement on the Central Registry is appropriate. The Department takes exception to the legal conclusions and analysis of the ALJ and respectfully submits that the Initial Decision should be rejected. END OF DAG'S EXCEPTIONS

FINAL AGENCY DECISION

The ALJ correctly states in the Initial Decision that "an Administrative Law Judge's findings of fact as to issues of credibility of a witness' testimony may not be rejected or modified unless the record demonstrates that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, credible evidence in the record. N.J.S.A. 52:14B-10(c). . . . "Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963) ... "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in 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). "The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their] testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (internal quotation marks omitted). *ID* p.6

The ALJ merely states, without support or corroboration, that D.C.'s testimony was

“credible, straightforward, and extremely logical.” ID p.6 There is no discussion of the most obvious impediment to D.C.’s credibility – her self interest in the outcome of the hearing. The ALJ ignores the State v. Salimone case’s admonition that “the interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their] testimony” without discussion. The ALJ made unsupported comments about the Martin’s testimony, as a witness for the Respondent, which was denigrated as inconsistent. Upon review of the record, that testimony was consistent with the physical record, corrected during the hearing, or was immaterial to the case.

The ALJ’s discussion of Martin’s credibility states that, “Martin testified that she observed a linear mark on J.W.’s right thigh, but no such mark appears in the photographs of J.W.’s legs.” In fact, the photographs taken by one of the facility’s nurses show three bruises on J.W.’s right thigh. These three bruises correspond to the bruises marked on the Body Check Form that was completed earlier by another of the facility’s nurses, which are marked as to color. The bruise on the top of the thigh is roundish, as is the lowest bruise on the thigh. The middle bruise is the darkest of the three and rectangular in shape; it is approximately three times longer than it is high. The bruise could be defined as being linear (LINEAR | English meaning - Cambridge Dictionary LINEAR definition: 1. consisting of relating to lines or length). The Initial Decision was incorrect where it stated, “It appears that Martin mistook a large fatty-like deposit on J.W.’s right thigh with a corresponding linear shadow beneath it for a bruise. (R-5 at DHS296-298). J.W.’s knees show similar deposits and shadows without any documented corresponding injuries. (Compare R-5 at DHS 268, with R-5 at DHS296-298).” ID p.3 The rectangular, horizontal bruise described by Martin is well documented in the record by the photographs and the Body Check Form. There is no citation or mention of “fatty-like deposits on J.W. right thigh” anywhere in the record – photographs, diagrams, testimony, or statements – before this description in the Initial Decision. This supposition is without support.

The Initial Decision faulted Martin for testifying that the broken broom was found in J.W.’s room, when it was actually found in the hallway laundry room. In the first portion of the hearing, the ALJ asked Martin if the broom was found “at the scene,” to which Martin answered, “No, it was not found. I interviewed the housekeeper who said it was a broken broom that night of the incident, and she tossed it in the trash. So, it was not found.” T p.57 -25 – T p.58 -5 Later in the hearing, when the ALJ brought up the broom again, Martin’s memory was jogged and she attempted to remember the housekeeper’s name by reviewing her report. When Martin and the DAG located the actual interview that Martin had conducted with the housekeeper in the written record (DHS0031), the DAG gave the ALJ the citation and the ALJ read part of the interview into the transcript. T -16-21. Martin never testified that the broom was found in the bedroom, but just before she was dismissed from the hearing, referred the ALJ to the exact location in the exhibits that stated the correct location where the broom was found - the laundry room. During the course of the hearing Martin denied that the broken broom was found at the scene of the incident and testified that her investigation report showed that the broom was found in the laundry room. The record shows that Martin’s testimony was consistent as to the broom not being found in the room, and that Martin testified to the actual location with a supporting document.

The Initial Decision states that, “Martin intimated that J.W. tried to flush her cell phone charger down the toilet in J.W.’s room two and one-half hours after the incident, but it is clear from the evidence that J.W. was in the dining room for a meal when she attempted to flush her cell phone charger down a toilet.” ID p. 6 The Initial Decision does not explain how, or where in the record, Martin “intimated” such a statement – a statement that the ALJ established to be true at the hearing

after Martin's testimony. Martin had been dismissed from the hearing long before the ALJ brought up, *sua sponte*, the incident report that discusses the phone charger flushing incident, DHS211. The ALJ, D.C., and the DAG discussed the report for fourteen transcript pages amongst themselves. T 125 -22 – T 139 -10 The report was on a form created by the facility and filled out by one of its Direct Support Professionals (DSP) concerning a behavioral incident by J.W. that occurred at 5:30 pm on the day of the abuse incident at hearing. The ALJ, D.C., and the DAG discussed the data entered on the form – time, location(s), behavior, and how it was reported – and led by the ALJ's questioning, mutually agreed that L.W. had an incident involving food, beginning initially, in the dining room of the facility (because the facility does not allow food in service recipients' rooms); the DSP redirected L.W. to her room in Woods House, after she refused the food prepared for her. In her room, L.W. then attempted to flush her charger down the toilet in the bathroom that is attached to her room; the DSP then redirected L.W. out of her bathroom back to her room. The ALJ summarized the understanding of the facility's incident report: "All right. So it says that she attempted to flush her charger, presumably down the toilet. Staff redirected her to her room. So, is that redirecting her from the bathroom that's connected to her room back to the bedroom portion? D.C. answered, "Mmm hmm." The ALJ then asked, "Okay. So, do you agree that it appears she did have a charger on that day?" D.C. answered, "I mean, that's what the report says, but I wasn't aware that she had a charger or this incident even happened." The ALJ asked, "Okay. All right. And again this was reported by [a different DSP working in the facility], correct? D.C. answered, "Correct." T p. 132 -7 – T p.133-6 It is unreasonable, capricious, and outrageous to impugn Martin's credibility for "intimating" a fact pattern (attempting to flush a charger down the toilet in her own room) that the ALJ established during the hearing and then to declare, in a credibility assessment, that "it is clear from the evidence that J.W. was in the dining room for a meal when she attempted to flush her cell phone charger down a toilet." The ALJ's credibility assessment is, at best, capricious.

The Initial Decision mentions that "contrary to her report, Martin testified that D.C. did not report J.W.'s sleepwalking habit to her, when D.C. had in fact reported that." The statement is true. D.C. had given Martin a statement on 12/21/21 about L.W. injuries saying, "I'm not sure how it happened. She has a habit of sleepwalking, maybe that's how she got those bruises." DHS0041 The statement was over two years old at the time of hearing. Neither of the two facility nurses had suggested that sleepwalking might be a possibility for the cause of the bruises, but one had placed a high probability that abuse was the cause. Sleepwalking, in and of itself would not be abuse under the Central Registry. Because the incident was deemed an abuse investigation, the Office of Investigations was involved; the mistake by Martin is negligible and hardly seems capable of marring her credibility. The Initial Decision also states as a factor for negatively assessing Martin's credibility, that she "conceded that she did not know what kind of mark a cell phone charging block would make, but opined that such a block could have caused J.W.'s circular bruises, assuming it was attached to the charging cord." When D.C. asked Martin a question concerning marks left by someone hit by a cord, Martin replied, "No. This the only one in reference that I've had that it was an allegation with a cord." Martin added, "I'm not an expert in that, no." T p.74 3 –11 Martin answered medical questions put to her during the hearing by adding that she was not an expert. Martin was investigating incidents of abuse. J.W. had already been seen by two of the facility's nurses who had evaluated and documented J.W.'s injuries; the nurses could not identify the instrument(s) that caused the bruises. One nurse stated "that she is unable to definitely say it was abuse, but the probability is very high." DHS0027 Martin's answer to the questions about the bruises were measured and certainly not wildly speculative or assuming;

Martin's comments were qualified with a statement that she was not an expert on such matters.

The ALJ states, without support or corroboration, that D.C.'s testimony was "credible, straightforward, and extremely logical." ID p.6 In fact, D.C.'s testimony is contradictory and deeply flawed. In what appears to be an attempt to disassociate herself from any phone charger that might have been used to whip J.W. in her room, D.C. testified in great detail that that she did not have her phone charger with her at work at the time of the incident because her phone was already charged and "if D.C. needed to charge her phone at work, she would have just plugged it in in the closet and borrowed the supervisors' phone while her phone was charging." T97-T98 D.C. testified that J.W.'s iPad/Phone charger was kept in the staff office, not in her bedroom, because J.W. would otherwise stay on her iPad all of the time, which interfered with her sleep schedule. (T98). Thus, J.W. was not permitted to have a charger in her room. The ALJ established, during questioning of D.C., that on the day of the incident, J.W. did, in fact, have a phone charger accessible in her room, as documented by an incident report filed that same day showing J.W. attempting to flush it down her toilet. T p. 132-23 – T p.133-10 Although D.C.'s inconsistency on this matter was noted in the Initial Decision, the ALJ did not discuss, or consider, this in light of the cited State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) factors that "The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] in disbelieving [their] testimony." Clearly, D.C. had an interest and motive not to be associated with any phone charger. The ALJ needed to discuss and explain the Initial Decision's determination of D.C. as credible, especially since D.C. accused other employees of working against her.

In D.C.'s testimony, "D.C. noted that A.C.-D. and A.G., the two independent "anonymous" reporters, were close friends, that J.W. could be highly motivated and manipulated by food, and that J.W. was not fond of D.C. and preferred another supervisor who was less strict than D.C. (T99-T100). D.C. speculated that she may have been belatedly implicated as a result of undue influence on J.W. and a combination of the above factors. (T99)." During the trial, Martin pointed out that, as documented in her investigation report (DHS0041), Martin had interviewed D.C. on that particular point "D.C. stated that she thinks people are lying on her." Martin testified that she "at that point reached out to the agency, the HR, to see if there were any mediations or disciplinary actions among those staff, and HR said that there were no records of disciplinary action among the staff prior to this investigation." T p.47- 6-18 In D.C.'s written statement DHS0041, she states, "I am not a very likeable person in the unit. I get along with the older staff (F. K. and A.M.), but it appears the younger staff (A.C.-D. and A.G.) are against me. The ALJ put into the stipulation of facts: "Indeed, as noted by another DSP, this appears to be "a setup between staff not liking certain staff and also personal issues outside of work being brought into the work place." (R-5 at DHS195)." ID 7 The ALJ admits that the work environment of the facility is rife with "interest, motive, bias, and prejudice," yet the ALJ gave no consideration to the State v. Salimone factors of a how witness credibility can be affected and justify the trier of fact to disbelieve testimony." The ALJ's credibility analysis is arbitrary, capricious, and without support in the record.

The Initial Decision is also factually flawed. During Martin's Direct Testimony about S.L.'s statement to Martin, The DAG put the Interview Synopsis (DHS0022) on the computer screens of the participants during the hearing. The DAG asked Martin if it was a summary of the Martin's interview with Ms. S.A. and then asked Martin "Can you summarize that for us?" T p.32 Martin replied, "Yeah. She reported that - S.A. stated that when she looked into J.W.'s room from where she was standing, once (sic) another staff and D.C. were straddled over J.W. while the other

staff hit J.W. with a broom until it was broken, and D.C. was hitting J.W. with a phone charger. That was the gist of what she said, the main part.” The ALJ asked the DAG to verify the citation, which she did – as Bates stamp number DHS0022. The ALJ replied that “I got it.” T p.32-33 The oral summary by Martin at the hearing, covered a portion of the interview between Martin and S.A. on 12/21/21. Martin documents (DHS0021) that a written statement from S.A. (DHS0199) was received on 12/28/21; it was reviewed, and was found consistent with her OI interview. S.A.’s written statement was sent to an investigator employed by the facility, not DHS. That investigator wrote and signed on the paper copy that the email was from “Anonymous 2” and that she had interviewed the witness on 12/4/21. Martin wrote in her investigation report that the facility’s investigator confirmed that the statement had been sent by S.A. DHS0021.

In her interview with Martin, “S.A. stated that on 11/29/21, at approximately 3:00 p.m., she was in the hallway completing her CareLogic notes when she heard both A.M. and D.C. telling J.W. to go into her room, but J.W. did not listen. S.A. stated that she then heard J.W. screaming, “Stop it” and crying. S.A. reported that *when she looked into J.W.’s room from where she was standing*” (italics added), A.M. and D.C. were straddled over J.W. while A.M. hit J.W. with a broom until it broke and D.C. was hitting J.W. with a phone charger. S.A. further reported J.W. was struck by the broom mainly toward the outer part of J.W.’s legs. S.A. stated that it all happened so fast and J.W. was hit multiple times with a broom by A.M. and hit with the phone charger multiple times by D.C. on J.W.’s lower part of her body, specifically her legs. [Martin] asked, on a scale of 1 to 10, with 10 being the loudest, how loud the sound of the broom was when it was hitting J.W. and S.A. replied that J.W. scream was so loud. I don’t recall how loud the broom was because J.W.’s screaming lasted about 20-seconds.” (italics added) DHS 0022

The third party written statement written by S.A., DHS0199, states: “On the day of the incident, *I was in the hallway of J. W.’s room, as S.A. was training me on care logic (sic) and I was figuring out my care logic (sic) ... As I was in the hallway J.W. came running to me asking me to help help her help (sic). D.C. and A.M. are hurting her. J.W. literally red in the face like a tomato and crying. I had never saw (sic) her in that state of crying out for help*” (italics added). ... “A.M came down the hall with the broom to get J.W. and was aggressively pushing her into the room and hitting her with the broom. D.C. remained at the door and I saw her using a rope to beat J.W. J.W. was screaming it hurts. J.W. fell down to the floor where they continued to beat her and dragged her into the room I was so appalled and just felt so sick to my stomach and sad for J.W.” (italics added) DHS0199

D.C. posed a cross examination question to Martin as to how “was it possible that S.A. was able to see me hit Ms. J.W. with a cord while she’s outside and I’m in the room with Ms. J.W.?” Martin responded, “According to the testimony, she said that she was right outside the room. I did not hear what you saying that it was three rooms down. I’m only going by what she told me.” Martin was apparently referring to S. A’s interview and third party written statement. T p.70 11-21 D.C. then asked, “At that moment when she told she said that she said that she was completing notes. Wood Services notes – if you go back into the documentation, Wood Services notes is complete on a computer. The computer where she was completing that note at was at the supervisor office by the supervisor office door. Before you get to J.W. door, it’s about three different rooms, because J.W. room is all the way at the end of the hallway. Martin responded, “Okay.” D.C. then said, “So, if you’re at that computer completing notes, it’s impossible to see inside of J.W. room. And when —” At that point, the ALJ then suggested to D.C. that she “might want to ask if Ms. Martin inspected the physical facility and figured out who was where at the time the incident allegedly occurred.” D.C. said, “Okay.” and asked Martin, “So would you guys get any picture of

like Woods house's layout?" To which Martin responded, "No, we did not." T p.70 22 -- p.71 18 D.C. went on to question Martin about other matters - as to when her name was reported, cord marks, and phone chargers, etc. The DAG and the ALJ then conducted their Redirect questioning of Martin, as well as the recross questioning of Martin. After Martin's denial of having any floorplans, there was not any mention in the hearing concerning S.A.'s view into the room, nor of DHS0021 or DHS0199. T p.71.18 - T p.-86. At this point Martin was excused from the hearing. The question of how S.A. could see into J.W.'s room was never really asked. There were a series of statements by the Petitioner before suggestions from the ALJ led D.C. into an entirely different path of questioning.

The ALJ's finding of facts are arbitrary, capricious, and unsupported by any reliable testimony or the exhibits presented at the hearing. As pointed out in the exceptions above, the ALJ's unqualified determination of D.C.'s credibility is unsupported in the record and not justified under the cited criteria in the Initial Decision.

One of the findings of fact is that D.C. was not present in J.W.'s room when the incident occurred. ID p.7 The Woods investigation identified witnesses placing D.C. in the victim's room at the time of the abuse. The Office of Investigations interviewed each of those individuals and independently assessed their accounts, documenting their statements into a coherent investigation report. The victim reported to staff, who believe her to be credible, that D. C. was in her room hitting her with a cord; S.L. made statements (oral and written) that she witnessed D.C. in the room hitting L.W. with a cord. A.D.-C. gave a statement that she saw D.C. holding L.W.'s feet during the incident. The ALJ arbitrarily dismissed the possibility that D.C. was in the victim's room despite three eyewitness statements to the contrary.

The ALJ's failure to review the record carefully is evident in branding A.L. a liar. In A.L.'s interview, she did not say that she was in the supervisor's office actively entering CareLogic notes onto a computer, but *in the hallway*. (italics added) A.L. stated "she was in the hallway completing her CareLogic (sic) notes." In her written statement, she elaborated, "On the day of the incident, I was in the hallway of J.W.'s room, as S.D. was training me on CareLogic (sic) and I was figuring out my CareLogic (sic). As I was in the hallway J.W. came running to me asking me to help help(sic) her. D.C. and A.M. are hurting her." The ALJ's determination that A.L. could not possibly see the assault in J.W.'s room ID p.7 is without support and arbitrary.

FINAL AGENCY DECISION DISCUSSION

The Initial Decision is deeply flawed as discussed in the exceptions presented above and by the salient points presented by the DAG, in her letter brief, particularly that:

- Both Ms. Davis-Chives and J.W. herself both identify D.C. as a perpetrator of this abuse. In fact, in her interview with Investigator Martin, A.D.-C., who witnessed the conversation between J.W. and A.G. told the investigator that D.C. was holding J.W.'s feet down to keep her from moving while another employee struck her with a broom. R4 at DHS19. On December 7, 2021, J.W. told Investigator Martin explicitly that D.C. had her knees on her and "hit her multiple times with a white phone cord." R4 DHS16. A.G. stated in her interview to Investigator Martin that she believes J.W. to be credible and that she does not tell lies. R4 at DHS 24.
- The ALJ improperly concludes that S.L., another individual who reported that incident, was ultimately lying in her report of abuse. (Initial Decision at 10). Lyons'

testimony to consistent with both A.D.-C. and J.W. Lyons' told Investigator Martin that she could see Ms. Williams' room from the outside hallway where she saw D.C. hitting J.W. with a phone charger. She also reported another individual striking J.W. in the legs. R4 at DHS22. Here, the ALJ seems to find parts of A.D.-C., J.W. and Lyons' testimony credible as she finds that J.W. *was* abused by a broomstick. However, as to the abuse at the hands of D.C., which all the same individuals testified to, the ALJ simply concludes that this appears to be "a setup between staff not liking certain staff and also personal issues outside of work being brought into the work place." This conclusion is without any factual underpinnings.

- The ALJ further bases her decision on the fact that she did not believe the bruises on J.W.'s body were indicative of bruising caused by a cell phone charger. (Initial Decision at 6). The ALJ's decision is based on her own assumptions of what bruising caused by a phone charger should look like. (Initial Decision at 6). During Ms. Martin's testimony, the ALJ questioned her about the photographs of J.W.'s bruising. Martin opined that the bruises on J.W.'s leg could have been caused by the end of a broom stick handle or by a phone charger, assuming the charging block was still attached to a cord. (Initial Decision at 6). Here, the ALJ holds that the bruises, though all different sizes and shapes, were caused only by a broom. (Initial Decision at 10). The decision, however, is not supported by the record. The facts here show that J.W. had dark bruises to her lower extremities. R4 at 14. The body check revealed that sizes of the bruises ranged all different sizes, from one inch to five inches with a large concentration on the left shin and calf and on the lateral upper right thigh and hip. *Id.* The facts also show that J.W., S.L., and A.D.-C.'s report that J.W. was struck with a broom *and* a phone charger. R4. Those same reporters state that the D.C. wielded the phone charger. *Id.* The facts also show that J.W. states that she bruises easily, making it more likely that the bruise size and shape may not correspond to the item responsible for the bruise in the way the ALJ assumes it should. T81:14-24.

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 – the Initial Decision, exhibits, transcripts, and submissions - I must **REJECT and REVERSE** the Administrative Law Judge's findings and conclusions. Although the ALJ had the opportunity to assess the credibility and veracity of the witnesses, both the Petitioner and the witness for the Respondent, the assessment of both were wildly different and both were unfounded and not supported in fact when compared against the cited criteria. The credibility determinations are discussed at length above. As discussed above, evidence was mischaracterized and seemingly randomly accepted or rejected - without any discussion or analysis. The Initial Decision was improperly considered and must be corrected.

Based upon the arguments concerning the evidence presented in the Discussion of the Initial Decision (above), **I FIND AS FACT:**

- D.C. was present in J.W.'s room at the time of the incident.
- D.C. held J.W. while A.M. beat J.W. with a broom.
- D.C. hit J.W. with a white plastic cord during the incident.

- D.C.'s actions constitute abuse, as defined by the Central Registry rules, "Physical abuse means 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, the individual with a developmental disability being hit, or struck with a thrown or held object." N.J.A.C. 10:44D-1.2
- D.C.'s actions were reckless or show a careless disregard for J.W.'s health or safety. "Acting recklessly is the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for the risk. 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)

I CONCLUDE and AFFIRM THAT D.C. committed an act of Abuse, as defined in N.J.S.A. 30:6D-74 and N.J.A.C. 10:44D-1.2, against J.W. **I CONCLUDE and AFFIRM FURTHER THAT** D.C. acted with recklessness in the creation of a substantial and unjustifiable risk of harm to J.W. by a conscious disregard for that risk, or acted with careless disregard. **I CONCLUDE and AFFIRM** that there is a preponderance of the evidence in the hearing transcripts, exhibits, and reasoned exceptions demonstrating that D.C. committed an act of abuse as defined in the Statute and the Regulations. **I CONCLUDE and AFFIRM** that D.C., a caretaker, abused J.W., an individual with developmental disabilities and that D.C.'s placement on the Central Registry of Offenders Against Individuals with Developmental Disabilities is correct and proper.

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 D.C. on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

Date: 01/14/2025

Deborah Robinson

Deborah Robinson, Director
Office of Program Integrity and Accountability