



State of New Jersey

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FINAL AGENCY DECISION

OAL DKT. NO. HSL 03695-18
AGENCY DKT. NO. DRA#18-003

P.I.,
Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES,
Respondent.

P.I. appealed the finding of the Department of Human Services (DHS), that he committed an act of sexual abuse upon an individual with developmental disabilities, as defined in N.J.S.A. 30:6D-74, and the decision to place his name on the Central Registry of Offenders against Individuals with Developmental Disabilities (Central Registry). N.J.S.A. 30:6D-77.

PROCEDURAL HISTORY

The Office of Program Integrity and Accountability's Office of Investigations investigated an unusual incident concerning P.I. and an individual who receives services from the Division. By letter dated February 1, 2018, P.I. was notified that the investigation had substantiated his sexual abuse of a service recipient and that a decision whether to place his name on the Central Registry was pending. Through an attorney representing him, P.I. requested a hearing on the placement. DHS transmitted the matter to the Office of Administrative Law (OAL) where it was filed on March 9, 2018 as a contested case. A prehearing conference was conducted by Administrative Law Judge (ALJ) Thomas R. Betancourt, on April 13, 2018, and a prehearing order was entered April 16, 2018. Thereafter, the hearing was held on September 6, 2018. The record was closed on October 18, 2018, upon receipt of summation briefs from both parties. Based on the documents submitted, the ALJ issued an Initial Decision on December 5, 2018.

EXCEPTIONS

No exceptions were received.

INITIAL DECISION

The ALJ correctly cited and applied the laws governing the placement of persons on the Central Registry of Offenders against Individuals with Developmental Disabilities. The New Jersey Legislature created the Central Registry to protect the legal rights and safety of individuals with developmental disabilities by identifying those caregivers who have wrongfully caused them injury, and then preventing such caregivers from working with individuals with developmental disabilities. An individual will be listed on the Central Registry if he or she has committed an act of sexual abuse as defined at N.J.S.A. 30:6D-74, "Sexual abuse" means an act or attempted act of lewdness, sexual contact, or sexual penetration between a caregiver and an individual with a developmental disability. Any form of sexual contact or activity between a caregiver and an individual with a developmental disability, absent marriage, domestic partnership, or civil union, is sexual abuse, regardless of whether the individual with a developmental disability gives consent or the caregiver is on or off duty." A substantiation of sexual abuse shall be based upon the preponderance of the evidence found during the investigation. Inclusion on the Central Registry requires that the caregiver acted with intent, recklessness, or careless disregard to cause or potentially cause injury to a developmentally disabled individual.

Based on the testimony of two witnesses for the Department, and the testimony of the Petitioner, the ALJ made credibility assessments and determined that A.H., the Department's witness to the incident, was "very credible," stating:

"She testified in a straightforward and direct manner. She was sure of what she saw and testified accordingly. She was plainly upset by what she witnessed, and recalled the incident clearly. Her testimony conformed in all material respects with her written statement given the night of the incident and with her statement."

The ALJ determined that the investigator for the Department, C.S., was also "very credible," stating:

"She performed a thorough investigation of the allegation of sexual abuse of A.C. She interviewed all concerned, with the exception of petitioner [whose counsel had advised against an interview – and for which the ALJ drew no adverse inferences]. Additionally, [she] collected a good deal of documentary evidence in her investigation. She concluded, based upon the preponderance of the evidence collected, that the allegation of sexual abuse by petitioner upon A.C. was substantiated. Her testimony in this regard was direct and clear. She based her decision upon what was said by [two witnesses], as well as others interviewed, and upon her review of relevant documents."

The ALJ determined that the testimony of the petitioner was not credible, stating:

"He put forth a farcical tale of sex for a loan, baggy pants with no belt, and a woman angered by not receiving a loan as the explanation of what [A.H.] plainly saw. Making his tale all the more unbelievable was his assertion that [A.H.] offered sex for a loan that was not for her, but for [a third person]."

The ALJ also reviewed the documents submitted at the hearing and the summation briefs submitted by the attorneys for both parties. The ALJ found as **FACT**:

- [A.H.] was employed at the Center and worked the 11:00 p.m. to 7:00 a.m. shift on April 8–9, 2017.
- Petitioner was employed at the Center and worked the 11:00 p.m. to 7:00 a.m. shift on April 8–9, 2017.
- A.C. was a resident at the Center on April 8–9, 2017, and is a developmentally disabled individual. A.C. is autistic and nonverbal. [A.H.] was assigned to care for A.C. on this shift.
- On the morning of April 9, 2017, at approximately 12:30 a.m., [A.H.] noticed that A.C. was not in her bed. [A.H.] went to look for A.C. and found her in the men’s bathroom in a stall with petitioner.
- Petitioner and A.C. were both standing in the stall and were facing each other. A.C.’s pajamas and pull-up were down at her knees and her genital area was exposed.
- Petitioner’s pants and underwear were down at his ankles.
- When [A.H.] spoke petitioner’s name, he replied, “It’s not what you think,” and began pulling up his pants.
- [A.H.] left the men’s bathroom to find her supervisor, who was coming down the hall at that time.
- She returned to the men’s bathroom with [her supervisor] shortly thereafter and found petitioner coming out of the stall fixing his pants and belt.
- A.C. was still in the stall, and [A.H.] assisted her in pulling up her pull-up and pajamas.
- [A.H.] did not witness any sexual act between petitioner and A.C., as the curtain to the stall was closed.
- Petitioner engaged in an inappropriate act of a sexual nature with A.C.

Applying the statute, the ALJ found that the Department had properly substantiated that P.I. had, as a caregiver, sexually abused A.C., an individual with developmental disabilities. Citing the regulations at N.J.A.C. 10:44D-4.1(b), which define acting intentionally, recklessly, or with careless disregard as necessary for placement on the Central Registry, the ALJ found that “the placement of petitioner on the Central Registry is supported by the clear preponderance of the credible evidence, most notably the testimony of [A.H.]”.

For the foregoing reasons, the ALJ **CONCLUDED** that the substantiation of sexual abuse against A.C. by petitioner, and the Department’s determination to place P.I. on the Central Registry should be affirmed. The ALJ’s Initial Decision **ORDERED** that the finding of substantiation of sexual abuse of a developmentally disabled individual by petitioner and his placement on the Central Registry are **AFFIRMED**.

FINAL AGENCY DECISION

Pursuant to N.J.A.C. 1:1-18.1(f) and based upon a review of the ALJ's Initial Decision and the entirety of the OAL file, I concur with the Administrative Law Judge's findings and conclusions. The ALJ had the opportunity to assess the credibility and veracity of the witnesses. I defer to his opinions concerning these matters, based upon his observations described in the decision. **I CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that P.I. committed an act of sexual abuse against A.C., an individual with developmental disabilities, and that P.I.'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 P.I. on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: January 2, 2019



Lauri Woodward, Director
Office of Program Integrity and Accountability