



State of New Jersey

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FINAL AGENCY DECISION

OAL DKT. NO.: HSL 12944-19
AGENCY DKT. NO.: DRA #19-008

A.W.,
Petitioner,

v.

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

A.W., petitioner, pro se

Gregory J. Sullivan, Deputy Attorney General, for respondent, (Gerbir S. Grewal,
Attorney General, State of New Jersey)

STATEMENT OF THE CASE

Respondent, New Jersey Department of Human Services (DHS) sought to place petitioner's name on the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry), for having committed substantiated acts of abuse and neglect of an individual with developmentally disabilities. Petitioner appealed the matter. DHS filed a Motion for Summary Decision, asserting petitioner has admitted to his actions and there existed no dispute as to whether or not such actions constituted abuse and neglect of an individual with developmentally disabilities, requiring petitioner's name to be placed on the central registry. Petitioner opposes the motion.

PROCEDURAL HISTORY

Respondent, DHS, notified petitioner by letter, dated August 15, 2019, of its intent to place petitioner's name on the central registry. Petitioner appealed by letter of September 6, 2019. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on September 16, 2019, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13.

Respondent filed a Motion for Summary Decision on February 20, 2020. Petitioner submitted a letter, dated July 22, 2020, in opposition to the motion. On August 17, 2020, petitioner submitted a response to respondent's statement of material facts. Respondent submitted its letter brief reply on August 18, 2020.

EXCEPTIONS TO INITIAL DECISION

Due to the COVID-19 pandemic, the Governor of the State of New Jersey issued an Executive Order on March 9, 2020, declaring a public health emergency, which emergency continued until June 4, 2021. The time for the completion of administrative decisions was extended by Executive Order of the Governor, due to the public health emergency. The Administrative Law Judge issued her Initial Decision on October 16, 2020.

On June 4, 2021, the Governor of the State of New Jersey rescinded the public health emergency for Initial Decisions issued during the pandemic. Exceptions to such Initial Decisions were due on June 17, 2021; no exceptions have been received from either party.

INITIAL DECISION'S FACTUAL DISCUSSION AND FINDINGS

The Administrative Law Judge, in her Initial Decision, found the following undisputed facts from the written submissions of the parties, which she adopted and **FOUND** as **FACTS**:

As of October 13, 2018, petitioner was employed by Bellwether Behavioral Health as a direct-support professional in a group home for individuals with developmentally disabilities. On that date, G.F.¹ was a resident of the home. G.F. suffers from severe intellectual disabilities and is unable to verbally communicate. G.F. requires constant supervision. A direct-support professional caregiver is always required to stay with G.F.

Petitioner was working on October 13, 2018, and was assigned to G.F. to provide one-to-one care. At approximately 5:00 a.m. on October 13, 2018, petitioner left G.F. alone in their bedroom in the home, to turn off an alarm sounding elsewhere in the home, and to use the bathroom. Petitioner tied G.F. to a chair with a gait belt and a pillowcase before he left the room.

¹ Initials of the resident and gender-neutral pronouns, although not grammatically correct, are used for confidentiality purposes.

Shanell Baker, a Bellwether Behavioral Health Site Manager, performed an overnight quality assurance check at the home on October 13, 2018. At approximately 5:30 a.m. she discovered G.F. alone in their room, tied to a chair with a gait belt and what appeared to be a bed sheet. She observed G.F. to be in a t-shirt and diaper. She reported that G.F. was saturated in urine, there was urine under the chair on the floor, and the room smelled of urine.

DHS determined there was substantiated abuse of G.F. by petitioner, for having tied G.F. into a chair with a gait belt and pillowcase. DHS determined there was substantiated neglect of G.F. by petitioner, for leaving G.F. alone. DHS seeks to place petitioner's name on the Central Registry.

Petitioner denies that he abused or neglected G.F. Petitioner asserts the facility was short staffed and he was not properly trained to care for G.F. Petitioner contends he called for help multiple times on October 13, 2018, and no co-workers came to assist him or answered the alarm sounding elsewhere in the home. Petitioner secured G.F. in a chair to make sure G.F. could not fall or pull out their feeding tube, and to prevent G.F. from incurring head or other bodily injury. Petitioner took these precautions to keep G.F. safe while he left the room for purportedly less than five minutes. During the time G.F. was alone, G.F. did not suffer any bodily injuries. Petitioner denies acting with intent, recklessness, or careless disregard toward G.F. He denies acting with negligence, recklessness, or a pattern of behavior that could have caused harm to G.F.

INITIAL DECISION'S LEGAL ANALYSIS AND CONCLUSION

In an administrative law matter, a "party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits" and the decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The non-moving party will prevail if they "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." *Id.*

This standard for a summary judgment motion is set forth in New Jersey Court Rule 4:46-2, which is substantially equivalent to an administrative law summary decision motion. In *Brill v. Guardian Life Insurance Co. of America*, 142 N.J. 520 (1995), the New Jersey Supreme Court stated:

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

Brill, 142 N.J. at 540.

“The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.’” Brill at 540, citing Anderson v Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial.” Brill at 530, citations omitted. “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” In re Farmers’ Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

Here, DHS asserts petitioner’s actions resulted in abuse and neglect of an individual with developmental disabilities. Petitioner does not dispute his actions. Rather, he contends that his actions did not constitute abuse or neglect. The Administrative Law Judge, in her Initial Decision, **CONCLUDED** there is no genuine issue of material fact in dispute, as the parties agree upon the factual actions of petitioner. The Administrative Law Judge, in her Initial Decision, **CONCLUDED** that the matter is ripe for summary disposition.

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

Abuse is defined as “wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse, or verbal or psychological abuse or mistreatment by a caregiver upon an individual with a developmental disability.” N.J.S.A. 30:6D-74; N.J.A.C. 10:44D-1.2. To be placed on the registry “in the case of a substantiated incident of abuse, the caregiver shall have acted with intent, recklessness, or careless disregard to cause or potentially cause injury to an individual with a developmental disability.” N.J.S.A. 30:6D-77b(1). In the situation of abuse, the statutes and regulations define the mental states of intent, recklessness, and careless disregard to cause or potentially cause injury to an individual with a developmental disability as follows:

Acting intentionally is the mental resolution or determination to commit an act.

Acting recklessly is the creation of a substantial and unjustifiable risk of harm, to others by a conscious disregard for that risk.

Acting with careless disregard is the lack of reasonableness and prudence in doing what a person ought not do or not doing what ought to be done.
N.J.S.A. 30:6D-77(b); N.J.A.C. 10:44D-4.1(b).

Neglect is defined as consisting of “any of the following acts by a caregiver on an individual with developmental disability: willfully failing to provide proper and sufficient food, clothing, maintenance, medical care, or a clean and proper home; or failing to do or permit to be done any act necessary for the well-being of an individual with a developmental disability.”

N.J.S.A. 30:6D-74; N.J.A.C. 10:44D-1.2. “For inclusion on the central registry in the case of a substantiated incident of neglect, the caregiver shall have acted with gross negligence, recklessness, or in a pattern of behavior that causes or potentially causes harm to an individual with a developmental disability.” N.J.S.A. 30:6D-77b(2). In the situation of neglect, the statutes and regulations define gross negligence, recklessness, and a pattern of behavior as follows:

Acting with gross negligence is a conscious, voluntary act or omission in reckless disregard of a duty and of the consequences to another party.

Acting with recklessness is the creation of a substantial and unjustifiable risk of harm to others by a conscious disregard for that risk.

A pattern of behavior is a repeated set of similar wrongful acts.
N.J.S.A. 30:6D-77(c); N.J.A.C. 10:44D-4.1(c).

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

In the realm of registry cases regarding a certified nurse aide, an Administrative Law Judge determined that a CNA who tied a nursing facility resident’s wheelchair to a hallway railing with a trash bag, required that a finding of abuse and neglect was to be entered next to the CNA’s name on their central registry. Carmen Amador v NJ Department of Health, OAL docket no. HLT 00555-16, decided March 16, 2017. The Commissioner of the Department of Health adopted the ALJ’s findings and conclusions, which were also affirmed by the Appellate Division in an unpublished decision, Amador v New Jersey Dept. of Health, 2018 N.J. Super Unpub LEXIS 1323*, June 7, 2018. The statutes and regulations in effect to protect nursing facility residents from abuse or neglect by caregivers, are substantially analogous to those in effect to protect individuals with developmentally disabilities from abuse or neglect by their caregivers. See, N.J.S.A. 52:27G-1; N.J.A.C. 8:39-4.1(a)(5); N.J.A.C. 9:39-4(a)(12); N.J.S.A. 52:27G-2(a); N.J.A.C. 8:39-43.7.

Here, DHS asserts that petitioner’s action in tying G.F. to a chair constituted abuse. In the Amador matter, the CNA asserted that she jokingly used the trash bag to secure the 104-year-old resident’s wheelchair to the hallway railing. In this matter, petitioner contends it was his intent to protect G.F. when tying G.F. to a chair, to prevent G.F. from harming themselves, or pulling out their feeding tube. Petitioner asserted he was not properly trained to care for G.F. and the home was short staffed. Although petitioner is asserting his actions were done for a protective purpose, and not as a joke, as in the Amador situation, it does not abdicate his responsibility to tend to G.F. on a one-to-one basis, in a responsible and cruelty-free manner.

The Administrative Law Judge, in her Initial Decision, **CONCLUDED** that petitioner acted intentionally, with the mental resolution to secure G.F. to the chair. Despite petitioner’s assertion that he tied G.F. to the chair to protect him, petitioner knew that G.F. was an individual with developmentally disabilities and was not to be left alone. The Administrative Law Judge

CONCLUDED that such action was recklessly done, constituted mistreatment of G.F., and created an unjustifiable risk of harm to G.F. for being bound to the chair. It was unreasonable and imprudent for petitioner to tie G.F. to a chair, which carelessly disregarded G.F.'s needs. The Administrative Law Judge thus **CONCLUDED** that tying G.F. to a chair was an act of abuse as defined by the regulations, warranting petitioner's name to be listed on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

DHS asserts that petitioner neglected G.F. by leaving G.F. alone in his room. Petitioner counters that he did not neglect G.F. Petitioner secured G.F. to ensure G.F.'s safety, while petitioner stepped out of the room for a few minutes to tend to an alarm elsewhere in the building, and to utilize the bathroom for himself. He contends he was forced to do so because no other caregiver responded to his calls for assistance, justifying his action in leaving G.F. alone, and no physical harm occurred to G.F. while they were alone. The Administrative Law Judge **CONCLUDED** that petitioner consciously acted to leave G.F.'s room to tend to other matters. The Administrative Law Judge **CONCLUDED** such action was reckless, leaving G.F. at risk of harm, and constituted failure to provide proper care, as petitioner knew G.F. was not to be left alone, and petitioner was assigned the one-on-one responsibility of caring for G.F. on the date in question. Petitioner disregarded his duty to G.F. and placed his own personal concerns above G.F.'s needs. The Administrative Law Judge thus **CONCLUDED** petitioner neglected G.F. as defined in the regulations, warranting petitioner's name to be listed on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

Based upon the foregoing, the Administrative Law Judge **CONCLUDED** that respondent, DHS, had demonstrated by a preponderance of the evidence, and as a matter of law, that the petitioner's name should properly be listed on the Central Registry. The Administrative Law Judge **CONCLUDED** respondent's Motion for Summary Decision, and the relief requested, should properly be **GRANTED**.

INITIAL DECISION'S ORDER

The Administrative Law Judge **ORDERED** that respondent's Motion for Summary Decision be **GRANTED**. The Administrative Law Judge **ORDERED** that petitioner's name shall be placed on the Central Registry of Offenders Against Individuals with Developmental Disabilities, for having abused and neglected a developmentally disabled individual. Petitioner's appeal was therefore **DISMISSED**.

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. I **CONCLUDE and AFFIRM** that A.W. acted intentionally, with the mental resolution to secure G.F. to a chair. Despite A.W.'s assertion that he tied G.F. to the chair to protect him, A.W. knew that G.F. was an individual with developmentally disabilities and was not to be left alone. I **CONCLUDE AND AFFIRM** that such action was recklessly done, constituted mistreatment of G.F., and created an unjustifiable risk of harm to G.F. for being bound to the chair. It

was unreasonable and imprudent for A.W. to tie G.F. to a chair, which carelessly disregarded G.F.'s needs. I **CONCLUDE AND AFFIRM** that tying G.F. to a chair was an act of abuse as defined by the regulations, warranting A.W.'s name to be listed on the Central Registry of Offenders Against Individuals with Developmental Disabilities. Therefore, the matter was correctly decided by way of summary decision because there were no relevant facts in dispute that would necessitate a hearing, as a matter of law.

I **FURTHER CONCLUDE and AFFIRM** that A.W., despite his protestations, consciously acted to leave G.F.'s room to tend to other matters. I **CONCLUDE and AFFIRM** that such action was reckless, leaving G.F. at risk of harm, and constituted failure to provide proper care, as A.W. knew G.F. was not to be left alone, and A.W. was assigned the one-on-one responsibility of caring for G.F. on the date in question. A.W. disregarded his duty to G.F. and placed his own personal concerns above G.F.'s needs. I **CONCLUDE and AFFIRM** that A.W. neglected G.F. as defined in the regulations, warranting petitioner's name to be listed on the Central Registry of Offenders Against Individuals with Developmental Disabilities. Therefore, the matter was correctly decided by way of summary decision because there were no relevant facts in dispute that would necessitate a hearing, as a matter of law.

I **CONCLUDE and AFFIRM** that there is a preponderance of the evidence demonstrating that A.W. abused and neglected an individual with developmental disabilities and that A.W.'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 A.W. on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: July 22, 2021

Lauri Woodward

Lauri Woodward, Director
Office of Program Integrity and Accountability