



## State of New Jersey

PHILIP D. MURPHY  
GOVERNOR

DEPARTMENT OF HUMAN SERVICES  
OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY  
PO Box 700  
TRENTON, NJ 08625-0700

CAROLE JOHNSON  
COMMISSIONER

SHEILA Y. OLIVER  
LT. GOVERNOR

LAURI WOODWARD  
DIRECTOR

### FINAL AGENCY DECISION

OAL DKT. NO. HSL 18168-16  
AGENCY DKT. NO. DRA#16-005

**S.R.,**

Petitioner,

v.

**DEPARTMENT OF HUMAN SERVICES,**

Respondent.

S.R. appealed the finding of the Department of Human Services (DHS), that she committed acts of financial exploitation against three individuals with developmental disabilities, as defined in N.J.S.A. 30:6D-74, and the decision to place her 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 that was reported to it concerning S.R. and individuals receiving services from the Division of Developmental Disabilities. By letter dated September 19, 2016, S.R. was notified that the investigation had substantiated financial exploitation of service recipients and had recommended to place her name on the Central Registry. S.R. requested a hearing on the placement and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 1, 2016 as a contested case. Hearings were scheduled for June 16, 2017, August 4, 2017, and December 4, 2017, but were adjourned. On October 27, 2017, S.R.'s attorney filed a motion for summary decision. The motion was refiled on December 4, 2017, after conferences with the previously-assigned Administrative Law Judge. The Department filed an opposition brief on December 22, 2017, and the respondent's reply brief was filed on December 26, 2017. The motion for summary decision was denied on January 8, 2018.

The matter was assigned to Administrative Law Judge (ALJ) Judith Lieberman on March 22, 2018. A hearing was conducted on August 10, 2018, after which the attorneys

representing the parties filed written submissions. The Department's brief was received October 15, 2018, and S.R.'s brief was received November 30, 2018. The record closed November 30, 2018.

**EXCEPTIONS:**

The Deputy Attorney General (DAG) representing the Department filed a procedural exception that the record of the proceedings should not be held under seal. The Order to Seal had been entered by the previous ALJ on November 14, 2017. The DAG correctly maintains that initial decisions and final-agency decisions involving the Central Registry Act, N.J.S.A. 30:6D-77 to -82, were never intended to be sealed from the public. In Initial and Final Agency Decisions, initials are used in place of full names, a practice which adequately safeguards the identities of victims and petitioners.

Having decisions available in Central Registry cases stimulates transparency in the adjudicatory process, educates the public and members of the bar on this developing area of the law. The availability of these decisions provides an invaluable precedential resource for use in the Office of Administrative Law. There are cases falling outside the context of the Central Registry, particularly ones that involve child abuse that fully warrant the entry of an order to seal. In this case, however, such an order serves no tenable purpose.

No reply to the exception by the DAG was received from the petitioner's attorney.

The Department contends that the Order to Seal was entered improvidently in this case. Further, as a general rule, such orders should not be used in Central Registry cases. Therefore, the order to seal is vacated and the petitioner and any victims will be identified by initials in the decisions concerning this matter and any subsequent release of documents, such as transcripts or evidence (such releases shall comply with all state and federal laws concerning confidentiality, such as HIPAA and the Central Registry).

**INITIAL DECISION:**

Testimony and Evidence

Four witnesses testified for the Department.

1. Edith Cuenco, Program Coordinator in August 2015 who supervised the operation of the Arc's group homes, and was the petitioner's direct supervisor.
2. Phil Giordano is The Arc Unusual Incident Reports/HIPAA Coordinator. He prepared the agency's Initial Incident Report concerning the allegations against S.R.
3. John Whitehead is the interim Arc CEO. In August 2015, he was the Director of Community Living and the head administrator for the department in which the incident occurred.
4. Janet McPhee is a Quality Assurance Specialist/Investigator, with the Department of Human Services, Office of Investigations. She interviewed Arc personnel, administrative staff, and residents. She attempted to speak with S.R., who declined based on her counsel's advice.

No witnesses testified for the petitioner. The Department introduced the following documentary evidence: Receipts, a Division of Developmental Disabilities Incident Report, Initial Incident Report, and the DHS Unusual Incident Report.

Edith Cuenco testified that only she and the petitioner had access to the residents' funds. During the summer of 2015, Cuenco received a complaint concerning financial irregularities and was advised that a staff member asked S.R. if staff could shop for food, because there was no food in the house. Staff members then reviewed receipts of prior food purchases and came to believe that S.R. had shopped for food a few days earlier, although the staff did not find food in the home. Cuenco reviewed the receipts and observed that there was a "long grocery list" but the food was not in the home.

Cuenco then reviewed receipts for all purchases. She found records that caused her to question payments to a nail salon, which were made with residents' funds. She asked the nail salon about a visit corresponding to a receipt and was told that Arc residents had not been present in the salon; the petitioner was there with a man and two children. Cuenco discovered other purchases made with residents' funds, including at Michael's, Walmart, and a mall clothing store. She believed the purchases were not made for the residents because the items were not found in the home. Cuenco also discovered receipts for purchases of infant clothing at Kohl's.

Relying upon the available receipts, Cuenco determined that S.R. used three residents' funds to make purchases that were not for the benefit of the residents. Cuenco determined that \$244.62 of T.H.'s funds had been inappropriately utilized by S.R. Cuenco identified a total of \$141.97 from resident B.H.'s funds had been used by S.R. Cuenco found that, on August 15, 2015, S.R. spent ten dollars of resident K.R.'s funds at Town Nails. Cuenco also found information suggesting that a check written to a resident, for \$42.45, was cashed, but the proceeds were not placed into the resident's account. The records concerning the check indicate S.R. was involved with the transactions.

Cuenco confronted the petitioner. Cuenco believed the petitioner "basically" admitted misuse of The Arc and clients' funds because she did not deny using the funds and said, "I don't know what ... happened and what I did[.]" S.R. told Cuenco she did not have enough money to purchase groceries for herself, her boyfriend and two children. Cuenco approached her supervisor, John Whitehead, and asked him to not pursue a criminal investigation.

The petitioner gave The Arc two money orders, for \$254.38 and \$500, which totaled \$754.38. Cuenco prepared a formal incident report in which she memorialized the payments:

"The Arc of Warren County made an agreement with [S.R.] stating if she reimbursed The Arc for the full amount, they would not pursue criminal charges against her. On September 25, 2015, [S.R.] reimbursed The Arc for the full amount of \$754.38. This amount includes the money exploited from Consumers [T.H., B.F. and K.R.] contained on the initial EX135 UIR (UIRMS #15-381263), as well as the amount of money directly stolen from The Arc of Warren County, \$315.34, which was reported as a CR400 UIR, UIRMS #15-381119." (R-2.)

Phil Giordano wrote that, on August 24, 2015, two staff members informed S.R. that they needed to purchase food for the home, "as food items were running low." S.R. told them they could not shop for groceries for a week. The two staff members discovered a Walmart receipt for items purchased with the Arc's Walmart charge card. A total of \$315.34 was spent on August 14, 2015. The two staff members could not find the items listed on the receipt in the house. Giordano reported that the Walmart grocery purchases were made only with the charge card and not client funds, thus, there was not a "consumer victim." The Hackettstown Police Department was notified on August 24, 2015.

Giordano learned that, on August 24, 2015, S.R. met with Department Director John Whitehead, Assistant Department Director Dori Howell, and Cuenco; they agreed that S.R. would repay an amount calculated by Cuenco, which would represent both misused Arc funds and residents' funds, and the Arc would not press charges. S.R. was terminated that day. The Arc was required to report the incident to the State, notwithstanding S.R.'s agreement to repay the money.

John Whitehead testified that two staff members approached him and the Assistant Director to advise that they were concerned that food and other items were missing. They said that grocery shopping had been done but there was very little food in the house. They were concerned that the residents were being taken advantage of. They expressed concern about S.R. Whitehead relied upon the audit findings of misused funds.

The police department was contacted; S.R. "agreed right away that she would ... repay the funds that were taken and the money for the groceries that were purchased that weren't hers." Giordano advised Arc CEO Bob Pruznik of this agreement. The Arc agreed not to pursue criminal charges, if S.R. paid the money back. S.R. returned the money and was terminated.

Janet McPhee audited the accounting sheets and receipts. McPhee concluded there was a preponderance of evidence supporting the charge that S.R. exploited three residents. The fact that S.R. reimbursed the Arc was particularly compelling evidence. She did not believe reimbursement would be made had there not been wrongdoing. McPhee's findings were reported in the "Usual Incident Report." In the report, McPhee wrote, "The \$315.34 worth of items ... purchased using Arc's charge account," was not consumer funds.

McPhee specifically identified the amount of money that was misappropriated from the funds of the service recipients living in the home. A Hackettstown Police Department report was included in McPhee's Unusual Incident Report. That report included entries made on August 26, 2015, and August 27, 2015. The reporting officer wrote that he spoke with Cuenco, who alleged S.R. used residents' money to purchase items for herself. The officer wrote:

"Edith [Cuenco] produced sales receipts showing these purchases. Edith stated she checked through the residence and didn't find the purchases made. Edith stated the money was stored in a safe and only she and [S.R.] had access to it. Edith showed this officer the money is stored in a zipper pouch, in binders with the resident's initials on it. The safe is located in the office of the home and had no signs of forced entry. Edith stated the following residents were missing money: [B.F.] \$141.97, [K.R.] \$18.00, and [T.H.] \$314.62."

#### ALJ's Evidence Determinations

It is the obligation of the ALJ to weigh the credibility of the witnesses. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. As the fact finder, the ALJ had the ability to observe the demeanor, tone, and physical actions of the witnesses during the hearing. The ALJ found that Edith Cuenco testified calmly and directly and demonstrated that she approached her duties at The Arc in a professional manner. She appeared to have responded to the incident fairly and exhibited no bias or interest in the outcome during her investigation of the matter. Her testimony was bolstered by the police report contained in the Department's Unusual Incident Report as well as by the testimony of Investigator McPhee, who also credibly testified concerning her evaluation of the evidence. The ALJ found Cuenco's testimony to be credible. The ALJ stated that Investigator McPhee also testified credibly.

The ALJ correctly explained, in the initial decision, the allowable use of hearsay evidence in Administrative Law hearings. The ALJ cited to the residuum rule where if “hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1971)” The ALJ also cited to the admissibility of statements made by declarants which are contrary to the declarant’s pecuniary, proprietary, or social interests; regardless of the declarant’s availability as a witness. N.J.R.E. 803(c) (25).

### ALJ’s Findings

The ALJ **FOUND** the petitioner misappropriated over \$100 of the residents’ funds. The ALJ correctly analyzed the evidence to separate the individual service recipients’ money from the money misappropriated from S.R.’s employer – Arc. The ALJ further **FOUND**, that by reimbursing The Arc all of the funds at issue, the petitioner acknowledged having misused those funds.

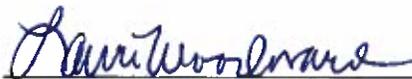
The New Jersey Legislature created the Central Registry to protect the legal rights and safety of individuals with developmental disabilities by identifying those caregivers who have wrongfully caused them injury, and then preventing such caregivers from again working with individuals with developmental disabilities. The ALJ **FOUND** the Department produced evidence that the petitioner misused residents’ funds in excess of \$100. The petitioner acknowledged this when she repaid the funds she misused. The ALJ **FOUND** that respondent has proven by a preponderance of the undisputed, credible evidence that petitioner exploited individuals with developmental disabilities, and her placement on the Central Registry was appropriate. The ALJ **ORDERED and AFFIRMED** the placement of S.R.’s name on the Central Registry.

### **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 her opinions concerning these matters, based upon her observations described in the decision. **I CONCLUDE and AFFIRM** that the Department has met its burden of proving sufficiently that S.R. committed an act of exploitation, in excess of \$100, against individuals with developmental disabilities, and that S.R.’s placement on the Central Registry is 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 S.R.’s name on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Date: February 14, 2019



Lauri Woodward, Director  
Office of Program Integrity and Accountability