



State of New Jersey

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FINAL AGENCY DECISION
OAL DKT. NO. HSL 01385-17
AGENCY DKT. DRA #17-002

I.G.,

Petitioner,
v.

**NEW JERSEY DEPARTMENT
OF HUMAN SERVICES,**

Respondent.

PROCEDURAL HISTORY

Petitioner, I.G., appealed the finding of respondent Department of Human Services (DHS) that she committed an act of physical abuse, as defined in N.J.S.A. 30:6D-73 et seq., against a service recipient of the Division of Developmental Disabilities (DDD), and the decision of respondent to place her name on the Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry). N.J.S.A. 30:6D-77.

DHS’s Office of Program Integrity and Accountability investigated a report that S.H., an individual who receives services from the DDD, had suffered abuse at the hands of I.G. and J.B. On December 20, 2016, the Department notified petitioner that the investigation had substantiated an allegation of abuse against her and that her name would be placed on the Central Registry. On January 26, 2017, petitioner requested an appeal, and the Department transmitted this matter to the Office of Administrative Law (OAL), where it was filed as a contested case on January 30, 2017, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

An Amended Order to Seal was entered on September 12, 2017, covering records provided by DHS as confidential information, pursuant to N.J.S.A. 30:4-24.3. A hearing was conducted on April 18, April 22, July 17, and July 19, 2019. The record remained open to allow submissions. The record closed on March 3, 2020, following receipt of post-hearing briefs. The Administrative Law Judge issued an Initial Decision on the matter on April 17, 2020.

EXCEPTIONS

Because the Initial Decision was entered during the Public Health Emergency declared by the Governor under Executive Order number 103, the time period for submitting exceptions was stayed until June 4, 2021, when certain aspects of the Public Health Emergency were suspended. The thirteen-day period for the submission of exceptions elapsed on June 17, 2021. No exceptions were received in this matter.

FACTUAL DISCUSSIONS AND FINDINGS OF THE INITIAL DECISION

The Initial Decision included a wide-ranging variety of testimony, presented in an almost conversational manner. The testimony of each witness was only lightly edited in this Final Agency Decision to add clarity to the narratives. In this hearing, the credibility of the witnesses was of the utmost importance, with diametrically opposing narratives of events being proffered by some of the witnesses. Only by including such detailed descriptions of each witness' testimony, can the Administrative Law Judge's veracity and credibility determinations be understood.

Kiana Mercedes Blocker testified on behalf of the respondent. On October 8, 2015, while employed at Bancroft, she witnessed I.G. physically abuse service recipient S.H. She first started working at Bancroft in 2015 and is still employed there. I.G. and J.B. were both Program Associates at Bancroft on October 8, 2015, when Ms. Blocker witnessed them injure S.H. S.H. was repeatedly requesting a beverage, and Ms. Blocker recalled J.B. reaching to get a cord and hitting and striking S.H. with it. Ms. Blocker described the cord as thick. J.B. struck S.H. in the legs and then she passed the cord to I.G. who then hit S.H. with the cord. S.H. moved suddenly and I.G. struck her with the cord in her forehead. Initially, Ms. Blocker believed she was hitting her in her legs but was not sure. I.G. appeared to be shocked when she struck S.H. in the face and tried to wipe her face with a napkin. Ms. Blocker believes she saw the skin was not on her forehead.

Ms. Blocker immediately texted Caleb Wilder and later wrote a statement about the incident involving I.G. and J.B. and S.H. Ms. Blocker heard I.G. and J.B. tell Mr. Wilder that S.H. was hit with a chair by another service recipient, K.O., which was false. An investigation by the State was conducted in addition to the internal investigation by Bancroft. Ms. Blocker was contacted, via text, by I.G. concerning the investigation. I.G. had asked Ms. Blocker if she had been interviewed yet. Ms. Blocker understood that I.G. wanted her to say that Ms. Blocker was not present when the incident occurred, which was false. Ms. Blocker gave a statement and a telephone interview to Ms. Gonzalez, the State investigator. Ms. Blocker was not aware of Mr. Wilder retaliating against I.G. or being romantically interested in I.G. She was not aware of Mr. Wilder ever harassing I.G. She was not having an affair with Mr. Wilder and any statements by I.G. and J.B. to the contrary are false. Ms. Blocker did not have a vendetta against I.G.

On cross-examination, Ms. Blocker reviewed her handwritten statement from October 8, 2015, prior to testifying. She spoke with Nancy Gonzalez twice in-person and once on the telephone. Ms. Blocker did not recall who she was assigned to on October 8, 2015. Ms. Blocker knows I.G, J.B. and S.H. were present in the day room at the time of the incident. Ms. Blocker did not complete an incident report on October 8, 2015, she gave a handwritten statement of what she observed at the request of Mr. Wilder. After witnessing her two co-workers assault a person served, she left whoever she was assigned to, alone in the room - not watching her individual served during this time. Ms. Blocker recalls the nurse looking at S.H.'s injury. She does not recall any conclusions discussed as to the cause of the injury.

Blocker's statement indicates that I.G. and J.B. "beat" S.H. with the cord. S.H. was standing when the beating took place, as were J.B. and I.G. They hit S.H. in the leg, but Ms. Blocker did not know what part of the leg or which leg. Ms. Blocker was shocked but did not do anything to stop it. She cannot recall how many times J.B. beat S.H. but knows for sure it was once. Ms. Blocker could not remember S.H.'s reaction to the beating whether she yelled or made a noise. I.G. was to the right of S.H. I.G. received the cord from J.B. but does not recall how she passed the cord to her. She does not know how many times I.G. hit S.H. but knows she hit her once. It may have been twice. According to her statement, I.G. was trying to hit S.H. in her leg and missed and hit her in the forehead when S.H. moved backward. They panicked after S.H. was injured and I.G. tried to take a napkin and wiped S.H.'s forehead.

Ms. Blocker does recall when she came back into the room after the incident, where Mr. Wilder was already present. J.B. stated "That's your boy" referring, that Ms. Blocker had been assigned to K.O. J.B. said that K.O. threw a chair at S.H. Mr. Wilder left the room to get the nurse. When he left, J.B. and I.G. were trying to figure out a way to cover up what happened; and J.B. looked at the tracking sheet for K.O., saw he went off that day, and was going to write an Incident Report saying K.O. threw the chair at S.H. Ms. Blocker recalls reporting that to Mr. Wilder that J.B. and I.G. were going to write an incident report using K.O.'s tracking data.

Ms. Blocker was aware that J.B. and I.G. claimed that on October 8, 2015, Ms. Blocker was not in the room. She did not know they claimed that she left the room and left K.O. in the back room, and that while she went to see Mr. Wilder, K.O. threw a chair at S.H. When shown her October 22, 2015, statement, she agreed that her statement, closer in time to the incident, would be the most accurate. She does not believe she took her person served with her when she left the room, but she does not know.

Ms. Blocker gave a telephone statement to Ms. Gonzalez on November 6, 2015, to which Ms. Blocker made corrections on November 9, 2015, and initialed same. In that statement she said she was assigned to K.O. on the day of the incident and was not sure if she also had R.F. or A.V. When the incident occurred, she stated that K.O., R.F. and A.V. were present and that H.N. had left with Ms. Holloway. When she exited the room after the incident to tell Mr. Wilder, she did not take anyone with her. J.B. took K.O. to see his mother after the incident with S.H. Ms. Gonzalez advised Ms. Blocker that it was reported that she was not in the room when K.O. threw the chair at S.H. Ms. Blocker wrote that this was not correct. K.O. was with her the whole time and never threw a chair that day. She was with him until he left to go out with his mother. Ms. Blocker witnessed the incident where I.G. hit S.H. with a cord on her forehead, but they both hit S.H. with the cord. As of November 6, 2016, she was aware of the claim that she was not there when K.O. threw a chair at S.H.

In Ms. Blocker's statement of November 6, 2015, she witnessed S.H. seated at the table in between I.G. and J.B. A soda was present and S.H. kept asking for soda. J.B. picked up a charger cord and hit S.H. in the leg and then passed it to I.G., who tried to hit her leg. S.H. moved back and put her head forward. I.G. hit S.H. in the forehead, when trying to hit her leg. In Ms. Blocker's statement, she indicated that I.G. and J.B. did not report the incident immediately, but Ms. Blocker did. Ms. Blocker told the investigator that when she came back, they were looking for how they were going to cover it up. Ms. Blocker admits that her second statement may be inconsistent with her first statement as it was written a month earlier. She could not state at the hearing when she told Mr. Wilder about I.G. and J.B. talking, when she first went to his office or when she came back from his office. Ms. Blocker could only say that she reported the incident to Mr. Wilder and did not remember. Ms. Blocker has not seen the complete investigation report of Ms. Gonzalez.

Ms. Blocker had a telephone conversation with Investigator Nancy Gonzalez on August 22, 2016. Ms. Blocker said she did not recall who took the cord out of the wall.

However, it implies that she saw the cord being taken out of the wall -- she just does not remember who took it out. The other question by the investigator was who struck S.H. first, to which Ms. Blocker replied that she did not recall, but she knew both I.G. and J.B. hit S.H. She was sure it was I.G. that caused the injuries to S.H.'s forehead. She indicated that she provided a written statement about an hour after it happened and that one would be the most accurate. On August 22, 2016, in her interview with the investigator, Ms. Blocker could not recall who beat S.H. first. At the hearing, under oath, she recalls it being J.B.

The screen shot (R-6) of the text message of October 20, 2015, between Ms. Blocker and I.G. starts out with I.G. saying "Hey" and Ms. Blocker replying "Hey". Then I.G. states "They still didn't come question you yet, right? Ms. Blocker says not yet but Amber Holloway, the fourth program associate in the room that day was questioned yesterday so maybe they will today. I.G. then says "Okay remember u had A.B. Out the room." Ms. Blocker's response was that "Huh I had K.O. that day Oh wait ur telling what to say? Then I.G. responds "You kno to say that right lol. Ms. Blocker responds, "Ok u just told me to say I wasn't there." I.G. responded that "You didn't have K.O. u had R.F. Amber had K.O. and H.N." Ms. Blocker then responded, "I had both that day, that day K.O." and then the message in the text bubble ends and Ms. Blocker does not recall what else was in the message.

On re-direct, Ms. Blocker said she received a series of text messages during the investigation indicating she was not going to have any luck and that they were going to hit her. She ended up switching to a different location. The Office of Investigations Report indicates that Ms. Gonzalez spoke to Ms. Blocker on the telephone and Ms. Blocker advised that she had received threatening text messages from I.G. and J.B. on October 30, 2015. October 30, 2015 is the same date that Bancroft terminated I.G. and J.B.'s employment. Ms. Blocker also notified the Director at Bancroft. Ms. Blocker does not recall having heard anything at Bancroft about Mr. Wilder having an interest in I.G. Mr. Wilder was a mentor to Ms. Blocker.

Nancy Gonzales testified on behalf of the respondent. In October 2015, she was employed as a Quality Assurance investigator by the State of New Jersey, Department of Human Services, Office of Program Integrity and Accountability (OPIA). She was with OPIA from 2010 until she retired. She estimates she investigated approximately one hundred cases of abuse while working for OPIA and substantiated approximately twenty-five percent of them. An Unusual Incident Report (UIR) was submitted by Mr. Wilder, to the DDD on October 8, 2015. Ms. Gonzalez subsequently investigated the incident and prepared an investigation report. Her report listed all the documents she reviewed and interviews she conducted.

S.H.'s Individual Habilitation Plan (IHP) indicates she has limited verbal ability and that she will become upset, aggressive, assaultive to staff and peers if she does not get the attention of staff or she is unable to get a preferred food or meal.

Ms. Gonzalez reviewed the written statement provided by Ms. Blocker to Bancroft. The email from Mr. Wilder reflected that Ms. Blocker witnessed I.G. and J.B. strike S.H. with a cord. Mr. Wilder went back to the day room and asked I.G. and J.B. why the head protocol was not followed. J.B. completed the Agency Internal report. Photographs of S.H.'s injury were taken that depicted an upside down "U" - measuring one by one and a half inches. Ms. Gonzalez also took photographs of S.H.'s forehead on October 22, 2015, and November 6, 2015. One shows the bottom of the chair. A second photograph has Ms. Blocker showing Ms. Gonzalez how the cord was folded or bent. This was not the cord that was used. The third photograph is a photograph of S.H.'s forehead on October 8, 2015, taken by Bancroft. The fourth photograph is the bottom of the foot of the chair.

The data collection sheet for S.H. indicated 120 acts of aggression and/or disruption between the hours of 10:00 a.m. – 11:30 a.m. on October 8, 2015. There were no behavioral incidents reported before 10:00 a.m. or after 11:30 a.m.

Ms. Gonzalez repeatedly tried to obtain an Employee Assignment Schedule from Bancroft for October 8, 2015; she was not able to obtain this document.

Ms. Gonzalez interviewed S.H. and asked her what happened to her forehead and S.H. stated that she beat herself in the head. Both J.B. and I.G. received training on preventing abuse and neglect and received certifications of completion for the training. On November 6, 2015, Ms. Gonzalez went to Bancroft. She took photographs of the chairs and measured the bottom of the chair legs. The measurements of the bottom of the leg of the chair were inconsistent with the measurements of S.H.'s forehead injury.

Following her investigation, Ms. Gonzalez concluded that based upon a preponderance of the testimonial and documentary evidence, S.H., an individual receiving services from the Division of Developmental Disabilities (DDD), was physically abused by J.B. and I.G. on October 8, 2015. When they struck S.H.'s leg and forehead with an iPhone charger cord, it resulted in S.H. sustaining an upside down "U" mark on her forehead. Ms. Blocker witnessed J.B. and I.G. strike S.H. with a cell phone power cord in the leg and forehead. I.G.'s actions in striking S.H. with the power cord resulted in S.H.'s sustaining a one and a half inches by one-inch upside down "U" shaped mark in the middle of her forehead.

Ms. Gonzalez set forth various facts in support of her findings:

Ms. Blocker stated she witnessed J.B. creating a loop with the charging cord and striking S.H. in the leg with the cord

J.B. then handed the cord over to I.G.

Ms. Blocker then observed I.G. swing the cord toward S.H.'s leg, but S.H. moved her leg.

I.G. missed hitting S.H. in the leg.

Ms. Blocker saw I.G. raise the cord and when doing so, the cord struck S.H. in the forehead resulting in the injury to S.H.'s forehead.

Ms. Blocker immediately reported the incident to Mr. Wilder, the Program Manager at Bancroft.

The text messages between I.G. and Ms. Blocker insinuated that I.G. was telling Ms. Blocker what to say when she was contacted by the investigator, i.e., that Ms. Blocker was out of the room with A.B., which was I.G. and J.B.'s version of events (R-6).

Although both, I.G. and J.B. claimed S.H.'s injury was caused by K.O. throwing a chair at S.H. and the bottom of the chair leg striking S.H. in the forehead, the measurements of the chair leg were smaller than the size injury on S.H.'s forehead. Also, the bottom of the chair leg was smooth with no raised ridges or rims around the edge that would cause the pronounced upside down "U" shaped

injury. The bottom leg of the chair would have caused injury to the entire area inside the “U” as well.

J.B. and I.G.’s statements that S.H. was cleaning the window were inconsistent with the initial internal report prepared by J.B. indicating S.H. was cleaning the table when the incident occurred. J.B. also indicated that S.H. had 120 acts of aggression and disruption between 10:00 a.m. and 11:30 a.m. The internal report prepared by J.B. indicated that S.H. went back to her normal routine after the incident. Also, both I.G. and J.B. indicate that S.H. fell when she was trying to get at K.O. This fact was not mentioned in the internal report.

Although the incident happened at 11:07 a.m., it was not reported to the supervisor until 11:45 a.m. The nurse’s office was not notified until 12:17 p.m. and a nurse did not respond to the scene until 12:45 p.m.

S.H.’s guardian was not notified of the injury until the following day on October 9, 2015.

On cross-examination, Ms. Gonzalez admitted that she undertook no investigation as to whether a phone charger cord could cause the type of injury that S.H. sustained. She is not a wound expert and did not seek any expert forensic opinion to see if it was possible for a charger cord to cause this type of injury. Ms. Gonzalez indicated that she showed the photos to her peers and supervisors to get their opinion, but no expert was consulted, or demonstrations done to duplicate the type of injury S.H. had sustained.

Although undated, Ms. Gonzalez said the investigation report was submitted to her supervisor for review and then submitted to the Director of OPIA. She does not believe anyone had any questions or issues concerning her report.

Ms. Gonzalez did interview nurse Maggie Gabriele who was advised that S.H. was hit in the head with a chair by another individual. Ms. Gabriele went with Mr. Wilder to the scene and assessed S.H.’s injuries. She observed a bump above S.H.’s right eye, superficial cuts and an upside down ‘U’ shaped mark on her forehead. Ms. Gabriele believed the injury could have been caused by the chair because the bottoms of the chairs are ‘U’ shaped. Ms. Melanie Berthot, the Nurse Manager on duty, was also interviewed by Ms. Gonzalez. Ms. Berthot believed the chair could have caused the ‘U’ shaped injury on S.H.’s forehead (P-3). Ms. Gonzalez is also a nurse and disagreed with this opinion as to causation.

Ms. Zlin McCoy, a Bancroft investigator, reported this incident to the state police on October 23, 2015. On March 14, 2016, Ms. Gonzalez contacted them to learn the results of their investigation and was advised that the disposition of the case was ‘unfounded’ due to insufficient evidence (R-1, page 38). Ms. Gonzalez had already concluded her investigation at this point and did not take into consideration the state police’s determination.

I.G., respondent, testified on her own behalf. On October 8, 2015, she was employed as a Program Associate at Bancroft and had been working there for one year. She worked the 7:00 a.m. - 4:30 p.m. shift. Previously, she worked at Vineland Developmental Center for twelve years, working with individuals with developmental disabilities. She was a senior CTT when she left the Vineland Developmental Center. She had no substantiated complaints against her while she was employed there. Prior to this complaint, she had never had any substantiated complaints against her at Bancroft. As a result of this complaint, criminal charges were brought

against I.G. which were eventually dismissed. She has not been able to work with developmentally disabled individuals since October 8, 2015, because she has been placed on the Central Registry.

At Bancroft, she was assigned to an individual and would work with them on their daily goals and then would do daily activities and take them on outings or whatever was planned for them that day. The individuals at Bancroft had different levels of disabilities. I.G. came to work at 7:00 a.m. and the residents came in at 9:00 a.m. from their residence on the grounds. Her supervisor/manager was Mr. Wilder. The other program associates she worked with on October 8, 2015, were J.B., Amber Holloway, and Ms. Blocker. The assignments for the day were kept in the manager's office and on a dry eraser board in the day room. The initials of the associates were written on the dry eraser board and the initials of the individuals they were assigned to for the day were written next to their names. The individuals serviced were referred to as "consumers". Some individuals need more attention, and they were assigned a one-to-one associate. If an individual did not need as much attention, two could be assigned to one program associate. I.G. was assigned to work one on one with A.B. J.B. was assigned to work one on one with S.H. Program associate Amber Holloway was assigned to H.N. and K.O. Ms. Blocker was assigned to R.F., who did not require one to one attention, but she would cover for another associate if one of the individuals had a behavior and needed assistance. A 'behavior' was described as when one of the consumers would try to hit another person being served or the staff, or throw things, flip tables and chairs, try to run out or strip off their clothes. I.G. and J.B. could not aid the others because their assignments were one on one.

At some point in the morning, the manager, Mr. Wilder, called for Ms. Blocker to come to his office. Ms. Blocker asked I.G. if she could take her consumer, A.B., with her because she could not leave without taking someone with her. A.B. was an easy consumer. I.G. agreed to let Ms. Blocker take A.B. but told her to come back right away. I.G. stated that Ms. Blocker had a habit of not coming back right away. Prior to Ms. Blocker leaving the room, Amber Holloway left with H.N. because he was stripping in front of the others, and she had to leave the room with him. The consumers were rotated in assignments because prior to October 8, 2015, there were complaints that Mr. Wilder was always assigning A.B. to Ms. Blocker so she could come and see him throughout the day.

After Ms. Blocker left with A.B., I.G. was left with K.O. and R.F. in the room and J.B. and S.H. S.H. started making noise which made K.O. get mad and they started going back and forth fighting and K.O. hit S.H. with a chair. I.G. was sitting at the table with K.O. when this happened.

A program associate is required to keep a "Data Collection Sheet" which records every fifteen – thirty minutes what a consumer is doing throughout the day. Each consumer has a book; when an assignment is made, the next program associate maintains the record. P-6 was the record kept that day for S.H.

I.G. and J.B. did not return to work at Bancroft following October 8, 2015. Mr. Wilder put I.G. and J. B. in separate rooms following the incident. He came in with Ms. Blocker and A.B. and I.G. and J.B. told him what happened, and Mr. Wilder said something to the effect that it does not look like that happened the way they said it did. It did not look like a chair caused the injury to S.H.

Before S.H. was injured, J.B. was working on her goals with her, which were washing the tables and the door. I.G. had worked with S.H. before and was familiar with her goals. S.H. was humming and got louder. K.O. got up and started kicking chairs and pushing the table. I.G. stated he jumped up and that she also probably jumped up to get out of his way because he moves fast. I.G. believed S.H. tried to go after K.O. S.H. tried to spit on him and he picked up the chair and hit her. I.G. saw K.O. pick up the chair and hit S.H. in the head. S.H. was still

trying to fight him after he hit her on the head. S.H. fell to the ground. S.H. always falls to the ground and must be helped up. After K.O. threw the chair at S.H., he backed up and went into the corner which is something he usually does after he throws something, as if he did not do it.

I.G. did not know who J.B. called first following the incident. J.B. called Mr. Wilder from the wall house phone several times. Mr. Wilder, Ms. Blocker, and A.B. arrived first following the incident. Two nurses also came – the regular nurse and one that was in training. S.H. had an injury to her forehead which was attended to by the nurses. They gave her some ointment. A body check form for S.H. was also completed dated October 9, 2015, indicating S.H. had an abrasion scrape on her forehead. There was no indication that there was any injury to S.H.'s leg (P-10).

Following this incident in the Starling room, I.G. was directed to leave the room and go to the cafeteria. She does not know where J.B. was directed to go, but they were separated. I.G. estimates the incident took place around lunch time which is between 12 – 1:00 p.m. After the incident, K.O. ended up leaving with his mother for an outing. Mr. Wilder did not say anything to I.G. After the incident happened Mr. Wilder and Ms. Blocker did not come right away but came approximately forty-five minutes afterwards. They knew I.G. was upset because she was not supposed to be watching K.O. but was supposed to be having an easy day watching A.B. Nobody said anything to I.G. that day that there was an allegation that she whipped S.H. with an iPhone charger. There were not even any iPhone chargers in the room. They were allowed to have their phones on them, but they were not allowed to use it in front of the consumers.

I.G. first became aware of the allegation that she and J.B. had whipped S.H., which was several days after the incident, when she met with Bancroft investigator Zlin McCoy. I.G. denied that this occurred and told Ms. McCoy it was a lie. I.G. gave a written statement and drew a diagram for Ms. McCoy dated October 20, 2015 (P-13). Her statement was accurate as to what happened on October 8, 2015. I.G. drew the diagram as to how the room looked and where everybody was at the time.

A photograph (R-9) shows Ms. Blocker holding up some sort of wire. I.G. never held up any kind of wire on October 8, 2015 and did not whip S.H. with it. J.B. did not do so either. The meeting with Ms. McCoy on October 20, 2015, was the first time I.G. learned of the allegations against her. All she knew before that time was that it had to do with Mr. Wilder because he was upset with her that she did not want to date him. He would purposely assign her to clients that were difficult, and she could not control. He would isolate her from her coworkers so she would just be with Mr. Wilder. Ms. Blocker was behind it because she liked Mr. Wilder. Mr. Wilder also took a picture of I.G.'s buttocks while she was talking to another Manager named Lenore. He was behind her taking a picture with his cell phone when Rashia Ellis, another Manager there who Mr. Wilder was having an affair with, snatched his phone out of his hand and showed I.G. that he had taken a picture of her buttocks. Everybody saw it. I.G. told him to delete it. There were about four or five individuals who were sleeping with Mr. Wilder, but I.G. would not pay him any attention.

Ms. McCoy advised I.G. on October 20, 2015, that someone had reported that she and J.B. hit S.H. with a cord. At some point later, I.G. learned that the person who had reported her and J.B. was Ms. Blocker. She did text Ms. Blocker to make sure that she did not leave out the fact that she left the room with A.B. because if she tells the truth, she was supposed to have K.O. and if she said she had K.O., then that never leaves her out of the room, and she was out of the room with I.G.'s person A.B. I.G. was not trying to tell her that she was assigned to A.B. that day, but just that she was out with her at the time. I.G. and Ms. Blocker's text messages show that I.G. texted Ms. Blocker "Okay, Remember you had A.B. out the room." Ms. Blocker replied "Huh? I had K.O. that day" (R-6). I.G. explained that she was not trying to tell Ms. Blocker she did not have K.O., but she was trying to tell her "Make sure you let them know

that you had my person served out of the room.” I.G. believed Ms. Blocker was her friend and she was still talking to her on the phone while I.G. was out of work until she found out that Ms. Blocker was the one who reported her.

I.G. was never shown the Data Collection Sheet for any of the consumers that day but said that Ms. Blocker had to hurry up and fill out the forms when she got back because she had not been with K.O. and R.F. to complete it every fifteen – thirty minutes as required. I.G. saw Ms. Blocker filling out the forms and pointed out to the Investigator Nancy Gonzalez that the ink was different. I.G. gave a statement to Ms. Gonzalez on October 23, 2016 (R-7).

I.G. identified P-2 as the diagram she drew for Investigator Nancy Gonzalez. I.G. was also asked to list the assignments for that day and listed A.B. as assigned to I.G.; S.H. was assigned to J.B; R.F. was assigned to Ms. Blocker; and H.N. and K.O. were assigned to Amber Holloway. Then H.N. had to be taken out of the room by Amber. In her interview with Ms. Gonzalez, I.G. brought up the issue with the Data Collection Sheets and Ms. Blocker. This is because this was after the October 20, 2015, with Zlin McCoy, when I.G. first learned it was Ms. Blocker who accused I.G. Ms. Gonzalez acknowledged that she saw that it was different ink.

A lady from Bancroft in Haddonfield called I.G. and told her she was terminated on October 30, 2015. I.G. started crying and advised her that it was all because Mr. Wilder was harassing her, and she said that she would look into it. When I.G. called her back, the woman said that I.G. should have reported it. The woman said she left I.G. an email message on the Bancroft website to come show them proof that he was harassing her, but I.G. never received the message. I.G. asked her why didn't she just call her, like she was calling her on the telephone, to fire her. I.G. did not know the name of the woman from Bancroft.

There were no surveillance cameras in the room. There were cameras in the hallway that would show who left the room and when they came back. She was never advised that anyone reviewed the surveillance films. Ms. Blocker was going to Mr. Wilder's office that day to fill out an application for a position.

On cross-examination, I.G. stated that everyone regularly complained to Mr. Wilder about Ms. Blocker being assigned to A.B. so that Ms. Blocker could end up with Mr. Wilder somewhere. They even complained to another manager, named Denise. Ms. Blocker left the room around 9:30 a.m. and was out of the room until she returned with Mr. Wilder after the incident. I.G. did not know what time the incident occurred. She was shown J.B.'s report (P-5), which stated the incident was 11:07 a.m. S.H. and K.O. were trying to get to each other, trying to hit each other, before K.O. threw the chair.

I.G. brought her phone to work every day and had it in her pocket.

I.G. was familiar with S.H.'s behaviors. On October 8, 2015, I.G. believes she remembers S.H. asking for a soda when the manager Lenore Robinson was present and had a soda. She did not know if she asked for a soda fifty times because she was not paying attention to her since she had her own one on one. I.G. was shown the statement she gave to Nancy Gonzalez on October 23, 2015 (R-7). S.H. asks for a soda all the time.

The text messages between I.G. and Ms. Blocker in R-6 was sent before I.G.'s meeting with Ms. Zlin McCoy. S.H. was not I.G.'s one-on-one, and she was not responsible for responding to S.H. if she wanted a soda. I.G. did not strike S.H. with a cord at any time that day. It was J.B.'s responsibility to contact Mr. Wilder about S.H.'s injury. She was not sure if she tried calling him using the wall phone in the Starling room, or her own phone or both.

I.G. is a certified nurse's aide. She has not attended college.

At one point, S.H. was charging towards K.O. and she fell on her buttocks. Mr. Wilder did not show up for a long time after K.O. threw the chair, until 11:45 a.m. In I.G.'s statement she said Mr. Wilder was notified immediately and no one had time to make up a story (R-7).

However, J.B.'s statement is that the incident took place about 11:07 a.m. and if Mr. Wilder responded at 11:45, there were thirty-eight minutes between when the incident occurred and when he showed up.

The head injury protocol for the State is that you call for assistance right away. I.G. said Bancroft was very disorganized and nothing is clear, and nobody knows anything. As a Program Associate, working with people with disabilities, I.G. agreed that waiting an hour is not a good practice. But J.B. was assigned to S.H. and it was her responsibility to call for assistance.

I.G. never filed any internal complaint against Mr. Wilder. She did consult with several attorneys who initially told her to wait and then told her it was too late. She wanted to be a Sheriff's Officer. She was terminated around October 30, 2015, and believes she was called by the Sheriff's Office in January 2016, but the charges were not dismissed until April 2018.

Ms. Blocker started working at Bancroft after I.G. and they were friends. They would go out to dinner or go over Lenore Robinson's house for dinner, J.B., Ms. Blocker and I.G. as well as others. I.G. believed she was on good terms with Ms. Blocker as of October 8, 2015. However, I.G. was told that Ms. Blocker did not like I.G. because Mr. Wilder would flirt with I.G. in front of Ms. Blocker.

In their text messages (R-6), Ms. Blocker said she had K.O. She did have K.O. She did not deny having A.B. either. I.G. told her to remember she had A.B. out of the room. Then Ms. Blocker texted that I.G. was telling her what to say. I.G. texted her that she knows to say that, laugh out loud. I.G. explained she was telling Ms. Blocker to let them know that she had A.B. out of the room. Basically, she said she was reminding her to tell that to the investigator.

I.G. said she told Nancy Gonzalez that Ms. Blocker was lying about I.G. to avoid getting into trouble herself for not watching K.O., although that is not in her statement (R-7).

On re-direct examination, I.G. recalled being asked why someone, who witnessed the incident would say that I.G. and J.B. struck S.H. with a cord causing the injury to her forehead. I.G. answered that at the time of this incident Ms. Blocker and Amber Holloway were out of the room so they could not have witnessed her hit S.H. with a cord. I.G. stated that she felt that this was fabricated because Ms. Blocker was messing around with Mr. Wilder, and he was obsessed with I.G. I.G. said that she and S.H. are very close, and she works with her every day and would never hurt her (R-7, page 5). I.G. further stated to Ms. Gonzalez that Ms. Blocker was in Mr. Wilder's office applying for a position and that his computer should be checked to see what time she was logged on. Ms. Blocker was not even there to complete K.O.'s data sheet. I.G. believes K.O.'s data sheet was forged. Ms. Blocker was not even in the room when this incident happened. The investigator did not follow up.

J.B. testified on behalf of the petitioner. She is currently employed as an office manager for Ranch Hope. On October 8, 2015, she was employed by Bancroft as a program associate and had been there about six years. She was assigned as the one-to-one program associate for S.H. The daily assignments were made by management and posted on a white dry erase board. J.B. met S.H. that morning at 9:00 a.m. when she was brought over from her living quarters on the grounds to the day room. J.B. was to work with S.H. on her goals which involved cleaning the tables and windows and sweeping.

The incident occurred at 11:07 a.m.; those present were program associates J.B. and I.G. and service recipients S.H., K.O. and R.F. Program associate Amber Holloway had left the room with service recipient H.N. who was attempting to strip. J.B. had left the room with A.B. S.H. was doing her goals and was being loud. K.O. was getting annoyed and tried to spit at her. She kept being loud; K.O. picked up a chair and threw it at her. The bottom of the leg struck S.H. in the forehead. S.H. then went after K.O. but fell to the floor on her rear end. J.B. tried to call Mr. Wilder on the wall phone but could not reach him. She tried three times to contact him by

phone, but he usually does not check his messages. She also called the nurse's office and left a message for the nurse. J.B. also left a message for S.H.'s guardian. Mr. Wilder came to the day room at 11:45 a.m. and J.B. recorded the time on the internal report she prepared (P-5). Two nurses also came to evaluate S.H.

J.B. described the injury to S.H.'s forehead as a 'scratch'. She described it as 'U' shaped.

Bancroft had a policy that no cell phones were allowed during the day and J.B. stated that she did not have an iPhone or an iPhone charger cord on her that day.

J.B. reviewed the data sheet for K.O. and told Nancy Gonzalez that it was 'falsified' because there was different ink used and that since K.O. remained in the dayroom his data sheet would have stayed there, and the same ink used to complete the data sheet. Ms. Blocker had A.B. out of the room and should have done her data sheet and I.G. would have done K.O.'s data sheet, but the initials K.B. in different ink are on K.O.'s data sheet indicating he was with Ms. Blocker the entire time in the day room.

J.B. stated that there was a relationship between Mr. Wilder and Ms. Blocker. Mr. Wilder also was having a relationship with two other employees. She believes Mr. Wilder was trying to get I.G. fired for not wanting to have a relationship with him. Mr. Wilder had taken a picture of I.G.'s buttocks.

On cross-examination, J.B. stated that she was aware of the individual habilitation plan for S.H. and S.H.'s diagnosis. S.H. would also become upset or aggressive if she did not get attention of staff or if she was unable to get a preferred food or meal. J.B. stated that S.H. always asked repeatedly for something she sees someone has such as a soda. S.H. repeatedly asked for a soda on the day of the incident, but J.B. and I.G. are used to it and either ignore it and she will eventually stop, or she can be redirected.

J.B. stated she believed Mr. Wilder was responsible for getting I.G. and J.B. fired because I.G. did not want a relationship with him. She did not know why she was involved or why someone would say they saw I.G. and J.B. strike S.H. with a charger cord. J.B. did not have any problems with anyone at Bancroft.

J.B. was not aware of any Bancroft policy where program associates could not swap a service recipient if necessary. She and I.G. never discussed the theory that Ms. Blocker was alleging she saw I.G. and J.B. hit S.H. with a charger cord because she was trying to avoid responsibility for K.O. who was her assignment that day and who threw the chair that struck S.H. in the forehead. J.B. stated that she never heard this was the motive behind Ms. Blocker's allegations against them.

J.B. filed an internal appeal of the charges against her and appeared for a hearing in Trenton. She did not have a lawyer. She was substantiated for abuse and was placed on the Central Registry.

INITIAL DECISION CREDIBILITY DETERMINATION

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958).

Petitioner contends that S.H. was injured when another service recipient threw a chair and hit her in the forehead causing the upside down 'U' injury to her forehead. Respondent contends that: S.H. was physically abused by program associates I.G. and J.B., who were taking

turns striking S.H. in the leg with an extended iPad charging cord; and that I.G. struck S.H. in the forehead with the cord, causing the injury to S.H. Respondent's witnesses overall were more credible than petitioner's witnesses.

The respondent's first witness was Ms. Blocker, the program associate who had been at Bancroft approximately eight months and witnessed her coworkers, I.G. and J.B., strike service recipient S.H. with an iPhone charger cord on October 8, 2015. Ms. Blocker witnessed I.G. strike S.H. in the forehead with the charger cord and caused the upside down 'U' shaped injury to her forehead. Although the several statements Ms. Blocker gave surrounding the incident that day differed in various details, she was consistent that she was present in the room and witnessed her coworkers strike S.H. with a cord after S.H. was repeatedly asked for a soda. Ms. Blocker was certain that it was I.G. who struck S.H. in the forehead and caused the injury. Although Ms. Blocker was not the most credible witness when she testified at the hearing that her review of her previous statements did not refresh her recollection. There was no reason for her to lie about what she witnessed.

There was no motive for Ms. Blocker to lie about what she witnessed. On the other hand, I.G. and J.B. had motive because they would lose their jobs and they were facing criminal charges. I.G. testified that Mr. Wilder was behind the allegations against her because she would not engage in a relationship with him and Ms. Blocker was jealous when Mr. Wilder would flirt with I.G. J.B. was also charged, yet she had no problems with either Mr. Wilder or Ms. Blocker. I.G. admitted that she never made any complaints about Mr. Wilder harassing her.

Petitioner also attempted to argue that Ms. Blocker was lying because she was out of the room when the incident occurred and that it was her service recipient, K.O., who threw the chair that hit S.H. in the forehead. Ms. Blocker would then be in trouble for not monitoring her consumer. Despite this argument, there was testimony from both Ms. Blocker and J.B. that there was no prohibition at Bancroft of swapping assignments or leaving a consumer with another program associate if you had to leave the room. Furthermore, J.B. testified that she had not even heard or discussed with I.G. that this was Ms. Blocker's motive for making the allegations against them. As far as J.B. was aware, the motive was Mr. Wilder's obsession with I.G.

The second witness for the respondent, Investigator Nancy Gonzales, was a very credible witness. She was an experienced investigator and while having investigated a hundred cases of abuse, she has only substantiated twenty-five. She was impartial and very thorough in her investigation, despite not consulting an expert in wound causation as petitioner's counsel brought up on cross-examination. Ms. Gonzalez described the injury as almost like a "branding" type injury. Her analysis was that it was unlikely that a blow from the bottom of the chair leg would cause such an injury. The bottom of the chair leg was smooth with no ridges and would not cause the delineated upside down 'U' shape. If it were from a blow from the chair leg, the entire area inside the 'U' area would also be bruised. The injury would appear to be more like an injury caused by a whipping or lashing strike and not a blunt force trauma.

J.B.'s testimony that the injury to S.H.'s forehead was just a "scratch" was not credible, especially when looking at the photograph of the injury to S.H.'s forehead (R-9, third photograph). According to the internal report prepared by J.B., although the incident happened at 11:07 a.m., it was not reported to the supervisor until 11:45 a.m. The nurse's office was not notified until 12:17 p.m. and a nurse did not respond to the scene until 12:45 p.m. The head injury protocol which required immediate notification of the supervisor was not followed nor was first aid rendered promptly.

INITIAL DECISION FINDINGS OF FACT

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, **the ALJ FOUND** the following as **FACTS**:

S.H. is an individual with Developmental Disabilities receiving residential services at the Bancroft Group Home funded by the Division of Developmental Disabilities.

S.H.'s Individual Habitation Plan (IHP) indicates S.H. is diagnosed with autism, intermittent explosive disorder, diabetes, enuresis and seasonal allergies and requires assistance with all daily living skills (R-1, page 5). The IHP also indicates that she has limited verbal ability and that she will become upset, aggressive, assaultive to staff and peers if she does not get the attention of staff, or she is unable to get a preferred food or meal (R-1, page 6).

I.G. and J.B. were direct caregivers to S.H. and worked the 7:00 a.m. to 3:00 p.m. shift at the Bancroft Group Home on October 8, 2015.

I.G. and J.B. received training regarding abuse and neglect.

On October 8, 2015, at 11:07 a.m. S.H. was in the day room at Bancroft and not cooperating with staff in doing her goals and was repeatedly asking for a soda. I.G. hit S.H. in the leg with a looped extended iPad charging cord and then passed it to J.B. who also struck S.H. in the leg. J.B. gave the cord back to I.G. who was attempting to hit S.H.'s leg with the charging cord but missed her leg. When I.G. brought the cord back up to hit S.H. in the leg, she hit her in the forehead with the charger cord causing the injury to S.H.'s forehead.

S.H. sustained an upside down 'U' shaped injury in the middle of her forehead measuring approximately one and a half inches by one-inch as a result of being stricken by I.G. in the forehead with the charging cord.

I.G. and J.B. were terminated from their employment at Bancroft following an investigation of the incident.

INITIAL DECISION LEGAL ANALYSIS AND CONCLUSION

The ALJ cited the Central Registry statute and regulations and applied the appropriate definitions of abuse, the correct standard of proof, and the additional elements necessary for placement on the Registry. Even though the ALJ seemed to criticize the investigator for not seeking an expert medical forensic opinion on the 'U' shaped injury, the ALJ correctly applied the reasonable person standard of the preponderance of the evidence standard applicable in Administrative Law hearings. The Legislature, in creating the Central Registry, specifically mandated the preponderance of evidence standard, rather than a different standard. The ALJ concluded that "it is clear from the factual record that I.G. committed an act of physical abuse against S.H. I.G. struck S.H. in the forehead with a charging cord causing a one and a half inches by one-inch upside down 'U' shaped injury in the middle of S.H.'s forehead. Whether

she meant to strike her in the forehead as opposed to the leg..., if not intentional, [she] was undoubtedly still reckless and [acting] with careless disregard for the physical well-being of S.H.

The ALJ CONCLUDED that DHS had sustained its burden of proving, by a preponderance of the credible evidence, that petitioner's actions rise to the level of abuse as defined in N.J.A.C. 10:44D-1.2. Further, **The ALJ CONCLUDED** that I.G. acted with careless disregard for the well-being of S.H. resulting in injury to an individual with developmental disabilities, justifying that her name be entered onto the Central Registry. **The ALJ ORDERED** that the determination of the Office of Program Integrity and Accountability to place I.G. on the Central Registry of Offenders Against Individuals with Developmental Disabilities was **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 her opinions concerning these matters, based upon the observations described in the Initial Decision. **I CONCLUDE and AFFIRM** that the Department has met its burden of proving, by the preponderance of the evidence, that I.G. committed an act of physical abuse against an individual with developmental disabilities. **I CONCLUDE and AFFIRM** that I.G. acted with careless disregard to the well-being of that individual, and that I.G.'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 I.G.'s name on the Central Registry of Offenders against Individuals with Developmental Disabilities.

Although a Consent Confidentiality Protective Order was signed by all parties and the ALJ, an Order to Seal was signed by the ALJ and entered in this case on September 12, 2017. The Department of Human Services 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. Where, as is stipulated in the protective order and in the decisions, initials - as opposed to full names are used - that practice suffices to safeguard the identities of victims and petitioners. Making Initial Decisions and Final Agency Decisions available in Central Registry cases promotes transparency in the adjudicatory process, educates the public and members of the bar on this developing area of the law, and provides an invaluable precedential resource for use in the Office of Administrative Law.

Therefore, it is **ORDERED** that the order to seal is removed and all parties privy to this case shall abide by the protective order, return all discovery materials, and continue to refer to the Petitioner and the victim in this case by their initials in all public documents concerning this case.

Date: 6/30/21

Lauri Woodward

Lauri Woodward, Director

Office of Program Integrity and Accountability