

**STATE OF NEW YORK  
JUSTICE CENTER FOR THE PROTECTION OF PEOPLE  
WITH SPECIAL NEEDS**

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In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

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**FINAL  
DETERMINATION  
AND ORDER**

**Adjud. Case #:**

[REDACTED]

Vulnerable Persons' Central Register  
New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
Appearance Waived

New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
By: Thomas Parisi, Esq.

[REDACTED]

By: Jeremy Ginsburg, Esq.  
CSEA, Inc.  
143 Washington Avenue  
Capitol Station Box 7125  
Albany, New York 12224

[REDACTED]

The Findings of Fact and Conclusions of law are incorporated from the Recommendations of the presiding Administrative Law Judge's Recommended Decision.

**ORDERED:**

The request of [REDACTED] that the substantiated report dated [REDACTED] be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect.

It is agreed that the substantiated report is properly categorized as a Category 3 act.

NOW, THEREFORE, IT IS DETERMINED that the record of this report is substantiated and shall be retained by the Vulnerable Persons' Central Register, and will be sealed after five years pursuant to SSL § 493(4)(c).

This decision is ordered by David Molik, Director of the Administrative Hearings Unit, who has been designated by the Executive Director to make such decisions.

**DATED:** August 24, 2016  
Schenectady, New York

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David Molik  
Administrative Hearings Unit

**STATE OF NEW YORK  
JUSTICE CENTER FOR THE PROTECTION OF PEOPLE  
WITH SPECIAL NEEDS**

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In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

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**RECOMMENDED  
DECISION  
UPON STIPULATED  
FACTS**

**Adjud. Case #:**

[REDACTED]

Before:

John T. Nasci  
Administrative Law Judge

Held at:

Upon written stipulation,  
Administrative Hearings Unit  
New York State Justice Center for the Protection  
of People with Special Needs  
333 East Washington Street  
Syracuse, New York 13202

Parties:

Vulnerable Persons' Central Register  
New York State Justice Center for the Protection  
of People with Special Needs  
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By: Thomas Parisi, Esq.

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By: Jeremy Ginsburg, Esq.  
CSEA, Inc.  
143 Washington Avenue  
Capitol Station Box 7125  
Albany, New York 12224

### **JURISDICTION**

The New York State Vulnerable Persons' Central Register (the VPCR) maintains a report substantiating [REDACTED] (the Subject) for abuse and/or neglect. The Subject requested that the VPCR amend the report to reflect that the Subject is not a subject of the substantiated report. The VPCR did not do so, and a hearing was then scheduled in accordance with the requirements of Social Services Law (SSL) § 494 and Part 700 of 14 NYCRR.

### **FINDINGS OF FACT**

An opportunity to be heard having been afforded the parties and upon consideration of a stipulation of facts, it is hereby found:

1. On [REDACTED] an allegation was reported to the VPCR that [REDACTED], the subject, an employee of the [REDACTED] located at [REDACTED] had neglected Service Recipients who were residents of the [REDACTED]. The Justice Center classified this report as a neglect case and assigned [REDACTED] to the report.

2. This report was investigated by the Justice Center.

3. On [REDACTED] the Justice Center substantiated the report against the Subject for neglect. The Justice Center concluded that:

#### **Allegation 1**

It was alleged that on [REDACTED], at the [REDACTED], located at [REDACTED], while acting as a custodian, you committed neglect when you failed to provide medications to numerous service recipients during the morning shift medication pass, failed to follow the Controlled Substances guidelines and failed to properly transfer your medication keys at the end of your shift, conduct that placed the service recipients at risk.

This allegation has been SUBSTANTIATED as Category 3 neglect pursuant to Social Service Law § 493(4)(c).

4. An Administrative Review was conducted and as a result the substantiated report was retained.

5. Notwithstanding that the Subject was entitled to a full evidentiary hearing, the Subject elected to waive her rights to an evidentiary hearing on the relevant issues and instead the Subject elected to proceed to a hearing decision based upon stipulated facts. The Parties have entered into a Stipulation of Facts, which is attached hereto and incorporated into this decision. As part of the Stipulation, it was agreed and it is understood that, subject to the approval of the Executive Director of the Justice Center, the report will be maintained within the VPCR as a Category 3 finding of neglect.

### **ISSUE**

Whether the resolution of this substantiated report proposed in the Stipulation of Facts is both legally correct and consistent with the public policy expressed in the Protection of People with Special Needs Act (PPSNA) (Ch. 501, L. 2012) that the primary focus of the Justice Center will be on “the protection of vulnerable persons” and that workers found responsible for abuse or neglect are held accountable.

### **APPLICABLE LAW**

The Justice Center is responsible for investigating allegations of abuse and/or neglect in a facility or provider agency. SSL § 492(3)(c) and 493(1) and (3). Pursuant to SSL § 493(3), the Justice Center determined that the initial report of neglect presently under review was substantiated. A “substantiated report” means a report “wherein a determination has been made as a result of an investigation that there is a preponderance of the evidence that the alleged act or acts of abuse or neglect occurred...” (Title 14 NYCRR § 700.3(f))

The abuse and/or neglect of a person in a facility or provider agency is defined in relevant parts by SSL § 488(1)(h).

Substantiated reports of abuse and neglect are categorized into categories pursuant to SSL § 493(4), including Category 3 neglect, which is defined, as relevant here, as follows:

Category three is abuse or neglect by custodians that is not otherwise described in categories one and two. Reports that result in a category three finding shall be sealed after five years.

### **DISCUSSION**

The stipulated facts agreed to by the parties establish by a preponderance of evidence that the Subject committed the neglect that was alleged in the substantiated report as contained in Allegation 1. I am recommending that the Executive Director accept the stipulated outcome which upholds the finding of neglect.

The parties also have requested, as part of the proposed stipulated resolution of this case, that the substantiated finding of neglect remain a Category 3 finding. Based upon the facts contained in the parties' stipulation, it is determined that the substantiated report is properly categorized as a Category 3 act.

### **DECISION:**

The request of [REDACTED] that the substantiated report dated [REDACTED] be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect.

It is agreed that the substantiated report is properly categorized as a Category 3 act.

This decision is recommended by John T. Nasci, Administrative Hearings Unit.

**DATED:** August 10, 2016  
Schenectady, New York

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John T. Nasci, ALJ



STATE OF NEW YORK – NYS JUSTICE CENTER  
ADMINISTRATIVE HEARINGS UNIT

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In the Matter of:

**STIPULATION OF FACTS**

Adjudication Case No. [REDACTED]

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**JURISDICTION**

The New York State Vulnerable Persons' Central Register (the VPCR) maintains a report substantiating [REDACTED] (the Subject), for a Category 3 offense under [REDACTED]. The Subject requested that the Justice Center amend the report to reflect that the category findings are not supported by a preponderance of the evidence. The Justice Center, after review, declined to do so, and a hearing was scheduled in accordance with the requirements of Social Services Law (SSL) § 494 and Part 700 of 14 NYCRR.

The purpose of a full evidentiary hearing in this matter would be to determine:

1. Whether the Subject has been shown by a preponderance of the evidence to have committed the act or acts giving rise to the substantiated report?
2. Whether the substantiated allegations constitute abuse or neglect?
3. Pursuant to SSL § 493(4), the category level of abuse or neglect that such act or acts constitute.

Notwithstanding that the Subject is entitled to a full evidentiary hearing, the Subject has elected to waive her right to an evidentiary hearing on the aforesaid issues and instead the Subject has elected to proceed to a hearing decision based upon the following stipulation of facts and it is further understood by the parties that the report will continue to be maintained within the VPCR as a Category 3 finding of neglect.

The presiding Justice Center Administrative Law Judge (ALJ) will draft and recommend a hearing decision based upon the stipulation of facts. However, the ultimate authority to approve the hearing decision is vested with the Executive Director of the Justice Center. Therefore, any hearing

decision which may be issued based upon this stipulation is subject to the approval of the Executive Director of the Justice Center. The Subject also agrees, after having had an opportunity to consult with counsel, and upon the receipt of the approval of the recommended decision by the Executive Director, that the report will continue to be maintained within the VPCR as a Category 3 finding of neglect, and that the Subject is waiving any rights that she may have for an appeal of this proceeding.

In the event that the Executive Director shall not approve a recommended decision based upon the stipulation of facts, a full evidentiary hearing will be scheduled and the existence of this stipulation and any facts admitted herein will not be admitted into the hearing record and this document shall not be used for any purpose whatsoever, at the evidentiary hearing.

#### STIPULATION OF FACTS

Jeremy Ginsburg, Esq. is counsel for the subject and has the authority to enter into this Stipulation of Facts on behalf of the Subject, [REDACTED].

Thomas C. Parisi, Esq. is an Assistant Counsel of the Administrative Appeals Unit, New York State Justice Center and has the authority to enter into this Stipulation of Facts on behalf of the Justice Center.

The parties hereby agree to the following facts:

1. The facility, [REDACTED] is located at [REDACTED]. It is a non-state operated facility licensed by the Office for People With Developmental Disabilities (OPWDD), which is a facility or provider agency that is subject to the jurisdiction of the Justice Center.
2. On [REDACTED], the Subject, [REDACTED], was employed as a Direct Support Assistant (DSA) at the [REDACTED] and at all times relevant hereto was a direct care custodian pursuant to Social Services Law § 488(2).

3. On said date, the Subject was assigned to work the overnight shift beginning at 11:00 p.m. on [REDACTED], and ending at 9:00 a.m. on [REDACTED].
4. During this shift, the Subject was the AMAP certified staff member responsible for administering medications at 6:00 a.m. on [REDACTED].
5. Subject administered the 6:00 a.m. medications and then locked the med keys in the designated lock box.
6. Subject was not scheduled to work the morning shift or to administer the 8:00 a.m. medications during the morning shift.
7. In order to reduce the risk of medication errors, the Registered Nurse (R.N.) for the [REDACTED] has set a general policy of discouraging staff from passing medications on a shift other than the one they routinely work, or after working an overnight shift.
8. Subject did not routinely work the morning shift.
9. Due to inclement weather on the morning of [REDACTED], several morning staff called the [REDACTED], notifying they would be arriving late.
10. Due to inclement weather moving into the area during the overnight of [REDACTED], some morning staff members arranged for substitutions of their shift assignments, approved by a supervisor, but unbeknownst to the overnight shift staff.
11. The morning staff normally assigned to pass the 8:00 a.m. medications did not arrive on time to pass the 8:00 a.m. medications.
12. Morning staff assigned to pass medications did not arrive until 9:00 a.m. (two hours later than normal time) at which time, the Subject left to go home.

13. The DA2 (Supervisor) was aware that the morning staff usually assigned to administer the 8:00 a.m. medications would not be present at the [REDACTED] until 9:00 a.m.
14. The DA2 arrived at the [REDACTED] at 7:40 a.m. and was otherwise available to administer the 8:00 a.m. medications but did not.
15. Due to these unusual staff substitutions caused by weather, the 8:00 a.m. medication pass was not administered and the Subject did not pass the medication keys to an incoming med-certified staff person.
16. Before ending her shift and going home, the Subject only locked the med keys in the lock box without physically handing the med keys off to the incoming shift's AMAP, and without following the protocol which controlled her actions when there was no incoming staff to receive the med keys.
17. It was not until 3:10 p.m. that the Day shift Supervisor realized that the 8:00 a.m. medications were not administered.
18. Subject was served with a Notice of Discipline ("NOD") stating that she failed to ensure the completion of the 8 a.m. med pass.
19. At arbitration, the NOD was dismissed because the Subject was not assigned the 8 a.m. med pass and the employer was not able to establish that the Subject was ordered to perform the morning med pass.
20. The Subject acknowledges that she was required to but failed to: count the controlled substances with the next shift's AMAP, sign the medication log alongside the incoming AMAP, and physically pass the medication keys to the incoming AMAP staff member; or, in the event there was no incoming AMAP staff member to receive the med keys, the Subject was required to but failed to

follow the protocol of documenting the medication counts, in the absence of the incoming AMAP staff member.


21. Subject acknowledges that she did not follow the correct practice of passing the med keys at the end of her shift and merely placed the med keys into the lock box. Subject does not contest that the foregoing conduct was likely to endanger the health, safety or welfare of the service recipients receiving medications at the [REDACTED].
22. The investigation concluded that no individuals at the [REDACTED] suffered any adverse effects as a result of not receiving his or her 8:00 a.m. medications.
23. Based on the above, the parties have agreed that the substantiated finding of neglect will be based on Subject's failure to properly deliver the med keys to the incoming AMAP certified staff member; not for the failure to administer the morning medications.
24. The Category level will remain substantiated as a Category 3 neglect.

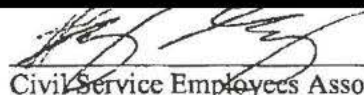
Dated: 8/4/16


Dated: 8/4/16

Dated: 8/9/16

Approved for recommendation:

  
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John T. Nasci  
Administrative Law Judge  
New York State Justice Center for the Protection of People with Special Needs  
Dated: August 10, 2016

  
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Civil Service Employees Association  
By: Jeremy Ginsburg, Esq.  
Attorney for the Subject

  
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Thomas C. Parisi, Esq.  
NYS Justice Center