

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

In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

**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: Robert T. DeCataldo, Esq.

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

It is agreed that the substantiated reports should be categorized as Category 3 acts.

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: January 6, 2017
Schenectady, New York



David Molik
Administrative Hearings Unit

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

In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

**RECOMMENDED
DECISION
UPON STIPULATED
FACTS**

Adjud. Case #:

[REDACTED]

Before:

Jean T. Carney
Administrative Law Judge

Held at:

Upon written stipulation,
Administrative Hearings Unit
New York State Justice Center for the Protection
of People with Special Needs
401 State Street
Schenectady, New York 12305

Parties:

Vulnerable Persons' Central Register
New York State Justice Center for the Protection
of People with Special Needs
161 Delaware Avenue
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New York State Justice Center for the Protection
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161 Delaware Avenue
Delmar, New York 12054-1310
By: Robert T. DeCataldo, Esq.

[REDACTED]

JURISDICTION

The New York State Vulnerable Persons' Central Register (the VPCR) maintains a report substantiating [REDACTED] (the Subject) for 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], an employee of the [REDACTED], neglected a Service Recipient who was a resident of the [REDACTED], located at [REDACTED]. The Justice Center classified this report as a neglect case and assigned [REDACTED] to the report.

2. On [REDACTED], the Justice Center substantiated the report against the Subject for abuse and neglect. The Justice Center concluded that:

Allegation 1

It was alleged that, based on a history of elopement, including incidents of elopement in [REDACTED] of [REDACTED] for about 7 weeks and [REDACTED], from the [REDACTED], located at [REDACTED], you committed neglect when you failed to properly address a service recipient's elopement issues, including but not limited to the failure to increase his supervision level as a protective measure, resulting in his elopement on [REDACTED].

This allegation has been SUBSTANTIATED as Category 2 neglect pursuant to Social Services Law § 493(4)(b).

Allegation 2

It was alleged that on dates before and including [REDACTED], at the [REDACTED], located at [REDACTED], while acting as a custodian, you committed neglect when you failed to ensure that the alarms required by a service recipient's plan to address his issues of elopement were used at all times in the residence.

This allegation has been SUBSTANTIATED as Category 2 neglect pursuant to Social Services Law § 493(4)(b).

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 has been 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 Category 3 findings 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 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 abuse or 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 Allegations 1 and 2. The parties also have requested, as part of the proposed stipulated resolution of this case, that the substantiated findings of neglect be modified from Category 2 findings to Category 3 findings. While a Category 2 finding requires a determination that a custodian’s conduct “seriously endangers the health, safety, or welfare of a service recipient,” a Category 3 finding does not require such a determination.

The consequences of a Category 2 finding and a Category 3 finding also are different. A Category 2 finding could cause a Subject to be placed on the Justice Center’s Staff Exclusion List (SEL), but only if she were to commit a second Category 2 act within three years of a previous finding that the Subject engaged in Category 2 conduct. There is no similar consequence for a Category 3 finding. Moreover, unless a Category 2 finding is elevated to a Category 1 finding,

both a Category 2 finding and a Category 3 finding will be sealed after five years. (SSL § 493(4) (b) and (c))

While the Subject's conduct was negligent and endangered the Service Recipient's welfare, it did not seriously endanger his health, safety, or welfare. The Subject's duties included supervisory oversight of [REDACTED] State Operated IRAs in [REDACTED]. The Subject had a duty to raise the Service Recipient's level of supervision to line-of-sight beyond [REDACTED]. The Subject also had a duty to ensure that the [REDACTED] staff were using the alarms in the Service Recipient's room. However, there were three levels of supervision between the Subject and direct care staff.

I find that modifying the Category 2 findings of neglect to Category 3 findings, as requested by the parties, also is not inconsistent with public policy.

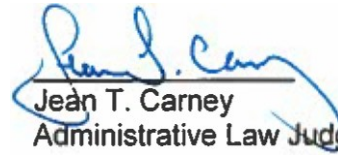
Accordingly, it is determined that the substantiated reports of neglect should be categorized as Category 3 acts.

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

It is agreed that the substantiated reports should be categorized as Category 3 acts.

This decision is recommended by Jean T. Carney, Administrative Hearings
Unit.

DATED: December 23, 2016
Schenectady, New York



Jean T. Carney
Administrative Law Judge

STATE OF NEW YORK – NYS JUSTICE CENTER
ADMINISTRATIVE HEARINGS UNIT

In the Matter of:

STIPULATION OF FACTS

Adjudication Case No. [REDACTED]

JURISDICTION

The New York State Vulnerable Persons' Central Register (the VPCR) maintains a report substantiating [REDACTED] (the "Subject"), for two Category 2 offenses for neglect 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 New York State Justice Center for the Protection of People with Special Needs ("Justice Center"), after review, declined to do so, and a pre-hearing conference was scheduled in accordance with the requirements of Social Services Law ("SSL") § 494 and Part 700 of 14 New York Code of Rules and Regulations.

A hearing in this matter has not yet been held as the parties have agreed to enter into this Stipulation of Facts. The purpose of a full evidentiary hearing in this matter is 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 be maintained in part and amended in part to reflect that two Category 3 finding of neglect will be substantiated.

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 allegation report will continue to be maintained within the VPCR as two Category 3 findings 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

The Subject, [REDACTED], has the authority to enter into this Stipulation of Facts on her own behalf.

Robert T. DeCataldo, Esq. is an Associate Counsel of the Justice Center's Administrative Appeals Unit, 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. At all times relevant herein, the [REDACTED] (the "Facility"), located at [REDACTED], was a [REDACTED] [REDACTED] individualized residential alternative, operated by the New York State Office for People with Developmental Disabilities ("OPWDD"), which is an agency that is subject to the jurisdiction of the Justice Center.
2. At all times relevant herein, the Subject was employed as treatment team leader ("TTL") by the [REDACTED] and was a custodian pursuant to Social Services Law § 488(2).
3. At all times relevant herein, the Subject's duties, among others, included meeting with treatment staff to coordinate individual treatment plans and supervising the development of individual client care plans.
4. At all times relevant herein, the service recipient "[REDACTED]" was a resident at the Facility.
5. At all times relevant herein, [REDACTED] supervision level was visual range supervision while in the Facility, except while in his room, wherein he was on 15-minute checks.
6. At all times relevant herein, [REDACTED] behavior support plan ("BSP") required that the window and door of his bedroom be outfitted with an alarm to notify Facility staff of his attempt to elope.
7. On or about [REDACTED], [REDACTED] eloped from the facility and for multiple weeks and returned by his own volition.
8. On or about [REDACTED], [REDACTED] eloped from the facility while he was outside of his bedroom. Thereafter, the Subject completed an OPWDD Form 147

putting in place a protection for [REDACTED] that called for line-of-sight supervision, which pursuant to OPWDD policy requires a 1:1 staff assignment, "until further notice." The Subject did not intend this protection to remain in place beyond [REDACTED].

9. On or about [REDACTED], [REDACTED] was arrested by the [REDACTED] Police Department for Criminal Impersonation, New York Penal Law article 190.

10. On or about [REDACTED], [REDACTED] was returned to the Facility. A few hours after returning the Facility, [REDACTED] eloped from the facility while in his room in between 15 minute checks by leaving his room and escaping through the window of a peer's bedroom.

11. At all times relevant herein, the alarms on [REDACTED] were not being used by the staff at the Facility because they did not believe they were necessary.

12. The immediate supervisors in the Facility did not report or convey that they had discontinued the at issue aspect of [REDACTED] Behavior Support Plan.

13. The Subject did not have knowledge that the alarms on [REDACTED] room were not being used by the Facility staff as the Subject did not work directly in the Facility.

14. Subject's duties were supervisory oversight for [REDACTED] State Operated IRAs in [REDACTED].

15. The Facility [REDACTED] eloped from had three (3) levels of supervision between Subject and the direct care staff.

16. The Subject had a duty to raise [REDACTED] level of supervision to line-of-sight beyond [REDACTED].

17. The Subject had a duty to ensure that the staff were using the alarms in [REDACTED] room.

18. The Subject does not contest that her conduct outlined above constitutes a breach of her duty of care as to [REDACTED] and was likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of [REDACTED].

19. Based on the above, the parties have agreed that the substantiated findings should reflect that the actions of the Subject did not seriously endanger the health, safety, or welfare of the service recipient, and that the allegations of neglect shall be reduced in Category levels from Category 2 to Category 3.


Dated: January 3, 2017

[REDACTED]

Dated: January 3, 2017

Robert T. DeCataldo
Digitally signed by Robert T. DeCataldo
DN: cn=Robert T. DeCataldo, o=ny.gov, email=robert.decataldo@ny.gov, c=US
Date: 2017.01.03 15:29:00 -0500
Robert T. DeCataldo, Esq.
NYS Justice Center

Approved for recommendation:


Jean T. Carney
Administrative Law Judge

New York State Justice Center for the Protection of People with Special Needs

Dated: January 4, 2017