

**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: Todd M. Sardella, Esq.

[REDACTED]

By: Nathaniel K. Charny, Esq.
Charny & Associates
9 West Market Street
Rhinebeck, New York 12572

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], [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 report should be 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: January 13, 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
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: Todd M. Sardella, Esq.

[REDACTED]

By: Nathaniel K. Charny, Esq.
Charny & Associates
9 West Market Street
Rhinebeck, New York 12572

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 the Subject, an employee at the [REDACTED], neglected a Service Recipient who was a patient at 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 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 properly supervise a service recipient, during which time she engaged in self-injurious behavior.

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

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

4. Notwithstanding that the Subject was entitled to a full evidentiary hearing, the Subject elected to waive his 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 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 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 Allegation 1. The parties also have requested, as part of the proposed stipulated resolution of this case, that the substantiated findings of neglect be modified from a Category 2 finding to a Category 3 finding. 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 he 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 her health, safety, or welfare. The Subject accepted the duty of supervising the Service Recipient while her one-to-one was on a break. During that time, the Subject admits to breaching that duty by becoming inattentive. However, it cannot be established

that the Service Recipient engaged in the self-injurious behavior while the Subject was supervising her. Additionally, the Subject was prohibited from removing the blanket that covered the Service Recipient due to his gender and facility policy. Therefore, if she was cutting herself under the blanket, the Subject would not have known it and been able to prevent it.

I find that modifying the Category 2 finding of neglect to a Category 3 finding, 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 a Category 3 act.

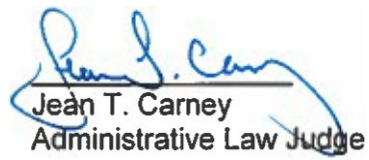
DECISION:

The request of [REDACTED] that the substantiated report dated [REDACTED], [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 report should be categorized as a Category 3 act.

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

DATED: January 6, 2017
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]

[REDACTED]

JURISDICTION

The New York State Vulnerable Persons' Central Register (the VPCR) maintains a report substantiating [REDACTED] (the Subject), for a Category 2 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.

A hearing in this matter was currently scheduled for [REDACTED]. 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; and (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 his 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 abuse (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 he 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

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

Todd M. Sardella, Esq. is an Assistant Counsel for 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 at which the incident occurred, the [REDACTED], is located at [REDACTED] and is operated by the New York State Office of Mental Health (OMH), which is a State Operating Authority that is subject to the jurisdiction of the Justice Center.
2. On [REDACTED], the Subject, [REDACTED], was employed as a Mental Health Therapy Aide (MHTA) at [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 agreed to cover for another MHTA for about 15 minutes (or less) while the other MHTA finished her evening meal.
4. Such coverage involved one-to-one supervision of a female service recipient.
5. The shift coverage was not done in any formal manner, and was instead procured in a word-of-mouth, undocumented arrangement.
6. The service recipient was in a darkened bedroom, in a bed, under a blanket during this period of time. The Subject attempted to turn the light on to better observe the service recipient, but the service recipient's roommate protested and turned the light back off.
7. The Subject was aware that the service recipient was under a blanket, and his understanding of his training was that a male staff cannot ask a female to remove her blanket when she is in bed. This training protocol was confirmed with the investigator.
8. The Subject was admittedly inattentive for some short period of time.
9. The Subject ended his supervision when the other MHTA finished her meal.
10. Within about 30 minutes after the other MHTA took over the supervision, an injury was discovered on the arm/wrist of the service recipient.
11. The service recipient had obtained a small piece of glass from a compact mirror that she had obtained from a visitor. The compact mirror was brought to the service recipient sometime earlier in the day; it was not obtained by the service recipient during the Subject's supervision.

12. The service recipient had deliberately cut herself with the small piece of glass while under the blanket.

13. The wound required 9 sutures to close.

14. There remains the possibility that the wound was inflicted during the time period that the Subject was supposed to be supervising the service recipient in one-to-one capacity, during which time the room was dark and the service recipient was under a blanket.

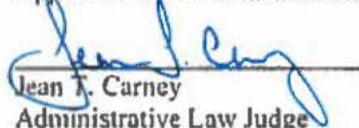
15. Based on the above, the parties have agreed that the Subject committed neglect, and the substantiated finding should reflect that the totality of the actions of the Subject did not seriously endanger the health, safety, or welfare of the Service Recipient, and that the neglect shall be reduced in Category level from a Category 2 to a Category 3.

Dated: December 16, 2016

Dated: December 16, 2016

Dated: 1/6/17

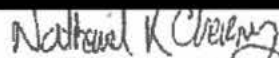
Approved for recommendation:


Jean F. Carney
Administrative Law Judge

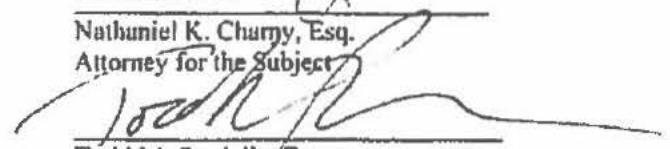
New York State Justice Center for the Protection of People with Special Needs

Dated: January 6, 2016 2017





Nathaniel K. Churny, Esq.
Attorney for the Subject



Todd M. Sardella, Esq.
NYS Justice Center