

**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: Thomas Parisi, Esq.

[REDACTED]

By: Michael Sussman, Esq.
1 Railroad Avenue, 3rd Floor
P.O. Box 1005
Goshen, New York 10924

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 the Subject, [REDACTED], that the substantiated report dated [REDACTED], [REDACTED] of abuse (obstruction of reports of reportable incidents) be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed abuse (obstruction of reports of reportable incidents).

It is agreed that the substantiated report be modified to be 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: February 23, 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:

Sharon Golish Blum
Administrative Law Judge

Held at:

Upon written stipulation
Administrative Hearings Unit
New York State Justice Center for the Protection
of People with Special Needs
125 East Bethpage Road, Suite 104
Plainview, New York 11803

Parties:

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

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P.O. Box 1005
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JURISDICTION

The New York State Vulnerable Persons' Central Register (the VPCR) maintains a report substantiating [REDACTED] (the Subject) for abuse. 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 of the [REDACTED], located at [REDACTED], had committed abuse (obstruction of reports of reportable incidents) of a service recipient who was a resident of the facility. The Justice Center classified this report as abuse (obstruction of reports of reportable incidents) and assigned [REDACTED] to the report.

2. This report was investigated by the Justice Center for the Protection of People with Special Needs (Justice Center).

3. On [REDACTED], the Justice Center substantiated the report against the Subject for abuse (obstruction of reports of reportable incidents). 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 abuse (obstruction of reports of reportable incidents) when you failed to report an incident involving serious physical abuse of a service recipient to the New York State Justice Center after becoming aware of it.

This allegation has been SUBSTANTIATED as Category 1 serious conduct, pursuant to Social Services law § 493(4)(a)(xi).

4. An Administrative Review was conducted and, as a result, the substantiated report was retained but the category of the allegation was modified from a Category 1 act to a Category 2 act.

5. 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 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 finding of abuse (obstruction of reports of reportable incidents), but that the Category of the finding will be modified from a Category 2 to a Category 3.

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 service providers found responsible for abuse and/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 abuse (obstruction of reports of reportable incidents) 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 (obstruction of reports of reportable incidents) of a person in a facility or provider agency is defined in relevant parts by SSL § 488(1)(f) as follows:

"Obstruction of reports of reportable incidents," which shall mean conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment or supervision of a service recipient, actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing state agency regulations, policies or procedures; or, for a mandated reporter who is a custodian as defined in subdivision two of this section, failing to report a reportable incident upon discovery.

Substantiated reports of abuse and/or neglect are categorized into categories pursuant to SSL § 493(4), including Category 1 abuse and/or neglect, which is defined, as relevant here, as follows:

Category 1 conduct is...serious conduct by custodians, which includes and shall be limited to “knowingly and willfully failing to report, as required by paragraph (a) of subdivision one of section four hundred ninety-one of this article, any of the conduct in subparagraphs (i) through (ix) of this paragraph upon discovery.”

Category 2 abuse and/or neglect is defined, as relevant here, as follows:

Category two is substantiated conduct by custodians that is not otherwise described in category one, but conduct in which the custodian seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect.

Abuse and neglect may also be categorized as Category 3 conduct, which is defined as any “abuse or neglect by custodians that is not otherwise described in categories one and two.”

DISCUSSION

The stipulated facts agreed to by the parties establish by a preponderance of the evidence that the Subject committed the abuse (obstruction of reports of reportable incidents), that was alleged in the substantiated report as contained in Allegation 1.

The parties have requested, as part of the proposed stipulated resolution of this case, that the substantiated finding 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, 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 deviated from the correct reporting requirements, it did not seriously endanger the Service Recipient's health, safety or welfare. The facts of this case arose [REDACTED], very soon after the Justice Center legislation became effective. The Subject followed the directions of his supervisor to investigate an allegation that the Service Recipient had been the victim of physical abuse by other facility staff.

Immediately after the Subject discovered the reportable incident, upon his supervisor's instructions, he created a report in the New York State Incident Management and Reporting System (NIMRS), the New York State Office of Mental Health (OMH) database, which he mistakenly believed to be the correct course of action.

When the Subject telephoned the Justice Center regarding the reportable incident, he either misunderstood what he was told or he was provided with inaccurate information regarding the status of the report.

When he contacted the OMH, he was incorrectly advised that the Justice Center had closed the case and that the matter had been referred to the OMH for review.

The Subject was given misinformation regarding the reporting process from the facility Quality Assurance Manager, who emailed to him that he was not required to make a report to the Justice Center.

The Subject mistakenly thought that the steps his supervisor instructed him to take were the appropriate measures when, in fact, he should have immediately contacted the Justice Center upon discovering the reportable incident.

Given the facts that the Justice Center was a very new entity, that training in the Justice Center law, policies and procedures was a recent development, that the Subject was given misinformation regarding the correct reporting steps he should have undertaken and that the Subject exerted good faith efforts to comply with reporting requirements, it is determined that modifying the Category 2 finding of abuse (obstruction of reports of reportable incidents) to a Category 3 finding, as requested by the parties, is not inconsistent with public policy.

Accordingly, it is determined that the substantiated report of abuse (obstruction of reports of reportable incidents) should be categorized as a Category 3 act.


DECISION: The request of the Subject, [REDACTED], that the substantiated report dated [REDACTED], [REDACTED] of abuse (obstruction of reports of reportable incidents) be amended and sealed is

denied. The Subject has been shown by a preponderance of the evidence to have committed abuse (obstruction of reports of reportable incidents).

It is agreed that the substantiated report be modified to be a Category 3 act.

This decision is recommended by Sharon Golish Blum, Administrative Hearings Unit.

DATED: February 16, 2017
Plainview, New



Sharon Golish Blum, Esq.
Administrative Law Judge

STATE OF NEW YORK – NYS JUSTICE CENTER
ADMINISTRATIVE HEARINGS UNIT

In the Matter of:

STIPULATION OF FACTS

██████████

██

JURISDICTION

On ██████████, the Justice Center substantiated the report against ██████████
██████████ (the Subject) for Category 1 abuse (obstruction of reports of reportable incidents) under
██████████. The Subject requested that the Justice Center amend the report
to reflect that the category finding is not supported by a preponderance of the evidence. On
██████████, the Administrative Appeals Unit of the Justice Center, after review, amended
the report from a substantiated Category 1 finding to a Category 2 finding, which is maintained by
the New York State Vulnerable Persons' Central Register (the VPCR). The Subject did not accept
this amended finding, 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 and/or neglect?
3. Pursuant to SSL § 493(4), the category of abuse and/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 the Subject's 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 (obstruction of reports of reportable incidents).

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 abuse, and that the Subject is irrevocably waiving any rights that the Subject may have to appeal any aspect of this proceeding.

In the event that the Executive Director does not approve the 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 Stipulation shall not be used for any purpose whatsoever at the evidentiary hearing.

STIPULATION OF FACTS

Michael Sussman, 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]
[REDACTED]. It is a non-state operated facility licensed by the Office of Mental Health

(OMH), which is a facility or provider agency that is subject to the jurisdiction of the Justice Center.

2. On [REDACTED], [REDACTED] staff members [REDACTED] and [REDACTED] followed the Service Recipient, outside of the facility and assaulted her.
3. The altercation was captured on the video surveillance system of a neighboring property. The footage was later secured and utilized as evidence to support the substantiated Category 1 allegations against [REDACTED] and [REDACTED].
4. As a result of this incident, Category 1 allegations were upheld against [REDACTED] and [REDACTED] after appeal, and both staff members have been placed on the Justice Center VPCR permanent Staff Exclusion List (SEL).
5. Following the assault outside of the facility, the Service Recipient absconded from the facility and did not return until 7 a.m. the next morning [REDACTED].
6. Upon her return to the facility at the above noted time, the Service Recipient behaved violently toward staff, resulting in a 911 call being made.
7. After FDNY Emergency Services arrived, the Service Recipient was hospitalized at [REDACTED] Hospital Psychiatric Unit. The hospitalization was due to her psychiatric and emotional condition; not due to physical injury.
8. During the Service Recipient's hospital stay, no physical injuries were documented in the [REDACTED] Hospital records.
9. While the Service Recipient was away from the facility between [REDACTED] and [REDACTED], she did not have any interaction with any facility staff members.

10. At all times material hereto, the Subject was employed as the Director at [REDACTED].
[REDACTED] He was both a custodian and a mandated reporter pursuant to Social Services Law § 488(2) and § 488(5).
11. At all times material hereto, the co-Subject, [REDACTED] was the Deputy Vice President [REDACTED] in a position of supervision over the Subject. She was both a custodian and a mandated reporter pursuant to Social Services Law § 488(2), § 488(5).
12. On [REDACTED], while on duty, Subject received information about an incident from the previous evening, during which the Service Recipient slapped [REDACTED] across the face.
13. Subject communicated this information to [REDACTED] via email in the morning of [REDACTED].
14. On or about [REDACTED], Subject created an Incident Report in the New York State Incident Management & Reporting System (NIMRS) consistent with this original, incomplete version of the incident.
15. On [REDACTED], after completing his shift, Subject received a telephone call from the facility Supervisor on Site, with the *additional* information that [REDACTED] and [REDACTED] had followed the Service Recipient outside of the facility and then assaulted her on the sidewalk.
16. Subject immediately contacted [REDACTED] to convey said information to her.
17. Due to the conflicting versions of the incident, on [REDACTED], the Subject was ordered by [REDACTED] to report back to the facility to gather additional information, which he did.

18. On [REDACTED], Subject spoke with [REDACTED] who stated that the Service Recipient slapped her across the face and that she and [REDACTED] followed the Service Recipient outside so that she would be able to identify the Service Recipient to the police to facilitate her arrest.
19. The Service Recipient was released from [REDACTED] Hospital after twenty-four (24) hours and returned to the facility on [REDACTED].
20. On [REDACTED], Subject went to the facility to interview the Service Recipient, at which time he heard directly from the Service Recipient that she had been assaulted by [REDACTED] and [REDACTED] near the facility on [REDACTED].
21. [REDACTED] did not report to work on [REDACTED], and she was informed on [REDACTED] that she was suspended pending an investigation of the assault allegation.
22. [REDACTED] was told to no longer report to the facility by Subject on [REDACTED].
23. Email communications between [REDACTED] and her supervisor, to which Subject was also privy, disclose that there was concern about the Service Recipient having contact with [REDACTED] and [REDACTED] following the incident of [REDACTED].
24. The Subject contacted the Justice Center and the Office of Mental Health (OMH), inquiring whether a report was required to be submitted to the Justice Center.
25. Subject was informed by the Justice Center that the matter was closed with the Justice Center and that the OMH would be assuming the investigation.
26. Subject also communicated with an individual named [REDACTED] at the OMH, who informed him that the Justice Center did not need to be contacted.

27. On [REDACTED], Quality Assurance Manager, [REDACTED] also emailed the Subject stating that the Justice Center did not need to be notified because it had closed the report and that the OMH would be charged with conducting the investigation.

28. This incident took place [REDACTED] the Justice Center's assumption of its jurisdiction over incidents such as this.

Despite the circumstances outlined herein, the Subject, as a mandated reporter, acknowledges that he was statutorily required to report to the Justice Center upon learning on [REDACTED] of the reportable incident in which [REDACTED] and [REDACTED] followed the Service Recipient outside of the facility and assaulted her and, that by failing to do so, he committed an act of abuse (obstruction of reports of reportable incidents) under SSL § 488(1)(f).

Based on the above, the parties have agreed that the substantiated finding of abuse (obstruction of reports of reportable incidents) will be factually based on the Subject's failure to report the incident to the Justice Center upon learning of the reportable incident.

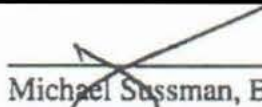
The Justice Center acknowledges that the record supports the conclusion that the Subject's failure to immediately report the incident to the Justice Center did not seriously endanger the health, safety and welfare of the Service Recipient.

It is stipulated that the totality of the circumstances mitigate Subject's culpability from a Category 2 act to a Category 3 act.

Dated:

[REDACTED]

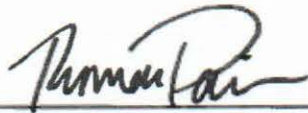
Dated:



Michael Sussman, Esq.
Attorney for the Subject

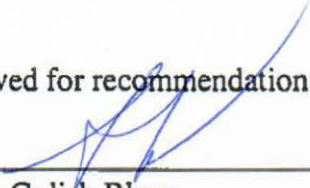
Dated:

2/15/17



Thomas C. Parisi, Esq.
NYS Justice Center

Approved for recommendation:



Sharon Golish Blum

Administrative Law Judge

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

Dated: Feb 15, 2017 SB

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