

**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
AFTER HEARING**

Adjud. Case #:

[REDACTED]
[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 DeCataldo, Esq.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

By: Jason Jaros, Esq. (Subjects' Attorney)
Jaros & Jaros
8207 Main Street, Suite 13
Williamsville, New York 14221

[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.

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.

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

All three substantiated reports have been properly categorized, as Category 3 acts.

**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
AFTER
HEARING**

Adjud. Case #s:

[REDACTED]
[REDACTED]

Before:

Mary Jo Lattimore-Young
Administrative Law Judge

Held at:

New York State Justice Center for the Protection
of People with Special Needs
Administrative Hearings Unit
1200 East and West Road
West Seneca, New York 14224
On: [REDACTED]

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: Robert DeCataldo, Esq.
Administrative Appeals Unit

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

By: Jason Jaros, Esq. (Subjects' Attorney)
Jaros & Jaros
8207 Main Street, Suite 13
Williamsville, New York 14221

as a result of an investigation that there is a preponderance of the evidence that the alleged act or acts of neglect occurred....” [Title 14 NYCRR 700.3(f)]

The neglect of a person in a facility or provider agency is defined by SSL § 488. Under SSL §488(1)(h), neglect is defined as:

"Neglect," which shall mean any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient. Neglect shall include, but is not limited to: (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian....”

Substantiated reports of neglect shall be categorized into categories pursuant to SSL § 493(4), including Category 3, which is defined under SSL § 493(4)(c) 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.

The Justice Center has the burden of proving at a hearing by a preponderance of the evidence that Subject [REDACTED] Subject [REDACTED] and Subject [REDACTED] committed the act or acts of neglect alleged in their substantiated reports that are the subject of the proceeding and that such act or acts constitute the category of neglect as set forth in the substantiated reports. Title 14 NYCRR § 700.10(d).

If the Justice Center proves the alleged neglect, the report(s) will not be amended and sealed. Pursuant to SSL § 493(4) and Title 14 NYCRR 700.10(d), it must then be determined whether the act(s) of neglect cited in the substantiated reports constitute the category of neglect as set forth in the substantiated reports.

If the Justice Center did not prove the neglect by a preponderance of the evidence, the substantiated reports must be amended and sealed.

DISCUSSION

In this case, the main issue in dispute is whether the Subjects committed neglect in failing to provide proper supervision to a service recipient³ by falling asleep during their overnight shift. The Justice Center's primary evidence in support of the conclusion that the Subjects were asleep during the overnight shift was the written statement of Staff Member A, a [REDACTED] Program Manager at a different residential site, who was assigned to conduct an unannounced inspection or visit to the facility in the early morning hours of [REDACTED]. All three of the Subjects were working at the facility at that time. (Justice Center Exhibits 7 and 9 in Adjudication Cases [REDACTED] [REDACTED]) All three Subjects have denied that they were sleeping during the overnight shift and have raised various defenses.

The Justice Center has established by a preponderance of the evidence that the three Subjects have committed the acts of neglect as described as "Allegation 1" in their substantiated reports dated [REDACTED].

In support of its substantiated findings, the Justice Center presented a number of documents obtained during the investigation. (Justice Center Exhibits 1-13)

The investigatory interrogations of the three Subjects were conducted by [REDACTED] Human Resource Department, then transcribed and made a part of the record in the Subjects' case. The investigation reports were generated and compiled by Investigator [REDACTED], [REDACTED] Clinical Risk Manager, who was the only witness to testify at the hearing on behalf of the Justice Center.

³ At the time the initial report was uploaded to the VPCR, it was not known how many individuals resided at the facility on the date of the alleged incident. Since Resident 1's name was listed as an individual living at the facility, her name was the only name noted as a resident in the initial report. This appears to be the reason why the substantiated report dated [REDACTED] only refers to "a service recipient" even though Subject [REDACTED] clarified during her hearing testimony that there were actually a total of thirteen residents living at the facility at the time of the alleged incident. (Hearing testimony of Subject [REDACTED] and cross-examination testimony of Investigator [REDACTED], [REDACTED] Clinical Risk Manager)

Blotter. As such, Staff Member A's written statement is determined to be reliable, trustworthy and credited evidence. (Justice Center Exhibits 7, 9 and 12-13)

The Subjects have denied the allegations against them and raised many claims in their defense to the charges. During her hearing testimony, Subject ██████ stated that she at no time fell asleep and that about 4:00 a.m. she left the living room to perform a second patrol walk around the facility and then came back to sit in the living room. However, Subject ██████ stated that she never heard the door alarm sound. She also stated that she was awake and texting on her cellular telephone between the hours of 4:20 a.m. and 4:50 a.m., yet offered no proof at the hearing or at the time of her investigative interrogation to substantiate this claim. (Hearing testimony of Subject ██████ and Justice Center Exhibit 7, pp.8-12 of interrogation transcript)

At the hearing, Subject ██████ testified that she did not fell asleep. Subject ██████ indicated that about 3:28 a.m. that morning she had entered the living room after making herself a sandwich. At about 4:00 a.m., she claimed to have gotten up from her chair and to have taken the paper plate she was using out to the kitchen to dispose of it in the garbage. Subject ██████ then said she came back into the living room to sit in the recliner chair to watch television. She stated that at about 4:20 a.m., she saw a shadow in the hallway and thought it was one of the residents heading outside to smoke a cigarette. Subject ██████ claimed that she heard the telephone ring, but when she tried to answer the telephone it had stopped ringing. When the telephone rang a second time, she stated that she answered it, but no one responded; so, she hung up. Subject ██████ testified that at 4:40 p.m. she saw the shadow again, then Staff Member A came into the living room from around the corner.

However, during her interrogation, Subject ██████ told the investigator that she first saw the shadow at 4:45 a.m. Subject ██████ further said she could hear Staff Member A talking on the

[REDACTED]

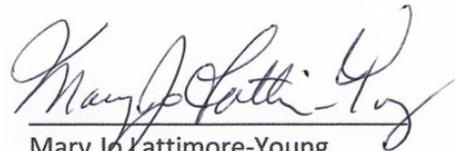
The request of [REDACTED] that the substantiated report dated [REDACTED] be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect.

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

All three substantiated reports have been properly categorized, as Category 3 acts.

This decision is recommended by Mary Jo Lattimore-Young, Administrative Hearings Unit.

DATED: August 3, 2016
West Seneca, New York


Mary Jo Lattimore-Young,
Administrative Law Judge