

**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**

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: Juliane O'Brien, Esq.

[REDACTED]

By: Steven M. Klein, Esq.
CSEA, Inc.
143 Washington Avenue
Capitol Station Box 7125
Albany, New York 12224

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 modified is granted. The determination that the Subject committed neglect is modified to include only that part of Allegation 1 which alleges that the Subject failed to follow the Service Recipient's medical treatment plan, including failing to properly treat an ulcer on his coccyx and for failing to medically treat his trachea, and eliminate all other parts of the allegation.

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 in part 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: March 21, 2016
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:

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
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: Juliane O'Brien, Esq.

[REDACTED]

By: Steven M. Klein, 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 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 Office for People With Developmental Disabilities (OPWDD), assigned to work at the [REDACTED] located at [REDACTED], had neglected a service recipient who was a resident of this [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 follow a service recipient's medical treatment plan, including failing to properly treat an ulcer on his coccyx, failing to properly reposition his body while he sat in his wheelchair for an extended period of time and/or failing to medically treat his trachea.

This allegation has been SUBSTANTIATED as Category 3 neglect pursuant to Social Services Law § 493.

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 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 of Facts, 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) (a) and (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, namely that the Subject failed to follow the Service Recipient's medical treatment plan, including failing to properly treat an ulcer on his coccyx and for failing to medically treat his trachea, establish by a preponderance of evidence that the Subject committed the neglect that was alleged in the substantiated report as contained in Allegation 1. Although the Justice Center also alleged in Allegation 1 that the Subject committed neglect by failing to properly re-position the Service Recipient's body while he sat in his wheelchair for an extended period of time, the parties have asked that this part of the allegation of neglect be dismissed. Because dismissal of this part of the neglect allegation, under these circumstances, is not inconsistent with the public policy set forth in the PPSNA, I am recommending that the Executive Director accept so much of the stipulated outcome as would uphold the finding of neglect based upon the allegation that the Subject failed to follow the Service Recipient's medical treatment plan, including failing to properly treat an ulcer on his coccyx and for failing to medically treat his trachea.

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], [REDACTED], [REDACTED] be modified is granted. The determination that the Subject committed neglect is modified to include only that part of Allegation 1 which alleges that the Subject failed to follow the Service Recipient's medical treatment plan, including failing to properly treat an ulcer on his coccyx and for failing to medically treat his trachea, and eliminate all other parts of the allegation.

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

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

DATED: March 14, 2016
Schenectady, New York



John T. Nasci, ALJ

STATE OF NEW YORK – NYS JUSTICE CENTER
ADMINISTRATIVE HEARINGS BUREAU

STIPULATION OF FACTS

In the Matter of:

Adjudication Case No. [REDACTED]

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.

A hearing in this matter is currently scheduled for [REDACTED] at 10:30 a.m. 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 Social Services Law § 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, 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.

The Subject understands and agrees that the report will continue to be maintained by the VPCR as a Category 3 finding of neglect as more particularly set forth below.

STIPULATION OF FACTS

Steven M. Klein, Esq. is a Senior Associate Counsel for Civil Service Employees Association, Inc., and has the authority to enter into this Stipulation of Facts on behalf of the Subject, [REDACTED].

Juliane O'Brien, 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], located at [REDACTED], is operated by the New York State Office for People With Developmental Disabilities

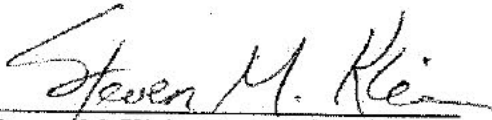
(OPWDD), which is a facility or provider agency that is subject to the jurisdiction of the Justice Center.

2. On [REDACTED], [REDACTED], the Subject, was employed as a Senior LPN at the [REDACTED] and at all times relevant hereto was a custodian pursuant to Social Services Law § 488(2).
3. The Subject is a supervisor on the evening shift. She began her shift [REDACTED] at 11:00 p.m. and worked until 9:15 a.m. on [REDACTED].
4. The Service Recipient is a thirty-six year old man who resides at the [REDACTED]. He is unable to ambulate or communicate and requires total care from staff. According to the Service Recipient's Individual Plan of Protective Oversight (IPOP), he requires fifteen minute visual checks in the house. At night, he requires thirty minute visual checks and repositioning every two hours plus hygiene. With respect to eating/nutrition, the Service Recipient requires total staff support (LPN for tube feedings and medications and other medical needs). The Service Recipient requires trachea care and must be elevated at least 30 degrees during feedings and for 30 minutes after.
5. According to the Service Recipient's Positioning/Equipment Routine, staff are encouraged to reposition him frequently (every 30-45 minutes) for comfort and skin integrity; position changes should occur minimally every two hours. With respect to the Service Recipient's placement in his wheelchair, it directs staff to "use only minimally when he has skin integrity concerns."
6. The Service Recipient's Medication Administration Record requires various medications/treatment including but not limited to: trachea care (day and night shift) and to cleanse open area on coccyx and apply Duoderm patch (day shift).

7. The Medication Administration Record indicates that said treatments were not done during the day shift on [REDACTED]. In fact, the Service Recipient did not receive any of his daytime medications and/or treatment until after 3:00 p.m. on [REDACTED].
8. The Health Care Progress note for [REDACTED], written by the Subject, detailed that the Service Recipient had a bowel movement at 3:45 a.m. and that she removed the dressing from his coccyx. The Subject did not reapply the dressing to the wound despite the directive in the Service Recipient's Medication Administration Record that requires the dressing be reapplied whenever soiled or loose.
9. From approximately 7:20 a.m. to 8:30 a.m. on [REDACTED], the Subject was the only Senior LPN on duty and was required to take over as the supervisor. During this period, the Subject failed to complete the daytime medications/treatments as required per the Service Recipient's Medication Administration Record.
10. At approximately 8:30 a.m., the Subject got the Service Recipient out of bed and placed him in his wheelchair. The Subject ended her shift at 9:15 a.m.
11. The forty-five minutes that the Subject had the Service Recipient in his wheelchair is not inconsistent with the Service Recipient's Individual Plan of Protective Oversight or his Positioning/Equipment Routine.
12. The Subject's placement of the Service Recipient in his wheelchair for forty-five minutes does not constitute a breach of her duty of care to the Service Recipient.
13. Based on the above, the parties have agreed that the substantiated finding that the Subject committed neglect will be based on the fact that the Subject failed to follow the Service Recipient's medical treatment plan, including failing to properly treat an ulcer on his coccyx and for failing to medically treat his trachea. The allegation that the Subject committed an act of neglect by failing to properly re-position his body while he sat in his wheelchair for an extended period of time should be omitted.

14. The Category level will remain a Category 3.

Dated: 1/26/2016


Steven M. Klein, Esq., Senior Associate
Counsel for CSEA, representing [REDACTED]

Dated: 1/26/2016


Julianne O'Brien, Esq.
NYS Justice Center

Approved for recommendation:



John T. Nasci
Administrative Law Judge
New York State Justice Center for the
Protection of People with Special Needs

Dated: March 18, 2016