

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

In the Matter of the Appeal of

██████████

Pursuant to § 494 of the Social Services Law

**FINAL
DETERMINATION
AFTER HEARING**

Adjud. Case #:

██████████

Vulnerable Persons' Central Register
Justice Center for the Protection of People with
Special Needs
161 Delaware Avenue
Delmar, New York 12054-1310
Appearance Waived

Justice Center for the Protection of People with
Special Needs
161 Delaware Avenue
Delmar, New York 12054-1310
By: Juliane O'Brien, Esq.

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By: William Burke, Esq.
O'Neil & Burke, LLP.
135 North Water Street
Poughkeepsie, New York 12601

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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 █ that the substantiated report, dated █, █, █ dated and received on █ be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed psychological abuse and neglect.

The substantiated report is properly categorized as a Category 3 act.

NOW THEREFORE IT IS DETERMINED that the record of this report 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: Schenectady, New York
June 23, 2015



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

██████████

Pursuant to § 494 of the Social Services Law

**RECOMMENDED
DECISION
AFTER
HEARING**

Adjud. Case #:

██████████

Before:

Sharon Golish Blum
Administrative Law Judge

Held at:

Office of Children and Family Services
Spring Valley Regional Office
11 Perlman Drive
Spring Valley, New York 10977
On: ██████████

Parties:

Vulnerable Persons' Central Register
Justice Center for the Protection of People with
Special Needs
161 Delaware Avenue
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By: William Burke, Esq.
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135 North Water Street
Poughkeepsie, New York 12601

JURISDICTION

The New York State Vulnerable Persons' Central Register (hereinafter the VPCR) maintains a report substantiating [REDACTED] (the Subject) for abuse and/or 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.

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. The VPCR contains a report "substantiated" on [REDACTED], [REDACTED] [REDACTED], dated and received on [REDACTED] of abuse and/or neglect by the Subject against a Service Recipient.

2. The Justice Center substantiated the report against the Subject. The Justice Center concluded that:

Offense 1

It was alleged that on [REDACTED], at the [REDACTED], located at [REDACTED], while acting as a custodian (DSA), you committed acts of psychological abuse and/or neglect when you breached your duty towards a service recipient by cursing, expressing anger, failing to maintain appropriate boundaries in your relationship with the service recipient, and/or blaming the service recipient for your receiving disciplinary action. These actions resulted in extreme emotional discomfort for the service recipient.

This offense has been SUBSTANTIATED as a Category 3 offense pursuant to Social Services Law § 493.

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

4. The facility, [REDACTED], located at [REDACTED]

██████████, is a day program that provides work and skills training opportunities, and 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.

5. At the time of the alleged psychological abuse and neglect, the Subject, ██████████, had been employed at the facility for approximately four years as a Direct Support Assistant (DSA). Her responsibilities were primarily as a ‘job coach,’ and for approximately 35 years prior to that, she had been working elsewhere in the public sector with people with developmental disabilities. (Hearing testimony of ██████████, Subject)

6. At the time of the alleged abuse and/or neglect, the Service Recipient was 26 years of age and had been participating for two years in the facility work programs, beginning on ██████████. The Service Recipient was a resident of the ██████████, for people with dual diagnoses, also operated by the OPWDD. The Service Recipient is a person with a diagnosis of mild intellectual delay, schizoaffective disorder, bipolar type, impulse control disorder, fetal alcohol syndrome, and attention deficit hyperactivity disorder (ADHD). (Justice Center Exhibit 15)

7. Over the period of time that the Service Recipient and ██████████ were both at the facility, they had become good friends. ██████████ had successfully advocated for the Service Recipient to advance her employment status from piece work in the facility, to working on an hourly basis at jobsites outside of the facility, usually under ██████████ supervision. (Hearing testimony of ██████████)

8. At some point in early ██████████, on the way back from a jobsite, ██████████ borrowed \$15.00 from the Service Recipient to purchase cigarettes. Shortly thereafter, a staff member at ██████████ asked the Service Recipient about the shortage of cash in her wallet and

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the Service Recipient told her of the loan. The staff member then contacted ██████████ supervisor, RC2 ██████████ (Resident Counselor 2) and disclosed to her, ██████████ breach of policy.¹ As a result of this disclosure, on ██████████, ██████████ “counselled”² ██████████ against engaging in any financial transactions with Service Recipients. (Hearing testimony of ██████████)

9. On ██████████, the Service Recipient was assigned to clean at a jobsite at the ██████████ with three other Service Recipients. ██████████ and DSA ██████████ were assigned to supervise the group. The Service Recipient was given the task of cleaning two bathrooms. While she was cleaning a bathroom, ██████████ confronted the Service Recipient. ██████████ yelled at her, saying several hurtful things, including calling her a “fucking bitch” and accusing the Service Recipient of getting ██████████ “into trouble” for borrowing money from the Service Recipient. (Justice Center Exhibit 6)

10. At approximately 11:45 a.m. on ██████████, after the work crew, including the Service Recipient, returned to the facility, the Service Recipient was extremely upset and crying about the incident. She provided a consistent account of the incident to three facility staff members on that date. (Justice Center Exhibit 6)

11. Subsequent to the ██████████ incident, the Service Recipient had repeatedly brought up the issue of what ██████████ had said to her that day, when meeting with ██████████. Each time the Service Recipient brought it up, ██████████ redirected her as, “it was

¹ There is an OPWDD ██████████ policy prohibiting financial transactions between custodians and Service Recipients. (Testimony of ██████████) Furthermore, 14 NYCRR § 633.7 governs the conduct of employees of the OPWDD and §633.7(a)(2)(v) states that, “There shall be no personal financial transactions between employees ... and persons receiving services...” (Justice Center Exhibit 7)

² Counselling is a form of discipline, whereby the supervisor speaks privately with the employee about his or her wrongdoing and a notation is made in the employee’s personnel file.

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not productive to dwell on the incident.” (Hearing testimony of ██████████)

12. On ██████████, ██████████ conducted a Conflict Resolution Session between the Service Recipient and ██████████ to explore whether they could work together again. At the session, ██████████ admitted that she “felt betrayed” by the Service Recipient. Despite the fact that both the Service Recipient and ██████████ said that they were ready to resume working together, ██████████ did not think that they were really ready to do so. (Hearing testimony of ██████████)

ISSUES

- 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.
- Whether the substantiated allegations constitute abuse and/or neglect.
- Pursuant to Social Services Law § 493(4), the category of abuse and/or neglect that such act or acts constitute.

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 and/or 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 evidence that the alleged act or acts of abuse or neglect occurred...” (Title 14 NYCRR 700.3(f))

Pursuant to SSL §§ 494(1)(a)(b) and (2), and Title 14 NYCRR § 700.6(b), this hearing decision will determine: 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, and if there is a

finding of a preponderance of the evidence; whether the substantiated allegations constitute abuse and/or neglect; and pursuant to Social Services Law § 493(4), the category of abuse and/or neglect that such act or acts constitute.

The abuse and/or neglect of a person in a facility or provider agency is defined by SSL § 488:

1. "Reportable incident" shall mean the following conduct that a mandated reporter is required to report to the vulnerable persons' central register:
 - (a) "Physical abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.
 - (b) "Sexual abuse," which shall mean any conduct by a custodian that subjects a person receiving services to any offense defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law; or any conduct or communication by such custodian that allows, permits, uses or encourages a service recipient to engage in any act described in articles two hundred thirty or two hundred sixty-three of the penal law. For purposes of this paragraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of a service provider shall not be considered a custodian if he or she has sexual contact with another service recipient who is a consenting adult who has consented to such contact.
 - (c) "Psychological abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a substantial diminution of a service recipient's emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but shall not be limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a service recipient as a means for infliction of pain or injury, in a manner that

constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule.

- (d) "Deliberate inappropriate use of restraints," which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a service recipient's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other person. For purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.
- (e) "Use of aversive conditioning," which shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services in the absence of a person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations. Aversive conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, the withholding of meals and the provision of substitute foods in an unpalatable form and movement limitations used as punishment, including but not limited to helmets and mechanical restraint devices.
- (f) "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.
- (g) "Unlawful use or administration of a controlled substance," which shall mean any administration by a custodian to a service recipient of: a controlled substance as defined by article thirty-three of the public health law, without a prescription; or other medication not approved for any use by the federal food and drug administration. It also shall include a

custodian unlawfully using or distributing a controlled substance as defined by article thirty-three of the public health law, at the workplace or while on duty.

- (h) "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; (ii) failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the facility or provider agency, provided that the facility or provider agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals; or (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article sixty-five of the education law and/or the individual's individualized education program.

The Justice Center has the burden of proving at a hearing by a preponderance of the evidence that the Subject(s) committed the act or acts of abuse and/or neglect alleged in the substantiated report that is the subject of the proceeding and that such act or acts constitute the category of abuse and/or neglect as set forth in the substantiated report. Title 14 NYCRR § 700.10(d).

Substantiated reports of abuse and/or neglect shall be categorized into categories pursuant to SSL § 493:

4. Substantiated reports of abuse or neglect shall be categorized into one or more of the following four categories, as applicable:
 - (a) Category one conduct is serious physical abuse, sexual abuse or other serious conduct by custodians, which includes and shall be limited to:
 - (i) intentionally or recklessly causing physical injury as defined in subdivision nine of section 10.00 of the penal law, or death, serious

disfigurement, serious impairment of health or loss or impairment of the function of any bodily organ or part, or consciously disregarding a substantial and unjustifiable risk that such physical injury, death, impairment or loss will occur;

(ii) a knowing, reckless or criminally negligent failure to perform a duty that: results in physical injury that creates a substantial risk of death; causes death or serious disfigurement, serious impairment of health or loss or impairment of the function of any bodily organ or part, a substantial and protracted diminution of a service recipient's psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor; or is likely to result in either;

(iii) threats, taunts or ridicule that is likely to result in a substantial and protracted diminution of a service recipient's psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor;

(iv) engaging in or encouraging others to engage in cruel or degrading treatment, which may include a pattern of cruel and degrading physical contact, of a service recipient, that results in a substantial and protracted diminution of a service recipient's psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor;

(v) engaging in or encouraging others to engage in any conduct in violation of article one hundred thirty of the penal law with a service recipient;

(vi) any conduct that is inconsistent with a service recipient's individual treatment plan or applicable federal or state laws, regulations or policies, that encourages, facilitates or permits another to engage in any conduct in violation of article one hundred thirty of the penal law, with a service recipient;

(vii) any conduct encouraging or permitting another to promote a sexual performance, as defined in subdivision one of section 263.00 of the penal law, by a service recipient, or permitting or using a service recipient in any prostitution-related offense;

- (viii) using or distributing a schedule I controlled substance, as defined by article thirty-three of the public health law, at the work place or while on duty;
- (ix) unlawfully administering a controlled substance, as defined by article thirty-three of the public health law to a service recipient;
- (x) intentionally falsifying records related to the safety, treatment or supervision of a service recipient, including but not limited to medical records, fire safety inspections and drills and supervision checks when the false statement contained therein is made with the intent to mislead a person investigating a reportable incident and it is reasonably foreseeable that such false statement may endanger the health, safety or welfare of a service recipient;
- (xi) 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;
- (xii) for supervisors, failing to act upon a report of conduct in subparagraphs (i) through (x) of this paragraph as directed by regulation, procedure or policy;
- (xiii) intentionally making a materially false statement during an investigation into a report of conduct described in subparagraphs (i) through (x) of this paragraph with the intent to obstruct such investigation; and
- (xiv) intimidating a mandated reporter with the intention of preventing him or her from reporting conduct described in subparagraphs (i) through (x) of this paragraph or retaliating against any custodian making such a report in good faith.
- (b) 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. Category two conduct under this paragraph shall be elevated to category one conduct when such conduct occurs within three years of a previous finding that such custodian engaged in category two conduct. Reports that result in a category two finding not elevated to a category one finding shall be sealed after five years.
- (c) 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.

- █
- (d) Category four shall be conditions at a facility or provider agency that expose service recipients to harm or risk of harm where staff culpability is mitigated by systemic problems such as inadequate management, staffing, training or supervision. Category four also shall include instances in which it has been substantiated that a service recipient has been abused or neglected, but the perpetrator of such abuse or neglect cannot be identified.

If the Justice Center proves the alleged abuse and/or neglect, the report 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 of abuse and/or neglect cited in the substantiated report constitutes the category of abuse and/or neglect as set forth in the substantiated report.

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

DISCUSSION

The Justice Center has established by a preponderance of the evidence that the Subject committed a prohibited act, described as “Offense 1” in the substantiated report. Specifically, the evidence establishes that █ committed acts of psychological abuse and neglect by expressing anger and cursing at the Service Recipient; and by blaming the Service Recipient for the disciplinary action █ had received.

Psychological abuse, under SSL § 488(1)(c), was established in that █ conduct caused “... a substantial diminution of a (S)ervice (R)ecipient's emotional... condition, supported by a clinical assessment performed by a... psychologist...”

Neglect, under SSL § 488(1)(h), was established in that █ conduct was a breach of her duty to the Service Recipient that resulted in “... serious or protracted impairment of the... mental or emotional condition...” of the Service Recipient and this conclusion is also supported by the Impact Assessment.

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The category of the affirmed substantiated psychological abuse and neglect that such act constitutes was properly substantiated as a Category 3 act.

In support of its substantiated findings, the Justice Center presented a number of documents obtained during the investigation. (Justice Center Exhibits 1-18) The investigation underlying the substantiated report was conducted by then OPWDD Internal Investigator, ██████████, who together with RC2 ██████████ and Psychologist II ██████████ ██████████, were the three witnesses who testified at the hearing on behalf of the Justice Center.

██████████ testified on her own behalf and provided no other evidence.

In the determination of whether ██████████ has been shown by a preponderance of the evidence to have committed the acts giving rise to the substantiated report, there was substantial evidence provided by the Justice Center, all of which was denied by ██████████. There were no witnesses to the incident other than the Service Recipient, who did not testify. The evidence shows that the Service Recipient had described to three separate staff members that ██████████ yelled at her, and among other things, called her “a fucking bitch.” In addition, the Service Recipient said that ██████████ told her that she was happy that they would no longer be working together and blamed her for getting ██████████ “into trouble” resulting from ██████████ having been disciplined for borrowing cigarette money from her. (Justice Center Exhibit 6)

DSA ██████████ provided a signed statement, dated ██████████, that on that date ██████████ was at the facility after the Service Recipient’s crew returned from its jobsite and the Service Recipient:

... appeared to me to be visibly upset. [The Service Recipient] put her lunch on the dining table then approached me to talk. She started to tear up. We walked to the bathroom, where she broke down crying. [The Service Recipient] stated that her job coach, ██████████, was saying mean things to her and cursing at her. There was an incident on Wednesday that caused her ██████████ to be counselled. At this time, I left [the Service Recipient] and went to get ██████████.

██████████ came into the bathroom and [the Service Recipient] repeated to ██████████ what was said to her. While out on a jobsite, calling [the Service Recipient] a fucking bitch, and that she would be glad when she gets her new job and moves so she ██████████ won't have to deal with her anymore... (Justice Center Exhibit 9)

RC2 ██████████ provided a signed statement, dated ██████████, that on ██████████ ██████████:

At around 11:45 a.m. staff ██████████ opened the ladies' bathroom door and called me to come into the bathroom with her. Upon entering, I observed [the Service Recipient] in a very distraught state: crying, visibly upset. I asked [the Service Recipient] what was wrong. She told me that ██████████ had been yelling at her. ██████████ is her job coach – they were on a cleaning crew that morning. [The Service Recipient] said she had cursed at her (called her a fucking bitch), and said she ██████████ was glad [the Service Recipient] was going to get another job so she wouldn't have to work with her and it was [the Service Recipient]'s fault that she ██████████ had gotten into trouble... (Justice Center Exhibit 9)

██████████ testified at the hearing that on ██████████, that after she had been called into the bathroom by ██████████, she saw that:

[The Service Recipient] was crying. I asked what's going on and Robin said that she would let [the Service Recipient] tell me. [The Service Recipient] was distraught and crying. It was hard to understand her. She said, "I don't want to work with ██████████ anymore. She called me a fucking bitch and blamed me for getting her into trouble..." (Hearing testimony of ██████████)

██████████ also testified that the Service Recipient would not have known independently that ██████████ had received a "verbal counselling," as a result of her violation of the policy prohibiting financial transactions, which had occurred in private the preceding day. (Hearing testimony of ██████████)

Subsequent to the Service Recipient's disclosure, ██████████ notified the Treatment Team Leader (TTL), ██████████. TTL ██████████ immediately arranged to have the Service Recipient seen by Psychologist II ██████████, who later prepared an Impact Assessment of the Service Recipient, Justice Center Exhibit 16. (Hearing testimony of ██████████)

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██████████ met with the Service Recipient on ██████████, and prepared an Impact Assessment on that date, which meets the requirements of a Clinical Assessment as set out in SSL § 488(1)(c).

The Impact Assessment contains the Service Recipient's description of ██████████ conduct, which was entirely consistent with the statements that she had made to ██████████ and ██████████ earlier that day. (Justice Center Exhibit 16)

The Impact Assessment states that:

On interview, [the Service Recipient] was extremely tearful and stated she felt angry. Her affect was appropriate to her mood and both were distraught; her face was red and somewhat swollen from crying and she appeared more forlorn than angry.

[The Service Recipient]'s account regarding the above incident remained consistent over time and throughout the entire interview. [The Service Recipient] gave specific details and reasons for her emotional upset, which appeared deep and sincere. She was not hesitant with responses and did not appear to be struggling for answers to questions. She appeared to have no bias in her statements and her affect was appropriate to the description she provided... She remained tearful, angry and sad throughout the interview but did achieve some calmness following reassurances that she was not at fault. (Justice Center Exhibit 16)

██████████ hearing testimony regarding the Service Recipient's disclosure, as to what ██████████ said to her, was consistent with the version contained in her Impact Assessment. (Hearing testimony of ██████████)

██████████ has consistently denied the allegations arising from the Service Recipient's disclosure of her conduct. In her recorded interview with Investigator ██████████, ██████████ stated that while at ██████████, "there wasn't any conversation" with the Service Recipient. ██████████ maintained that she only said, "I'll give you a hand with the showers' and that's all." According to her, she had a "very good relationship" with the Service Recipient. She said that

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there was no special interaction with the Service Recipient that day and that she cleaned the showers of the bathroom, that the Service Recipient was cleaning, and then left the room. When questioned further, she said that she did not curse; that she did not blame or confront the Service Recipient about getting her “into trouble;” that she had not been aware that the Service Recipient was upset that day; and that she did not know why she had been suspended from work effective around noon on ██████████. (Justice Center Exhibit 17)

In ██████████ Request for Amendment, dated ██████████, she provided a different version of what happened at the time in question. It states:

I made a comment about the house shower being dirty and said this bathroom has shit/feces on the floor and she thought I was talking to her. We were both in the bathroom and I was supervising her while she was cleaning... it clearly was a misunderstanding. (Justice Center Exhibit 2)

At the hearing, ██████████ testified to yet another accounting of the incident. She testified that when she and the Service Recipient were in the bathroom at the jobsite, ██████████ looked in the shower and she saw feces on the floor there. She testified that she then said, “Those fucking bitches didn’t even pick the shit up off the floor.” She testified that she had been talking to herself and, that to this, the Service Recipient replied, “Oh, look at that.” She testified that she then cleaned the shower and left the bathroom immediately, without further interaction with the Service Recipient. (Hearing testimony of ██████████, Subject)

The Service Recipient had no motivation to fabricate the story that she repeated to the three staff members to whom she spoke on ██████████. The Impact Assessment states that the Service Recipient, “... did not express any grudge or other reason to make false statements against ██████████. She did not ask to have her fired or etc...” (Justice Center Exhibit 16)

By all accounts the Service Recipient and ██████████ were good friends, even ██████████ was clear on this point, and the Service Recipient was sincerely upset, which supports the

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veracity of her disclosure of ██████████ conduct. ██████████, on the other hand, had the strong motivation of the preservation of her reputation and her employment status to compel her to prevaricate and deny. Furthermore, the Service Recipient's reports to the three staff members were clear, consistent and credible, while ██████████ three statements regarding what happened that day contained significant discrepancies. Accordingly, ██████████ testimony is not credited evidence.

The preponderance of the evidence establishes that ██████████ did commit the acts giving rise to the substantiated report, namely that she did, in fact, yell at, curse at, and blame the Service Recipient for the Subject being reprimanded, while they were in the bathroom of ██████████ ██████████ on ██████████.

Having determined that ██████████ committed the act(s) as alleged, the question then becomes whether that conduct constitutes psychological abuse and/or neglect.

The evidence is clear that, as a result of ██████████ conduct, the Service Recipient was extremely emotionally distraught. The evidence of ██████████ ██████████, (signed statement and investigator interview), ██████████, (hearing testimony, signed statement and investigator interview), and ██████████ ██████████, (hearing testimony, Impact Assessment and investigator interview), all established that, on ██████████, the Service Recipient was extremely upset. She was crying to each of the witnesses and expressed her upset verbally, the source of which was ██████████ conduct towards her. ██████████ described the Service Recipient's distress as "deep and sincere." (Justice Center Exhibit 16)

A component of the allegation described in "Offense 1" of the substantiation letter, (Justice Center Exhibit 1), is that ██████████ failed to maintain appropriate boundaries in her relationship with the Service Recipient. The argument is that, because of this failure to maintain

██████████ appropriate boundaries, the Service Recipient's reaction to ██████████ yelling, cursing and blaming her was more severe than it would otherwise have been.

In the hearing, when asked to describe her relationship with the Service Recipient, ██████████ testified that, "We're friends. Obviously, we're not supposed to be friends, but if you work in this job for 30-35 years, you make friends." (Hearing testimony of ██████████, Subject)

When asked about the borrowing of money from the Service Recipient, ██████████ testified that, "We had that kind of relationship. Even though it wasn't supposed to happen, we had that kind of relationship." (Hearing testimony of ██████████, Subject)

██████████ Impact Assessment states that the Service Recipient:

...she appears to have formed a special bond with ██████████. It is likely that this closeness, followed by ██████████ apparent rejection (as experienced by [the Service Recipient]) resulted in the extreme emotional discomfort the Service Recipient was expressing in the above mentioned interview. She appeared to be struggling with what she perceived to be a loss, and to be experiencing some guilt that she herself had been somehow at fault... (Justice Center Exhibit 16)

██████████ told Investigator ██████████ that:

There appears to be some crossing of boundary lines in the work relationship between ██████████ and [the Service Recipient], as demonstrated by [the Service Recipient]'s intense response to the situation. (Justice Center Exhibit 6)

██████████ testified that, on ██████████, ██████████ was extremely upset and that "...the degree of emotional suffering that [the Service Recipient] expressed..." made her think that..."boundaries had been crossed." (Hearing testimony of ██████████)

██████████ testified further that she usually met with the Service Recipient twice a month and that during some sessions, subsequent to the ██████████ incident, the Service Recipient had repeatedly brought up the issue of what ██████████ had said to her that day. Each time the Service Recipient brought it up, ██████████ redirected her as "...it was not productive

██████████
to dwell on the incident.” (Hearing testimony of ██████████)

██████████ testified that on ██████████, she conducted a Conflict Resolution Session between the Service Recipient and ██████████ to explore whether they could work together again. At the session, ██████████ admitted that she “felt betrayed” by the Service Recipient, an admission that supports the finding that ██████████ did, in fact, blame the Service Recipient. ██████████, “...got the sense that there were some underlying emotions that they weren’t sharing with [her], that the relationship was more emotional than it should be and that, as a result, ██████████ thought that the boundary was crossed...” ██████████ testified that even though both the Service Recipient and ██████████ said that they were ready to resume working together, she did not think that they were really ready to do so. (Hearing testimony of ██████████)

██████████ provided extensive testimony that there had been an ongoing issue related to the ignoring of appropriate boundaries by ██████████ with respect to the Service Recipient. She had spoken to ██████████ about crossing boundaries and maintaining professionalism repeatedly and had reported the problem to her superiors several times, but the problem persisted. (Hearing testimony of ██████████)

It is clear from all of the evidence that the Service Recipient did react very strongly to ██████████ yelling, cursing and blaming, on ██████████, and that her deep emotional pain was exacerbated by the fact that ██████████ had failed to maintain appropriate professional boundaries with her.

All of the elements of psychological abuse as set out in SSL § 488(1)(c) are present in this case. ██████████ yelling at, cursing at and blaming of the Service Recipient caused “...a substantial diminution of her emotional... condition, supported by a clinical assessment...” Both

██████████ and ██████████ testified that the Service Recipient had made consistent progress in eliminating her “targeted behaviors” and that she was functioning at a high level. The Service Recipient’s unsigned Functional Assessment/Behavior Management Plan prepared on ██████████ indicates, under the heading, Current Behavioral Status, that the Service Recipient, “...has made huge progress in the ██████████ environment. She has good rapport with most house staff and gets along fairly well with her peers... She has maintained prosocial behaviors...” (Justice Center Exhibit 18)

In short, at the time of the incident, the Service Recipient’s baseline behavior had stabilized and ██████████ conduct did cause a substantial diminution of the Service Recipient’s emotional condition.

Furthermore, all of the elements of neglect as set out in SSL § 488(1)(h) are also present in this case. ██████████ yelling at, cursing at and blaming of the Service Recipient was a breach of her duty to the Service Recipient that resulted in “...serious or protracted impairment of the ... mental or emotional condition...” of the Service Recipient. In this case, the impairment of the Service Recipient’s emotional condition was both serious and protracted. She was extremely upset and the trauma stayed with her to the extent that she continued to think about it and raise it with ██████████ in their sessions together for some time after the event.

In the final analysis, based on all of the evidence, it is concluded that the Justice Center has met its burden of proving by a preponderance of the evidence that ██████████ committed the psychological abuse and neglect as alleged in “Offense 1” of the substantiated report, and is properly substantiated as a Category 3 act.

A substantiated Category 3 finding of abuse and/or neglect will not result in the Subject’s name being placed on the VPCR Staff Exclusion List and the fact that the Subject has a

██████████

Substantiated Category 3 report will not be disclosed to entities authorized to make inquiry to the VPCR. However, the report remains subject to disclosure pursuant to NY SSL § 496 (2). This report will be sealed after five years.

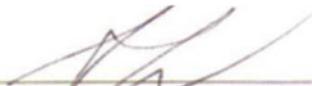
DECISION:

The request of ██████████ that the substantiated report, dated ██████████, ██████████, ██████████ dated and received on ██████████ ██████████ be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed psychological abuse and neglect.

The substantiated report is properly categorized as a Category 3 act.

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

DATED: May 28, 2015
Plainview, New York


Sharon Golish Blum, Esq.
Administrative Law Judge