

**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
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: Jennifer Oppong, Esq.

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By: Jean O'Hearn, Esq.
Kreisberg & Maitland, LLP
75 Maiden Lane, Suite 603
New York, New York 10038

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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 ██████████, ██████████ be amended and sealed is granted. The Subject has not been shown by a preponderance of the evidence to have committed physical abuse or abuse (deliberate inappropriate use of restraints).

NOW, THEREFORE, IT IS DETERMINED that the record of this report shall be amended and sealed by the Vulnerable Persons' Central Register, pursuant to SSL § 493(3)(d).

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
March 28, 2016



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**

Adjudication Case #:

██████████

Before:

Sharon Golish Blum
Administrative Law Judge

Held at:

Adam Clayton Powell Jr. State Office Building
163 West 125th Street
New York, New York 10027
On: ██████████

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
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By: Jean O'Hearn, Esq.
Kreisberg & Maitland, LLP
75 Maiden Lane, Unit 603
New York, New York 10038

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 evidence having been considered, it is hereby found:

1. The VPCR contains a substantiated report dated [REDACTED] [REDACTED] of physical abuse and/or abuse (deliberate inappropriate use of restraints) by the Subject of a service recipient.
2. The Justice Center substantiated the report against the Subject. The Justice Center concluded that:

Allegation 2¹

It was alleged that on [REDACTED], while in the parking lot of [REDACTED] [REDACTED], located at [REDACTED], while acting as a custodian from [REDACTED], you committed physical abuse and/or abuse (deliberate inappropriate use of restraints) when you grabbed a service recipient's arms and neck in an attempt to restrain her.

These allegations have been SUBSTANTIATED as Category 3 physical abuse and Category 3 abuse (deliberate inappropriate use of restraints), pursuant to Social Services Law § 493(4)(c).

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

¹ There was initially another allegation against the Subject of physical abuse under SSL § 488(1)(a) that was unsubstantiated.

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was retained.

4. The facility, ██████████, located at ██████████ ██████████, is a temporary detention facility for youth operated by ██████████ ██████████, which is overseen by the New York State Office of Children and Family Services (OCFS), a provider agency that is subject to the jurisdiction of the Justice Center.

5. At the time of the alleged abuse, the Subject, ██████████ had been employed as an ██████ Court Services Transportation Unit Juvenile Counsellor (JC) for approximately nine years. The Subject's responsibilities included picking up the female facility service recipients who had scheduled court appearances at the ██████████ (Court) from the facility at 7:00 a.m., escorting them during the transport to Court, staying with them in a designated waiting room at Court and escorting those who were finished, together with any new female facility service recipients, back to the facility in the early afternoon. Prior to leaving the facility for Court and prior to leaving Court to be transported to the facility, the Subject was required to put handcuffs and leg shackles on the service recipients. (Hearing testimony of the Subject) The Subject was a custodian as that term is so defined in Social Services Law § 488 (2).

6. At the time of the alleged abuse, the Service Recipient was a female youth who had been ordered detained by the Court and was temporarily residing at the facility. On ██████████, the Service Recipient had a scheduled court appearance and, consequently, was escorted by the Subject from the facility to Court and back to the facility after her appearance. (Hearing testimony of the Subject)

7. On the date of the alleged abuse, prior to the Subject's arrival at the facility, the

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Service Recipient had been involved in an altercation with another facility service recipient. (Hearing testimony of the Subject)

8. At the time of the alleged abuse, the other ██████ Court Services Transportation Unit staff members assigned to the shift were JC ██████████, who drove the transportation van, and JC ██████████, who was also responsible for escorting facility service recipients. (Hearing testimony of the Subject and Justice Center Exhibits 10 and 11)

9. Although the Service Recipient's behavior was unremarkable prior to her Court appearance, her conduct changed drastically after it. The Service Recipient was angry and obviously disappointed when she arrived back at the designated waiting room after appearing in the courtroom. The Service Recipient spoke disrespectfully and directed insults and profanities at the Subject. While still in the designated waiting room, the Subject attempted to counsel the Service Recipient, who was undeterred from continuing her defiant behavior. JC ██████████ ██████████, who was assigned to the later afternoon shift, arrived and attempted unsuccessfully to calm the Service Recipient. (Hearing testimony of the Subject and Justice Center Exhibit 7)

10. Subsequently, the Subject and JC ██████████ ██████████ escorted the Service Recipient together with Service Recipient A to the transport van, which was parked in the courthouse sally port, a secure enclosed parking area. (Hearing testimony of the Subject)

11. At approximately 2:20 p.m., at the sally port, Service Recipient A entered the back of the van, followed by the Service Recipient. The secure interior seating is comprised of two parallel benches running lengthwise inside the van. Once the Service Recipient sat down in the van, she deliberately positioned her foot so as to block the Subject from being able to close the van door. The Subject attempted to direct the Service Recipient to move her foot, but the Service Recipient refused to comply. The Subject then decided to switch the seating of the two

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Service Recipients to have the Service Recipient sit further inside the van and to have Service Recipient A sit closer to the door. The Subject directed the Service Recipient to get out of the van. The Subject assisted the Service Recipient out of the van by pulling the Service Recipient's handcuffs towards herself. Once the Service Recipient was standing with the Subject behind the van, the Subject again attempted to counsel the Service Recipient, who continued her use of profanities. (Hearing testimony of the Subject)

12. As the Subject was speaking to the Service Recipient, JC ██████████, who was at the front of the van, told the Subject to get the Service Recipient back into the van. The Subject directed Service Recipient A to step out of the van and then had the two Service Recipients reenter the van with the Service Recipient going in first, thereby switching their respective seats. Thereafter, the transport van completed the trip to the facility without further incident. (Hearing testimony of the Subject)

13. On the date of the alleged abuse, while still in the courthouse and being escorted to the van, the Service Recipient threatened to get the Subject "into trouble." After the transport van had returned to the facility, while the Service Recipients were waiting to be processed, the Service Recipient and Service Recipient A openly spoke of their plan to get the Subject "into trouble." (Justice Center Exhibits 10 and 11)

14. Upon arriving at the facility, the Subject removed herself from the situation in order to promote the de-escalation of the Service Recipient's behavior. At that time, the Subject was instructed by OCFS staff members ██████████ and ██████████ to fill out an Incident Report, as they had heard about the Service Recipient's threats against the Subject. The Subject did as she was instructed. (Hearing testimony of the Subject and Justice Center Exhibit 6)

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15. At approximately 3:11 p.m. on the date of the alleged abuse, the Service Recipient was escorted to the facility medical office by a Court Services Supervisor, where she was seen by Physician Assistant (PA) ██████████. The Service Recipient showed PA ██████████ scratches on her chest, neck and arm and, in the presence of the Court Services Supervisor, the Service Recipient alleged that the Subject caused the injuries by pulling the Service Recipient out of the van, choking her, squeezing her neck, banging the back of her head against the van five times, attempting to throw her back into the van and squeezing her “butt.” (Justice Center Exhibit 20: audio interview of PA ██████████)

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 allegation constitutes 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 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 by SSL § 488(1). SSL § 488(1)(a) defines physical abuse as follows:

(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.

SSL § 488(1)(d) defines the deliberate inappropriate use of restraints, also a form of abuse as follows:

(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.

Substantiated reports of abuse and/or neglect shall be categorized into categories pursuant to SSL § 493. Under SSL § 493 (4)(c), a Category 3 act is defined as:

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 the Subject 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).

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

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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 the evidence, the substantiated report must be amended and sealed.

DISCUSSION

The Justice Center has not established by a preponderance of the evidence that the Subject committed physical abuse or abuse (deliberate inappropriate use of restraints), by grabbing the Service Recipient's arms and neck in an attempt to restrain her, as alleged in Allegation 2 of the substantiated report.

In support of its substantiated findings, the Justice Center presented evidence obtained during the investigation. (Justice Center Exhibits 1-20) The investigation underlying the substantiated report was initially conducted by former Justice Center Investigator ██████████. Thereafter, based on the evidence gathered, Justice Center Investigator ██████████ prepared the Investigative Report (Justice Center Exhibit 14) and testified, together with ██████████ Director of Juvenile Justice Training, ██████████, at the hearing on behalf of the Justice Center.

The Subject testified at the hearing on her own behalf and provided no other evidence.

The Justice Center relied primarily on the evidence obtained from PA ██████████ ██████████, who was the only person who spoke to the Service Recipient regarding the allegations. After receiving the Service Recipient's complaint against the Subject, PA ██████████ ██████████ took four photographs of injuries that the Service Recipient attributed to the Subject's conduct (Justice Center Exhibit 15), completed a Health Services Incident Report (Justice Center Exhibit 12), a Report of Suspected Child Abuse (Justice Center Exhibit 13), and an OCFS Report

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of Suspected Child Abuse or Maltreatment. (Justice Center Exhibit 8) PA ██████████ also reported the allegation to OCFS hotline staff member ██████████, who consulted OCFS Supervisor ██████████ and told PA ██████████ that she would make a law enforcement referral. PA ██████████ further notified the facility Tour Commander² of the allegation and provided him with a copy of her Health Services Incident Report. PA ██████████ also provided the Court Services Supervisor³, who had been present during the Service Recipient's disclosure to PA ██████████ of the allegations against the Subject, with a copy of her Health Services Incident Report. (Justice Center Exhibit 20: audio interview of PA ██████████)

On ██████████ former Justice Center Investigator ██████████ conducted and recorded his interview of PA ██████████ in which she repeated the Service Recipient's allegations and stated that when she examined the Service Recipient on ██████████, she observed superficial abrasions on the Service Recipient's neck, left side of her chest and right arm. She further indicated that she did not see any bruises on the Service Recipient's head. When asked if she had seen any handprints or fingermarks on the Service Recipient, PA ██████████ responded that the injuries "...looked more like scratches." When asked if the injuries she observed may have been caused by the Subject's actions as alleged by the Service Recipient, PA ██████████ responded that the scratches on the Service Recipient's neck "...could be consistent with being choked" and that the scratch on the

² The only evidence of the facility Tour Commander's involvement in the allegations is contained in the ██████████ recorded interview of PA ██████████ by former Justice Center Investigator ██████████, wherein she refers to the facility Tour Commander but the name is inaudible. (Justice Center Exhibit 20)

³ The only evidence of the Court Services Supervisor's involvement in the allegations is contained in the ██████████ recorded interview of PA ██████████ by former Justice Center Investigator ██████████, wherein she refers to the Court Services Supervisor but the name is inaudible. (Justice Center Exhibit 20)

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Service Recipient's right arm "...could be consistent with being grabbed." Although PA ██████████ also mentioned the scratches on the left side of the Service Recipient's chest, she did not provide an explanation as to how those injuries would have been consistent with the Service Recipient's allegations. (Justice Center Exhibit 20: audio interview of PA ██████████ ██████████)

The Justice Center's other main evidence consisted of the Subject's Incident Report dated ██████████ (Justice Center Exhibit 6) and the handwritten statement of Service Recipient A dated ██████████ (Justice Center Exhibit 9).

The Subject's position was that she did not commit either physical abuse or abuse (deliberate inappropriate use of restraints) against the Service Recipient. The Subject testified at the hearing that, although the Service Recipient's behavior was unremarkable prior to her Court appearance, the Service Recipient's conduct changed drastically after the appearance, and that the Service Recipient was angry and obviously disappointed when she arrived back at the designated waiting room after appearing in the courtroom. The Subject testified that the Service Recipient spoke disrespectfully to the Subject and that, while still in the designated waiting room, the Subject attempted to counsel the Service Recipient. The Subject testified that JC ██████████, who was assigned to the afternoon shift, arrived and attempted unsuccessfully to calm the Service Recipient. JC ██████████ Incident Report dated ██████████ (Justice Center Exhibit 7) corroborates her involvement.

The Subject testified that thereafter, she escorted the Service Recipient together with Service Recipient A to the transport van, which was parked in the Court's sally port. The Subject further testified that at approximately 2:20 p.m., at the sally port, Service Recipient A entered the back of the van, followed by the Service Recipient and that once the Service

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Recipient sat down in the van; she deliberately positioned her foot to block the Subject from being able to close the van door. The Subject testified that after she attempted to direct the Service Recipient to move her foot, and the Service Recipient refused to comply, the Subject decided to rearrange the seating of the two Service Recipients to have the Service Recipient sit further inside the van. The Subject testified that she directed the Service Recipient to get out of the van and that she assisted the Service Recipient out of the van by pulling the Service Recipient's handcuffs towards herself. The Subject testified that once the Service Recipient was standing with the Subject behind the van, the Subject again attempted to counsel the Service Recipient, who continued her behavior. The Subject testified that at that point, JC ██████████ ██████████ told the Subject to just get the Service Recipient back into the van. The Subject testified that she then instructed Service Recipient A step out of the van, assisted the Service Recipient back into the van, after which she assisted Service Recipient A back into the van in the seat closer to the door. The Subject testified that thereafter, the transport van completed the trip to the facility without further incident.

The allegation against the Subject was substantiated by the Justice Center under both physical abuse and abuse (deliberate inappropriate use of restraints) based on the same alleged set of facts. However, each of the different findings of abuse requires a separate analysis.

Abuse (Deliberate Inappropriate Use of Restraints)

One of the Justice Center's alternate theories that the Subject had committed abuse (deliberate inappropriate use of restraints) was that the Subject executed a hook transport restraint on the Service Recipient. The Subject's Incident Report (Justice Center Exhibit 6) refers to the use of a hook transport restraint, but the circumstances of the recording of a hook transport restraint were unclear. The Subject's Incident Report is a segmented two page

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document that provides space on the first page for the incident description. On that part, the Subject provided a summary of the incident that was consistent with the Subject's Hearing testimony. She wrote that, while approaching the vehicle to return to the facility, the Service Recipient's behavior was rude, disrespectful and angry due to her remand status. The Service Recipient did not comply with repeated directions to get into the van. The Service Recipient then entered the van and prevented the Subject from being able to shut the van door by putting her foot in the way. The Subject directed the Service Recipient to get out of the van and ultimately assisted her in stepping out. After a short attempt at verbal counselling, the Service Recipient complied with the Subject's direction to reenter the van in a seat further from the door. At the bottom of the page, the description of the incident was signed by the Subject and dated

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The top part of the second page of the Subject's Incident Report (Justice Center Exhibit 6) has a heading where the Subject had entered her name, the date and the time. At the Hearing, the Subject testified that the description and her name, the date and the time were made in her handwriting but that the number assigned to the incident which was written in the top right corner of the page had not been written by her.

The middle part of the second page of the Subject's Incident Report (Justice Center Exhibit 6) has another section, which has several questions, each requiring a checkmark answer in the event that an Emergency Safety Physical Intervention (ESPI) was used. In that section, there were checkmarks made as follows: that an Emergency Safety Physical Intervention was used; that of the seven options for Standing Assists, a Hook Transport was used; that the ESPI lasted for thirty seconds; that no mechanical restraints were used; that no mental health referral was made; that a medical incident form was completed; and that the cause of the injury was the

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incident rather than a restraint.

At the Hearing, the Subject testified that she did not write the aforementioned checkmarks and that she did not know who had written them. She further testified that she had not attempted, nor did she execute any type of restraint on the Service Recipient.

The middle part of the second page of the Subject's Incident Report (Justice Center Exhibit 6) is signed by the OCFS staff member ██████████ on ██████████.

The bottom part of the second page of the Subject's Incident Report (Justice Center Exhibit 6) is signed by the OCFS staff member ██████████ on ██████████.

██████ Director of Juvenile Justice Training ██████████ testified at the hearing that a hook transport ESPI is a two staff member technique when moving an uncooperative service recipient from one place to another, that involves hooking one of each of the staff members' arms under the armpits of a service recipient, while facing that service recipient on each side, and moving that service recipient backwards toward the destination.

The Subject's Incident Report was signed by two other facility staff members who were not interviewed and, therefore, no clarification was pursued as to who had written the relevant entries. The Subject was not interviewed and, therefore, no statement was taken from her regarding her Incident Report or any other aspect of the allegation. The Justice Center did not establish who had made the relevant entries regarding the hook transport restraint and no further evidence was provided with respect to that restraint.

Furthermore, the Service Recipient's allegations that the Subject had pulled the Service Recipient from the van, choked her, banged her head against the van five times, squeezed her neck, tried to throw her back into the van and squeezed her "butt" do not align with a hook transport restraint noted in the Subject's Incident Report, as described by ████████ Director of

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Juvenile Justice Training ██████████. Accordingly, given this fundamental inconsistency, the lack of evidence as to who made the checkmarks on the Subject's Incident Report and the Subject's credible denial of having executed a restraint, the Justice Center has not established by a preponderance of the evidence that the Subject executed a hook transport restraint as indicated on the Subject's Incident Report.

The Justice Center counsel argued that even if there was insufficient evidence to find that a hook transport restraint occurred, some other form of restraint did occur. To support that contention the Justice Center relied on the evidence of PA ██████████ (Justice Center Exhibits 8, 12, 13 and 20: audio interview of PA ██████████), the four photographs of the Service Recipient's injuries (Justice Center Exhibit 15) and the handwritten statement of Service Recipient A dated ██████████ (Justice Center Exhibit 9), as evidence that the Subject committed a deliberate inappropriate use of restraints upon the Service Recipient.

PA ██████████ was the only person who was interviewed as part of the investigation of the Service Recipient's allegations. In the ██████████ telephone interview, PA ██████████ told former Justice Center Investigator ██████████ that the Service Recipient told her that the Subject pulled the Service Recipient from the van, choked her, banged her head against the van five times, squeezed her neck, tried to throw her back into the van and squeezed her "butt." (Justice Center Exhibit 20: audio interview of PA ██████████ ██████████)

The statement of Service Recipient A dated ██████████ (Justice Center Exhibit 9), contains allegations that the Subject had pushed the Service Recipient from the waiting area into the Court hallway and that the Subject had pulled the Service Recipient from the van, banged her against the van and grabbed her by the neck. Service Recipient A was not interviewed by either

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investigator.

While the statement of Service Recipient A is ostensibly corroborative of PA ██████████ ██████████ statement as to the Service Recipient's allegations, both JC ██████████ and JC ██████████ were present at the relevant time and they completed Incident Reports (Justice Center Exhibits 10 and 11) that state that they had heard the Service Recipient threaten to get the Subject "into trouble."

JC ██████████ Incident Report (Justice Center Exhibit 10) contains a description of the interaction between the Subject and the Service Recipient that is consistent with the Subject's version of events. It further indicates that, after the transport van had returned to the facility, JC ██████████ overheard the two Service Recipients discussing their plan to get the Subject "into trouble." JC ██████████ Incident Report (Justice Center Exhibit 11), indicates that in the courthouse, on the way to the van, he had overheard the Service Recipient threaten that she was going to get the Subject "into trouble." Neither JC ██████████ nor JC ██████████ was interviewed by either Justice Center investigator.

Because completing facility employee Incident Reports is one of the responsibilities of a facility employee's job duties, the Incident Reports have a level of inherent reliability. Accordingly, the evidence of JC ██████████ and JC ██████████ is determined to be convincing and credible.

Furthermore, while the four photographs of the Service Recipient taken by PA ██████████ ██████████ on ██████████ (Justice Center Exhibit 15) show injuries, the injuries alone do not support a finding that a deliberate inappropriate use of restraints occurred, especially in light of the failure of the other evidence to prove that any kind of restraint was executed or attempted by the Subject.

Physical Abuse

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Having determined that the Justice Center did not prove its allegation of abuse (deliberate inappropriate use of restraints), the issue remains as to whether the Justice Center established by a preponderance of the evidence that the Subject committed physical abuse on the Service Recipient.

The evidence relied upon by the Justice Center to prove the allegation of physical abuse included PA ██████████ three ██████████ reports (Justice Center Exhibits 8, 12 and 13), the audio recording of the ██████████ interview of PA ██████████ (Justice Center Exhibit 20: audio interview of PA ██████████), the handwritten statement of Service Recipient A dated ██████████ (Justice Center Exhibit 9) and the four photographs of the Service Recipient's injuries (Justice Center Exhibit 15).

Neither former Justice Center Investigator ██████████, nor Justice Center Investigator ██████████ interviewed any of the people who were present at the time of the alleged incident. Similarly, other than PA ██████████, none of the facility staff members who were present after the alleged incident, or otherwise may have had knowledge relevant to the investigation, were interviewed either.

Although three documents (Justice Center Exhibits 8, 12 and 13), were generated and multiple communications initiated by PA ██████████ relating to the Service Recipient's allegations against the Subject, they all simply repeat the same allegations made by the Service Recipient when she spoke to PA ██████████ on ██████████ in the presence of the Court Services Supervisor, who was never identified or interviewed.

While Service Recipient A's written statement dated ██████████, (Justice Center Exhibit 9) is ostensibly corroborative of the Service Recipient's allegations as provided by PA ██████████, the evidence of JC ██████████ (Justice Center Exhibit 10), who overheard

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the two Service Recipients discussing their plan to get the Subject “into trouble,” and of JC ██████████ (Justice Center Exhibit 11), who had overheard the Service Recipient threaten to get the Subject “into trouble” is convincing and credited.

Justice Center Investigator ██████████ testified that the four photographs of injuries observed on the Service Recipient, taken by PA ██████████ on ██████████, (Justice Center Exhibit 15), was the evidence that tipped the balance against the Subject when he weighed the statements of the Service Recipients against the statements of the Juvenile Counsellors.

Picture one shows two small deep scratches on a raised welt near the back right side of the Service Recipient’s neck. Picture two shows the Service Recipient’s neck and chest from her left side and reveals scratches below her collar bone and some redness on the left side of her neck. Picture three shows a clear frontal view of the Service Recipient’s neck/ throat and there are deep scratches on the left side of her chest, near her armpit well below her collar bone. Picture four shows a scratch on the Service Recipient’s right arm near her elbow.

PA ██████████ Health Services Incident Report (Justice Center Exhibit 12) refers to the injuries as superficial abrasions on the right of neck posterior, the left lateral side of her neck, the right upper arm and the left side of anterior chest.

When PA ██████████ spoke to former Justice Center Investigator ██████████ ██████████ by telephone on ██████████, she told the investigator that when she examined the Service Recipient on ██████████, she observed superficial abrasions on the Service Recipient’s neck, left side of her chest and right arm. Interestingly, PA ██████████ indicated that she did not see any bruises on the Service Recipient’s head. When asked if she had seen any handprints or fingerprints on the Service Recipient, PA ██████████

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responded that the injuries “...looked more like scratches.” When asked if the injuries that she had observed may have been caused by the Subject’s actions as alleged by the Service Recipient, PA ██████████ responded that the scratches on the Service Recipient’s neck “...could be consistent with being choked” and that the scratch on the Service Recipient’s right arm “...could be consistent with being grabbed.” Although PA ██████████ also mentioned the scratches on the left side of the Service Recipient’s chest, she did not provide an explanation as to how those injuries would have been consistent with the Service Recipient’s allegations. (Justice Center Exhibit 20: audio interview of PA ██████████)

While the four photographs of the Service Recipient taken by PA ██████████ on ██████████ (Justice Center Exhibit 15) show injuries, the Subject’s credited and uncontradicted testimony was that on the date of the alleged abuse, prior to transporting the Service Recipient to court, the Subject was advised by a facility staff member that the Service Recipient had been involved in an altercation with another service recipient that morning.

The Subject’s testimony provided a credible alternate explanation as to how the injuries occurred. Furthermore, although PA ██████████ had taken the photographs of the injuries very soon after they were allegedly sustained, there was no injury noted to the Service Recipient’s head even though the Service Recipient alleged that the Subject banged her head against the back of the van five times. Additionally, although most of the injuries were scratches, the Service Recipient had not alleged anything about being scratched by the Subject. Lastly, Pictures two and three show that the most visible injuries were on the Service Recipient’s chest below her collar bone. The Service Recipient did not allege that the Subject had touched her chest area. The Subject’s assertion that the injuries may have been caused by the Service Recipient’s earlier altercation may well explain why the photographs of the injuries are not

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consistent with the Service Recipient's allegations.

The Subject testified in a clear and forthright manner. Her testimony was supported by the Incident Report of JC ██████████ (Justice Center Exhibit 10) and by the Incident Report of JC ██████████ (Justice Center Exhibit 11), both of which indicate that each Juvenile Counsellor separately overheard the Service Recipient discussing her plan to get the Subject "into trouble." Having had the opportunity to hear and consider the Subject's hearing testimony, in light of all of the other evidence, the Administrative Law Judge finds that the Subject's testimony is credited and reliable evidence.

Conclusion

The Justice Center alleged that the Subject committed physical abuse and/or abuse (deliberate inappropriate use of restraints), by grabbing the Service Recipient's arms and neck in an attempt to restrain her, as alleged in Allegation 2 of the substantiated report. In the final analysis, based on all of the evidence, it is concluded that the Justice Center has not met its burden of proving by a preponderance of the evidence that the Subject committed the physical abuse or abuse (deliberate inappropriate use of restraints), alleged in the substantiated report.

DECISION:

The request of ██████████ that the substantiated report dated ██████████, ██████████ be amended and sealed is granted. The Subject has not been shown by a preponderance of the evidence to have committed physical abuse or abuse (deliberate inappropriate use of restraints).

This decision is recommended by Sharon Golish Blum, Administrative

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Hearings Unit.

DATED: March 22, 2016
Plainview, New York



Sharon Golish Blum, Esq.
Administrative Law Judge