

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of the)
)
 N M)
_____)

OAH No. 12-0423-SAN

DECISION

I. Introduction

The Office of Children’s Services (OCS) made a substantiated finding that N M had physically abused his minor son in December 2011. Mr. M requested a hearing to challenge that finding.

Mr. M’s hearing was held on August 13, 2013. Mr. M represented himself. Assistant Attorney General Megyn Greider represented OCS.

As discussed below, Mr. M caused physical injury to his minor son. The substantiated physical abuse finding is therefore affirmed.

II. Facts

Mr. M is the father of P, who was seven years old at the time of the underlying incident. Mr. M and his ex-wife, B U, share custody of P on a week on/week off schedule. P was at Mr. M’s home on December 29, 2011, when he and his stepbrother were acting out. Mr. M tried to control their behavior by non-corporal punishment methods. Those methods were ineffective. Mr. M then spanked both boys.¹

The spanking consisted of Mr. M using his belt and hitting the boys on the buttocks. P turned while being spanked and the end of the belt hit him on his right thigh. He developed a bruise on that spot the next day.²

P returned to his mother’s home on January 1, 2012. His mother noticed the bruise when she was undressing P so that he could take a shower. She called the police to report child abuse.³ The police observed a bruise “on his right leg, toward the front area of his thigh.”⁴ The bruise was round and approximately three inches in diameter. It was faded and appeared to be several

¹ Mr. M testimony; Ex. A, p. 21.
² Mr. M testimony.
³ Ms. U testimony; Ex. A, pp. 23 – 24.
⁴ Ex. A, p. 24.

days old.⁵ The police spoke to Mr. M about the incident and “determined that the bruise was caused accidentally during reasonable parental discipline.”⁶

Ms. U reported the abuse claim to OCS.⁷ Reports were also made to OCS by P’s school.⁸ OCS interviewed Ms. U, Mr. M, Mr. M’s wife, P, his sister, step-brother, and step-sister. Mr. M admitted spanking P.⁹ OCS reviewed the information and made a substantiated finding of physical abuse. OCS did not claim that Mr. M’s home is unsafe for the children.¹⁰

III. Discussion

It is OCS’s burden to prove, by a preponderance of the evidence, that Mr. M has committed an act of physical abuse involving his minor son. It is undisputed that Mr. M spanked his son, causing a bruise.

OCS’s position is that abuse or neglect for purposes of these findings is defined in AS 47.17.290(2). Prior decisions have adopted that definition,¹¹ and it will be used here as well.

“[C]hild abuse or neglect” means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby[.¹²]

As this statute is currently interpreted,

OCS may make a substantiated finding of physical abuse any time a child is injured. Such a finding must be upheld regardless of the circumstances that led to that injury. All that needs to be proven is that the child was injured in some way.¹³

Mr. M physically injured¹⁴ his son when he caused a small bruise on his son’s thigh. This injury occurred during the course of parental discipline. While parents have a statutorily

⁵ *Id.*

⁶ Ex. A, p. 24.

⁷ Ms. U testimony; Ex. A, pp. 15 – 16.

⁸ Ex. A, pp. 41 – 43.

⁹ Ex. A, pp. 13 – 16, 30 - 40.

¹⁰ Ex. A, p. 1; Ms. T testimony.

¹¹ *See In re H.N.*, OAH No. 12-0715-SAN (Commissioner of Health and Social Services 2013), page 3; <http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN120715.pdf>.

¹² AS 47.17.290(2).

¹³ *In re F. T.* OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013), p. 4; <http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN130050.pdf>.

¹⁴ AS 47.17.290 does not define physical injury. Physical injury is commonly understood to be anything that causes some damage to a person’s body, even if slight.

recognized right to exercise reasonable corporal discipline,¹⁵ parental discipline that causes any degree of physical injury is not reasonable and is, instead, an act of physical abuse.¹⁶

IV. Conclusion

Mr. M physically injured his minor son during the course of parental discipline. Because there was an injury, OCS's substantiated finding of physical abuse is affirmed.

DATED this 16th day of August, 2013.

Signed

Lawrence A. Pederson
Administrative M Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 23rd day of September, 2013.

By: *Signed*

Ree Sailors, Deputy Commissioner
Department of Health and Social Services

[This document has been modified to conform to the technical standards for publication.]

¹⁵ See AS 47.05.065(1): “[P]arents have the following rights and responsibilities relating to the care and control of their child while the child is a minor: . . . (B) . . . the right to exercise reasonable corporal discipline.”

¹⁶ See *In re F. T.* OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013) (parent who caused a bruise in the course of disciplining a child committed physical abuse); <http://aws.state.ak.us/officeofadminhearings/Documents/SAN/SAN130050.pdf>.