

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

In the Matter of)
)
 L D)
_____)

OAH No. 15-0207-SAN

DECISION

I. Introduction

On December 4, 2014, the Office of Children’s Services (OCS) received a report alleging L D neglected her 3-year-old daughter, E.¹ OCS investigated, and ultimately substantiated a finding of medical neglect.² On February 10, 2015, Ms. D appealed the substantiated neglect finding.³ An in-person hearing was held on June 5, 2015. Ms. D appeared in person and represented herself. OCS was represented by Assistant Attorney General Diane Foster. S K, OCS protective service specialist, testified on OCS’s behalf.

Based on the evidence in the record, OCS met its burden of proving that the substantiated neglect finding should be upheld. This decision relates solely to the narrow issue of tooth decay and neglect, and is not meant to reflect on Ms. D’s commitment to E or other parenting skills. The record is clear that Ms. D loves her daughter very much.

II. Facts

E is medically fragile. She was born premature. E has significant hearing loss, chronic lung disease, immunodeficiencies, and developmental delays.⁴ Because of her medical issues, she remains on a liquid diet and is bottle fed.⁵ According to Ms. D, E’s asthma medications affect her teeth.⁶

On December 4, 2014, OCS received a report alleging that Ms. D neglected E due to substance abuse.⁷ OCS followed up that day, but was unable to locate Ms. D and E.⁸ On December 12, 2014, OCS removed E from her grandmother’s home. OCS’s S K took E to the No Name emergency room because of her medical conditions. Dr. J noted E’s severely decayed teeth and reported that extraction may be necessary.⁹

¹ R. 8.
² R. 8.
³ R. 1.
⁴ D testimony; Ex. A, medical records.
⁵ D testimony.
⁶ D testimony.
⁷ K testimony; R. 8 -9.
⁸ K testimony; R. 8-9.
⁹ K testimony; R. 9.

E was placed in foster care and her teeth were extracted two months later.¹⁰ Ms. D has been aware of E's tooth decay since March 2013, when she brought her to Q F, DDS at Facility X.¹¹ Attempts at using remineralizing paste were unsuccessful, and E's tooth decay progressed rapidly.¹² By August 2013, Dr. F was recommending extraction and coordination of treatment with E's pediatrician.¹³ In October 2013, Dr. F wrote a letter to E's pediatrician, recommending extraction in a hospital setting due to E's medical conditions.¹⁴ E did not see Dr. F again until 2015.¹⁵

Ms. D explained that she sought a second opinion, hoping for a less intrusive treatment plan. To this end, she made an appointment with Facility Y, in August 2014.¹⁶ The evidence of follow up is a, "welcome, new patient" email without information of actual consultation. Ms. D also explained her failure to follow up on the fact that she suffered a broken foot and sprained ankle during this time period. This combined with the start of E's preschool and her numerous other medical appointments, created a hectic period. Ms. D testified credibly that E did not present as if she were in pain as a result of her decayed teeth. If she had, Ms. D stated that she would have followed up with treatment.

On December 15, 2015, OCS filed an Emergency Petition for Adjudication of Child in Need of Aid (CINA) and for Temporary Custody.¹⁷ On January 13, 2015, a Superior Court Master found that Ms. D knowingly failed to treat E's decaying teeth.¹⁸

III. Discussion

OCS maintains a central registry of all investigation reports.¹⁹ Those reports are confidential, but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.²⁰ At the conclusion of an investigation, OCS may find that an allegation has been substantiated. When a substantiated finding is appealed, OCS has the burden of proving by a preponderance of the evidence that the finding should be upheld. "Neglect means the failure by a person responsible

¹⁰ K testimony; R. 20.

¹¹ R. 105 – 111.

¹² R. 105- 111.

¹³ R. 109.

¹⁴ R. 102. The letter is addressed to "Dear Doctor" because Ms. D did not want to share the name of E's pediatrician with Dr. F.

¹⁵ R. 107.

¹⁶ Ex. C.

¹⁷ R. 13 – 18.

¹⁸ R. 20.

¹⁹ AS 47.17.040.

²⁰ AS 47.17.040(b).

for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child."²¹

There is no dispute in this case that E's teeth were decayed to the point of requiring surgical extraction. This can reasonably be construed as medical neglect. The record established that Ms. D was aware of the decay and did not seek the treatment plan recommended by E's pediatrician. Ms. D did not seek a second opinion for almost a year, despite findings that E's tooth decay was rapidly deteriorating. Ms. D testified credibly that she was dealing with her own medical issues at the time and it was a hectic period. However, this does not justify her failure to follow up with treatment. The neglect definition does not carve out an exception for failure to provide necessary medical attention.

IV. Conclusion

OCS has the burden of proof. OCS established by a preponderance of the evidence that Ms. D's failure to timely treat E's decayed teeth amounted to medical neglect. The substantiated finding of neglect is therefore affirmed.

DATED this 27th day of July, 2015.

Signed

Bride Seifert
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 21st day of August, 2015.

By: *Signed*

Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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

²¹ AS 47-17-190(11).