

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

In the Matter of	)	
	)	
L K	)	OAH No. 15-0903-SAN
_____	)	Agency No.

**DECISION**

**I. Introduction**

The Office of Children’s Services issued a finding that L K had physically abused her foster child, M.B. OCS’s finding was based on the following:

- evidence of bruising on M.B.’s neck and wrist;
- M.B.’s statement that Ms. K caused the bruising; and
- M.B.’s statement that she did not feel safe in the K home.

OCS found the existence of the bruising, coupled with M.B.’s two statements, sufficient to substantiate maltreatment. Under the protocol used by OCS in its abuse investigations, use of physical force, combined with a substantial fear reaction, is proof of maltreatment.

Following a hearing, however, OCS was unable to prove Ms. K maltreated M.B. Although Ms. K may have caused the bruising, OCS did not bring forward sufficient evidence to prove she did so. In addition, OCS did not prove that M.B. suffered a substantial fear reaction, because M.B. was not in fear of bodily harm and did not exhibit any of the elements of fear identified by OCS in its protocol. Therefore, the substantiated finding that L K abused M.B. is reversed.

**II. Facts**

In the fall of 2014, nine-year-old M.B. was removed from her family home by the Office of Children’s Services and placed with foster parents L and D K. M.B. was being raised by her adoptive mother, who was her grandmother. The record does not reflect why M.B. had to leave her home. The record is clear, however, that she wanted to return to live with her adoptive mother (who will be referred to simply as her “mother.”)<sup>1</sup>

The Ks welcomed M.B. into their home, and were concerned when they heard M.B. express feelings of abandonment, particularly with regard to her birth mother. Ms. K worked to ensure that M.B. had visitation with her mother so that the feelings of abandonment did not increase. Ms. K reported that she also tried to facilitate regular telephone contact between M.B.

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<sup>1</sup> L. K testimony; D. K testimony; E testimony.

and her mother. When M.B.'s mother missed a call, Ms. K would find a way to excuse the oversight, so that M.B.'s feelings of abandonment would not increase.<sup>2</sup>

The Ks are experienced foster parents. When they first began foster-parenting, they took in high-risk children who had been involved in the juvenile justice system. Later, their granddaughter, W.O., came to live with them, so they stopped taking high-risk (and potentially volatile) foster children, and instead took in regular-track foster children. During their years of foster-parenting, no complaints were filed about the Ks. Indeed, OCS would come to the Ks, and ask them to take in children, as occurred with M.B.

During the time that M.B. was living with the Ks, the Ks had one additional child living with them in full-time foster care. She was a 16-year-old girl, initials Q.N., who had developmental disabilities. At OCS's request, the Ks would also take in other foster children for short-term stays in order to provide respite for those children's foster parents. During the critical time at issue in this hearing, the Ks had taken in one of Q.N.'s siblings as a respite foster child.<sup>3</sup>

For the first several months that M.B. and Q.N. lived with the Ks, OCS was not aware of any significant friction or difficulty between the Ks and the children. On March 22, 2015, however, OCS learned that all was not well in the K household. It was a Sunday, and M.B. was having an unsupervised visit with her mother. M.B.'s caseworker, T E, made an unannounced visit to the home. She made the surprise visit because she wanted to observe the dynamic in the household, as part of exploring how the family was progressing toward reunification.<sup>4</sup>

At some point during the visit, M.B.'s mother told Ms. E that M.B. had unexplained bruises, and encouraged M.B. to speak to Ms. E. M.B. then revealed to Ms. E that she had two red marks on her neck, some faint marks on her wrist that looked like a bruise, and another slight red mark that could have been a scratch. Ms. E identified the red marks on the neck as fresh, red bruises. One bruise was about the size of a thumbprint. M.B. complained that it was sore. She said that Ms. K had squeezed her neck and wrist hard enough to leave the bruises.<sup>5</sup>

Using interview techniques that encourage a child to tell her story in her own words, Ms. E asked M.B. to tell her what had happened. M.B. then told her that L K was mean. Whenever M.B. did not do what the Ks wanted her to do, she was told she was misbehaving. She would be told she was "dumb" and "stupid." The other children in the home, particularly W.O., would call

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<sup>2</sup> L. K testimony.

<sup>3</sup> D. K testimony; L. K testimony.

<sup>4</sup> E testimony.

<sup>5</sup> *Id.*

M.B. names, including some racial slurs based on M.B.’s Alaska Native heritage, and no adult would intervene. M.B. explained that the reason she had never said anything earlier was that she was scared, particularly of the threat that she would not be allowed to visit her family.<sup>6</sup>

Ms. E provided M.B. a safety plan for that evening, which involved reassuring M.B. that she was not in physical danger and could have a call with her mother. She then filed a report of harm with OCS.<sup>7</sup>

After receiving the report of harm, OCS formed an interview team of foster parent licensing worker P J and child protective services lead investigator R S. The team interviewed M.B. on March 23, Q.N. on March 24, and L K on March 25.<sup>8</sup>

During the March 23 interview, M.B. confirmed that Ms. K had grabbed her neck and her wrist too hard.<sup>9</sup> This might have happened as many as three times during the preceding five months. She said that Ms. K had grabbed her neck and pushed her into her room. She demonstrated how Ms. K had grabbed her neck and wrists. She confirmed that she had been called a brat by W.O. and Ms. K. She did not feel safe in the K home.<sup>10</sup>

In the March 24 interview with Q.N., Q.N. confirmed that Ms. K would yell at the children. Ms. K had called Q.N. names like “brat” and “stupid idiot.”<sup>11</sup> The team and the team member’s supervisors made the decision to remove both children from the K home.

Ms. E reported that OCS removed M.B. from the K’s home on March 23, 2015, and placed M.B. with a cousin. About two months later, M.B. was returned to her family home. She is currently doing well there, and her academic achievement in school, which was moderate before, is now excellent.<sup>12</sup>

Meanwhile, OCS investigated whether Ms. K had committed child abuse against M.B. It concluded its investigation on May 29, 2015. It substantiated one count of child maltreatment under AS 47.17.209(9).<sup>13</sup> It found that it could not substantiate an allegation that Ms. K had caused mental injury to M.B.<sup>14</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> J testimony. An intern also attended the interviews.

<sup>9</sup> *Id.*; Admin. Rec. at 22. Ms. J’s interview notes indicate that the neck-grabbing occurred twice. *Id.*

<sup>10</sup> J testimony. Ms. J’s notes state M.B. said only W.O. called her an idiot—Ms. K did not use that term. Admin. Rec. at 23.

<sup>11</sup> J testimony.

<sup>12</sup> E testimony.

<sup>13</sup> Admin. Rec. at 13.

<sup>14</sup> *Id.*

Ms. K appealed the substantiated finding. A telephonic hearing was held on November 3, 2015.

### III. Discussion

OCS investigates reports of harm, and maintains a central registry of its investigation reports.<sup>15</sup> The registry is confidential, but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.<sup>16</sup> The standard that must be met to make a finding of substantiated abuse or neglect is found in the definition of child abuse or neglect:

“child 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.<sup>17</sup>

In this case, OCS has charged that Ms. K committed maltreatment when she grabbed M.B. by the wrist and neck with sufficient force to leave bruises.<sup>18</sup> “Maltreatment” means

an act or omission that results in circumstances in which there is a reasonable cause to suspect that a child may be a child in need of aid, as described in AS 47.10.011, except that, for purposes of this chapter, the act or omission need not have been committed by the child’s parent, custodian, or guardian.<sup>19</sup>

This definition cross-references the child-in-need-of-aid statute, AS 47.10.011, which has twelve paragraphs. Each paragraph identifies a different avenue that could constitute maltreatment.

OCS’s substantiation document in this case, however, identifies only one theory of maltreatment: substantial physical abuse, as described in AS 47.10.011(6). Under this theory, OCS must prove that

(6) the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately.<sup>20</sup>

In order to assist its staff with determining whether maltreatment has occurred, OCS has created a *Maltreatment Assessment Protocol* or “MAP” that breaks this definition into its component parts. The MAP creates a flowchart, under which staff must first determine that the

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<sup>15</sup> AS 47.17.040.

<sup>16</sup> AS 47.17.040(b).

<sup>17</sup> AS 47.17.290(3).

<sup>18</sup> Admin. Rec. at 13

<sup>19</sup> AS 47.17.290(9).

<sup>20</sup> AS 47.10.011(6).

person responsible for the child’s care either (1) used or threatened physical force (not by accident); or (2) failed to protect the child from physical force, threat of physical force, or exposure to dangerous conditions.<sup>21</sup> Then, staff must also determine that the act had a “substantial impact,” either by (1) substantial physical harm; (2) substantial risk for substantial physical harm; or (3) substantial fear reaction.<sup>22</sup> Under the MAP, any one of these substantial impacts, in conjunction with an initial finding of nonaccidental use of force or failure to protect, would constitute maltreatment. Although the MAP is not adopted into regulation, OCS has agreed that it will be bound by the approach to maltreatment found in the MAP. If it cannot prove the elements set forth in the MAP, it has not substantiated maltreatment.

Here, OCS’s theory of the case is as follows: first, it asserts that Ms. K used physical force on M.B. by squeezing her wrists and neck with sufficient force to leave a bruise. Second, OCS asserts that M.B. had a substantial fear reaction because she told staff she did not feel safe in the K home. Having agreed to be bound by the approach to maltreatment set forth in the MAP, OCS can only substantiate maltreatment by proving, by a preponderance of the evidence, that Ms. K used physical force on M.B., and that M.B. had a substantial fear reaction.

Ms. K raises three arguments in her defense. First, she raises a legal concern with the MAP. In her view, because the MAP is not a regulation, it is not binding. She did not have notice of the standards that OCS would apply, so could not conform her conduct to those standards. Second, she asserts that she did not grab M.B. by the wrist or the neck, so factually she did not maltreat M.B. Third, she argues that even if she did grab M.B., grabbing a child is reasonable parental discipline, so she did not commit maltreatment. These arguments are discussed below.

#### **A. Can OCS enforce the approach to maltreatment that is described in the MAP?**

The Ks are correct that OCS could not strictly enforce the MAP. Alaska law requires that rules that apply to the public must be adopted in regulation to be enforceable.<sup>23</sup> Because the MAP has not been adopted as a binding regulation, to the extent that the MAP describes new standards of conduct not already described in a statute or regulation, those standards are not binding.<sup>24</sup>

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<sup>21</sup> Alaska Office of Children’s Services, *Maltreatment Assessment Protocol* (Feb. 2015) attached to OCS’s Prehearing Brief (Oct. 16, 2015).

<sup>22</sup> *Id.*

<sup>23</sup> AS 44.62.640(3) (definition of regulation).

<sup>24</sup> *See, e.g., In re Alaska Children’s Services*, OAH No. 13-0182-MDA at 14 (Dep’t Health and Soc. Serv. 2014) (“if the department were to try to enforce a strict requirement that all [billings] must specify location, that

Yet, this does not mean that the MAP should be set aside. First, because OCS has agreed that the MAP is binding on it, the MAP is a useful starting point. We can analyze the facts for whether they meet the descriptions contained in the MAP. If not, OCS has agreed that the case should be dismissed.

Second, to the extent that the MAP merely describes the standards already adopted in statute, rather than adopting new standards, we can rely on it and use it in adjudication.<sup>25</sup> Here, for example, both parties agree that the MAP's description of "substantial physical harm" is a reasonable approach to describing the term used in the statute. Based at least in part on the descriptors in the MAP, OCS does not argue that it can prove substantial physical harm in this case.

Ms. K, however, has argued that the MAP's designation of "substantial fear reaction" as an element of "substantial impact on the child" is a new standard of general application. She asserts that she did not have notice of this standard.

Ms. K's argument raises a point that would require further analysis to resolve. The nexus between "substantial fear reaction" and "substantial physical harm" may exist, but it is not obvious. In addition, "substantial fear reaction" appears to be similar to "mental injury." "Mental injury," however, is defined in AS 47.17.290(10), and the legislature has required that OCS have an expert testify to the existence of a mental injury before it can be substantiated. The overlap between substantial fear reaction and mental injury could support Ms. K's argument that the "substantial fear reaction" prong cannot be applied here.

Because further analysis of this issue will be necessary only if OCS has proven that M.B. suffered a substantial fear reaction, this decision will first analyze the evidence supporting OCS's claim. If the evidence does not substantiate a substantial fear reaction, no further inquiry will be made into the viability of the MAP's adoption of substantial fear reaction as an element of substantial physical harm. The issue of whether the facts proved in this case meet the MAP's description of substantial fear reaction is discussed below in section C of this decision.

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would be a rule of general application, and it would have to be adopted in regulation to be enforceable."); *Jerrel v. State, Dep't of Natural Res.*, 999 P.2d 138, 143 (Alaska 2000) (holding that "indicia of a regulation is that it implements, interprets or makes specific the law enforced or administered by the state agency. A regulation also affects the public or is used by the agency in dealing with the public." (Internal quotation marks and citations deleted)).

<sup>25</sup> *Alaska Ctr. for the Env't v. State*, 80 P.3d 231, 244 (Alaska 2003) (holding that when agency action "neither provided new requirements nor made the existing ones any more specific," it was not an "amendment, supplement, or revision of a rule, regulation, order, or standard so much as it was a common sense interpretation of the regulation's applicability" (internal quotation marks and citation deleted)).

## **B. Did Ms. K use physical force on M.B.?**

We turn now to Ms. K's first factual argument: her assertion that she did not apply physical force to M.B. Analyzing this issue involves analyzing the credibility of two witnesses: M.B., who claims L K caused the bruising; and Ms. K, who claims she did not.

A picture of the back of M.B.'s head/neck showed that M.B. had two bruises on the back of her neck. The bruises are consistent with a thumb print on the right side of the neck, and finger marks on the left side of the neck. The pictures support a conclusion that someone squeezed M.B. on the back of M.B.'s neck, using a left hand. M.B. identified the person who squeezed her neck as L K. According to M.B., the squeezing took place when Ms. K lost patience with M.B., and wished to force M.B. to move to another location in the home by pushing her on the back of her neck.<sup>26</sup>

The evidence of the bruising on M.B.'s wrist is less dramatic. The picture of M.B.'s wrist submitted into the record showed what could be some slight bruising and what could be a scratch from a fingernail. The two witnesses who saw M.B.'s wrist each described visible bruising. Ms. J said the bruising was linear, running toward the elbow about two inches. Ms. E said she could differentiate about three pressure spots in a row. She described the bruising as fainter and browner than the neck bruises, indicating they were older. The bruising they described was consistent with finger pressure on a wrist. Yet, unlike the neck, the faint bruising on the wrist could also be consistent with any number of causes. Because the neck bruising was very likely caused by a person exerting force by squeezing, this inquiry will focus on the neck bruise.<sup>27</sup>

The question here, then, is whether Ms. K squeezed M.B.'s neck, or whether someone else did it. As the Ks argued, that question comes down to what quantum of evidence meets the "preponderance of the evidence" standard.

As an alternative to Ms. K being the person who squeezed M.B.'s neck, the Ks suggested that M.B.'s adoptive mother might have done the squeezing herself, so that M.B. could complain about the Ks. Both M.B. and her mother would have a motive for doing this because it might hasten M.B.'s return to the family home. Acknowledging that Ms. E's visit was unannounced, the Ks suggest that the squeezing might have occurred shortly after Ms. E arrived, when Ms. E

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<sup>26</sup> E testimony; J testimony.

<sup>27</sup> Mr. K suggested that bruising could be spontaneous bruising from a medical issue. This is possible but unlikely. The bruising on the neck is consistent with pressure from a hand, and M.B. reported no other bruising other than the neck and wrist.

was not looking. They find it significant that M.B. did not show the bruises to Ms. E until M.B.'s mother began to cry. To them, this indicates that M.B. was coerced into participating in her mother's scheme.

The Ks' scenario, however, is inherently implausible. Ms. E denied that the squeezing could have occurred when she was not looking. The plot would take planning and agreement, neither of which is likely considering that neither M.B. nor her mother knew Ms. E would be coming to visit.

The Ks pointed out that the bruises on M.B.'s neck were likely caused by a person's left hand. Ms. K is right-handed. A right-handed person, however, can use his or her left hand. Moreover, Ms. K testified that her right arm is severely debilitated. She cannot raise it above her shoulder or use it to exert force on a child's neck. This makes it more likely that Ms. K would use her left hand if she were to squeeze M.B.'s neck or wrist.

The Ks also challenged M.B.'s credibility. Ms. K stated that M.B. had earlier threatened that she would tell OCS that the family had been abusing her if they made her do chores or otherwise conform to the Ks' household regimen. The Ks assert that M.B. was motivated to falsely report the Ks so that she would be moved back to her family home.<sup>28</sup>

M.B.'s version of the facts, however, is plausible. She said that Ms. K caused the bruising on her neck. She related it to a time when Ms. K was disciplining her. M.B.'s story is consistent with common experience—a parent may well grab a child by the back of the neck to guide a child to a different place. M.B. told the same version to two different witnesses. Both witnesses have training in identifying when a child is being truthful, and both believed her. Ms. K admitted that M.B. was sometimes defiant, and would say that she did not have to obey Ms. K, which could give rise to a situation where the parent did take hold of the child. Thus, M.B.'s version is a plausible explanation for the bruising.

Ms. K denied she caused the bruising. She testified that she never grabbed, pulled, or lifted M.B. She also testified that in disciplining M.B., she would raise her voice and then walk away. M.B. would then do the chores that were being required.

Ms. K was a reasonably credible witness, especially when she was describing how she facilitated M.B.'s visitation, and the struggle she had with OCS when OCS would not be there

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<sup>28</sup> Mr. K also argued that OCS was acting in bad faith—that it substantiated the alleged abuse only because L K had been vocal about her exasperation with OCS staff, whose actions (or failure to act) had disappointed children in her care and caused her extra work and stress. Mr. K's argument is not persuasive. Given the bruising and the child's self-report, OCS had good faith grounds for its action. No inferences regarding either OCS or Ms. K will be drawn from the evidence of Ms. K's interaction regarding OCS staff.

for the children in her care. Her testimony showed she was a good foster parent who had taken care of many children, with no problems, and with OCS frequently calling on her to ask her to take in additional children. Her testimony that she *never* grabbed or pulled a child, and her description of how she disciplined M.B., however, were less believable. Most parents will occasionally have to tug on a child, and most have to use some form of discipline, such as a time-out, that is more intrusive than walking away from the child. For Ms. K to deny that she *ever* used these or other techniques was not persuasive.

Thus, on the record, the most plausible explanation for the red marks on M.B.'s neck is that Ms. K caused the bruising by squeezing M.B.'s neck while pushing M.B. from one room to another.

Yet, as the Ks point out, just because one version of the facts is the most plausible does not mean that the version is proved by a preponderance of the evidence. OCS has the burden of proving that the chance that M.B.'s version was true is slightly more likely than the chance that it was not true.<sup>29</sup> The problem here is the unknowns. We do not know much about the other people in M.B.'s life. She had unsupervised visits with her mother and siblings. She apparently had supervised visits with her father. She obviously had contact with many other children, as well as other adults. Bruises or red marks can be caused by many different sources. Where so much is unknown, the party with the burden of proof must come forward with sufficient evidence to persuade the decisionmaker that the party's version of the facts is more likely than not true, in spite of the many unknowns.

Here, the only evidence corroborating M.B.'s version is Ms. E's recollection of a conversation that she had with Q.N. sometime after both M.B. and Q.N. had been removed from the K's home. Ms. E apparently recalled that Q.N. had confirmed she saw Ms. K grab M.B.<sup>30</sup> Yet, Ms. J's notes and testimony document that in the investigative interview on March 24, 2015, Q.N. specifically stated she did *not* witness Ms. K pulling or pushing M.B.<sup>31</sup> Ms. E's recollection of the contrary now, with no documentation supporting the corroboration, and with specific documentation of the opposite, is not credible. In fact, this inconsistency weakens OCS's case, which depends entirely on witness credibility.

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<sup>29</sup> See, e.g., *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964) ("Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the jurors that the asserted facts are probably true."); *State v. Zeciri*, 43 P.3d 169, 170 n.4 (Alaska Ct. App. 2002) (citing Alaska Civil Pattern Jury Instruction § 2.04 (defining preponderance of the evidence as follows: "Something is more likely than not true if you believe that the chance that it is true is even the slightest bit greater than the chance that it is not true.")).

<sup>30</sup> E testimony.

<sup>31</sup> J testimony; Admin. Rec. at 24.

Thus, we have only the two competing versions of the facts. Ms. K has testified in person as to her version. M.B. has told her version to two trained investigators, both of whom believed M.B. Of the two versions, M.B.'s is the more plausible, and the most consistent with the known facts, which include the existence of the bruise on M.B.'s neck. Yet, because M.B.'s interview was not recorded, or transcribed, we do not have the ability to evaluate how truthful and confident M.B. sounded, whether her version changed over the two interviews, or whether anyone was asking leading or suggestive questions during the interviews.

We are left with M.B.'s story filtered through two others. This has led to the inconsistency described above, and at least one additional inconsistency, regarding whether Ms. K called M.B. an "idiot." Ms. E testified that M.B. said Ms. K would call M.B. an "idiot."<sup>32</sup> Ms. J, however, did not testify that M.B. said Ms. K called M.B. an idiot, and her notes state that only W.O, not Ms. K, used the term "idiot."<sup>33</sup> Inconsistencies such as this are frequently used to evaluate credibility. Here, because we do not have a transcript or recording of the interview, we do not know whether M.B. was inconsistent, or one of the two adults was in error.

In sum, on the issue of physical force, OCS has presented a case that is plausible but not persuasive. Although this is a very close question, given all of the unknowns, OCS has not met its burden of proving that Ms. K used physical force on M.B. Therefore, OCS has not met the first prong of its maltreatment assessment protocol.

### **C. Did OCS prove that M.B. experienced a substantial fear reaction?**

The MAP's description of "substantial fear reaction" requires OCS to prove two elements. First, it must prove fear of bodily injury, whether to the victim herself or to another. Second, it must prove at least one of the following four different signs of fear or anxiety lasting at least 48 hours:

1. Persistent intrusive recollections of the incident
2. Marked negative reaction to cues related to the incident, as evidenced by (a) avoidance of cues, (b) subjective or overt distress to cues, or (c) physiological hyper-arousal to cues
3. Acting or feeling as if incident is recurring
4. Marked symptoms of anxiety (any of the following):
  - Difficulty falling or staying asleep
  - Irritability or outbursts of anger
  - Difficulty concentrating

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<sup>32</sup> E testimony.

<sup>33</sup> Admin. Rec. at 23.

- Hypervigilance (i.e. acting overly sensitive to sounds and sights in the environment; scanning the environment expecting danger; feeling keyed up and on edge)
- Exaggerated startle response<sup>34</sup>

Both Ms. J and Ms. E testified that M.B. stated she felt unsafe in the Ks’ home. Based on this evidence, OCS argued that it has met the burden of proving a substantial fear reaction.

Ms. E testified, however, that M.B. had not expressed a fear of bodily harm. M.B. was not concerned that if she returned to the K home she would be injured by Ms. K. Apparently, she felt a generalized concern that made her feel less than safe in the home. She may have been concerned to some extent about repercussions and loss of privileges. A generalized unease about safety does not meet the requirement of the MAP that the victim display or verbalize a fear of bodily harm.

In addition, OCS has not met its burden of proving any one of the four signs of fear or anxiety identified in the MAP. Again, both Ms. E and Ms. J testified that M.B. had anxiety, but the anxiety was about the issue of being able to visit—and return to live with—her family. Some anxiety may also have been related to the conflicts with Ms. K, which may have related to Ms. K’s perceived role in denying phone conversations with M.B.’s mother, or to the conflict in the relationship of a nine-year-old child with an authority figure. Neither witness testified that M.B. exhibited anxiety about physical injury. Indeed, both denied that M.B. exhibited *any* of the heightened signs of anxiety described in the MAP, such as persistent re-living of the neck-grabbing incident, avoidance or hyperarousal to cues related to neck grabbing, startle reaction, difficulty sleeping, irritability, or hypervigilance.

Thus, OCS did not prove either of the elements of a substantial fear reaction. OCS has agreed that if it could not meet the requirements of the MAP, then it had not proved maltreatment. Therefore, OCS has not substantiated the charge that L K maltreated M.B. Because OCS has not met its own description of maltreatment, this decision does not need to consider whether the “substantial fear reaction” component of substantial physical abuse must be adopted as a regulation in order to be enforced.

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<sup>34</sup> *Maltreatment Assessment Protocol.*

#### **IV. Conclusion**

The allegation that L K committed child abuse or neglect against M.B. is not substantiated. OCS's finding is reversed.

DATED this 25th day of November, 2015.

By: Signed  
Stephen C. Slotnick  
Administrative Law 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 6th day of January, 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.]