

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

In the Matter of	)	
	)	
H B, SR. and L C	)	OAH Nos. 16-0552/0553-SAN
	)	Agency Nos.
_____	)	

**DECISION**

**I. Introduction**

The Office of Children’s Services received a report that H B, Sr., and L C had neglected their four children by becoming too intoxicated to care for the children. OCS investigated, and sustained four counts of maltreatment each by both Mr. B and Ms. C. Mr. B and Ms. C appealed the substantiations.

Following a hearing, the evidence showed that Mr. B was intoxicated on August 20, 2015, and that his intoxication at that time was an addictive or habitual condition that substantially impaired his ability to parent. His action put the children at a substantial risk of harm. Therefore, the four counts of maltreatment by Mr. B are sustained.

With regard to Ms. C, however, the evidence did not show that Ms. C’s consumption of alcohol put the children at a substantial risk of harm or was addictive or habitual. Accordingly, OCS’s decision regarding Ms. C is reversed, and the four counts of maltreatment against her are not substantiated.

**II. Facts**

L C and H B, Sr., live in No Name. They have four boys, M, age nine, H Jr., age five, and the twins, N and B, age three<sup>1</sup>.

On August 21, 2015, the Office of Children’s Services received a report of harm regarding the four children. According to the reporter, on the previous day, the reporter had been called to the C/B home. Both L and H Sr. were too drunk to care for the children. The reporter had to call L’s mother to come over to care for the children. According to the reporter, this fact pattern occurred frequently, and the relatives were objecting to being called to cover the couple’s drinking habits.<sup>2</sup>

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<sup>1</sup> B Admin. Rec. at 6. The ages of the children are as of the time of this decision. The alleged neglect occurred in August 2015 when the children were younger.

<sup>2</sup> B Admin. Rec. at 7.

For H Sr., this incident had serious consequences. H had recently been released from jail and, at the time of this incident, was on probation for a domestic violence incident that had occurred on December 31, 2013. In the 2013 incident, while he was intoxicated, H struck his mother, and threatened L and M. The terms of his release on probation included requirements that he stay away from L and that he not drink. Because of his actions on August 20, 2015, in contacting L and drinking, the authorities learned that he had violated both conditions. He went back to jail.<sup>3</sup>

OCS investigated the matter. Child Protective Services Specialist John Spitzberg traveled to No Name. He interviewed the family. He also interviewed other members of the village. In a follow-up trip, Specialist Jerry Webb interviewed M. As a result of the investigation, on April 15, 2016, OCS substantiated four counts of neglect against H Sr. and four counts of neglect against L.<sup>4</sup>

In the time since the August 2015 incident, H Sr. and L have made substantial progress. H Sr. has successfully completed a treatment program and an aftercare program. L has been sober.<sup>5</sup> All of the testimony at the hearing indicated that H Sr. and L have maintained sobriety and taken good care of their children since H Sr.'s treatment, for which they are congratulated.

After receiving the notifications of substantiations from OCS, both H Sr. and L appealed. The two appeals were consolidated. A telephonic hearing was held on September 6, 2016.

### **III. Discussion**

OCS investigates reports of harm, and maintains a central registry of its investigation reports.<sup>6</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>7</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>8</sup>

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<sup>3</sup> Keene testimony.

<sup>4</sup> B Admin. Rec. at 1-2; C Admin. Rec. at 1-2.

<sup>5</sup> C testimony; O testimony.

<sup>6</sup> AS 47.17.040.

<sup>7</sup> AS 47.17.040(b).

<sup>8</sup> AS 47.17.290(3).

In this case, OCS has charged that Ms. C and Mr. B committed maltreatment.<sup>9</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.<sup>10</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: a substantial risk of harm to the children because of Ms. C’s and Mr. B’s frequent intoxication, as described in AS 47.10.011(10). Under this paragraph, maltreatment occurs when

the parent, guardian, or custodian’s ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child.<sup>11</sup>

When charging maltreatment under this statute, OCS must prove the following in order to sustain the substantiation of maltreatment:

- That Ms. C and Mr. B have become intoxicated frequently enough to consider intoxication a habitual or addictive condition;
- That their habitual or addictive intoxication has substantially impaired their ability to parent;
- That they were intoxicated on August 20, 2015; and
- That their intoxication on August 20, 2015, put their children at substantial risk.

Below, this decision will address whether OCS has met its burden of proving these issues for each of the two parents.

**A. Has OCS met its burden of proof regarding Mr. B?**

With regard to Mr. B, given his past history of intoxication and putting his children at risk, and his own testimony regarding his condition on August 20, 2015, OCS has met its burden of proof.

On the question of whether intoxication is an addictive or habitual condition, Mr. B’s past behavior proves that he has become intoxicated to the point of being out of control on more than

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<sup>9</sup> B Admin. Rec. at 1-2; C Admin. Rec. at 1-2.

<sup>10</sup> AS 47.17.290(9).

<sup>11</sup> AS 47.10.011(10).

one occasion in the past.<sup>12</sup> His testimony at the hearing admitted that he did become intoxicated on August 20, 2015. He explained that he was drinking homebrew, and the homebrew was stronger than he expected. This testimony shows that the intoxication was an unexpected and unplanned event—indications that drinking is likely a habitual or addictive activity that, once it starts, may be beyond his ability to control.<sup>13</sup>

Similarly, with regard to whether his habitual or addictive intoxication has substantially impaired his ability to parent, his conviction in 2014 (for the incident that occurred on December 31, 2013) shows that he can be threatening and dangerous when intoxicated.<sup>14</sup> The record shows that he admitted to the OCS investigator that “he is unhappy that when he drinks he abuses mother and children.”<sup>15</sup> The comments of Ms. C and Ms. C’s mother in interviews by the investigator confirm that Mr. B is potentially dangerous when he is intoxicated.<sup>16</sup> This shows that Mr. B’s habitual or addictive intoxication has impaired his ability to parent.

With regard to the events of August 20, 2015, Mr. B admits he was intoxicated that day.<sup>17</sup> Whether this meant that his children were at a substantial risk, however, is a different question. OCS’s first theory of risk was that both parents were intoxicated, with no alternative caregiver present to protect the children from harm. This theory is difficult to prove because Ms. C testified that she was not so intoxicated that day as to be unable to care for the children.<sup>18</sup> Mr. B appeared to testify that when Ms. C became intoxicated, they had a babysitter.<sup>19</sup> The investigator’s notes reveal that Ms. C’s mother denied that Ms. C had neglected her children. The notes do not record any statement from the mother about the events of August 20, 2015.<sup>20</sup> Although the anonymous statement of the reporter would support a finding of substantial risk on this theory, the reporter’s statement is hearsay without sufficient indications of reliability. Therefore, it will not be relied upon here for meeting OCS’s burden of proof.<sup>21</sup> Thus, on this record, OCS has not proved that

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<sup>12</sup> Keene testimony.

<sup>13</sup> B testimony.

<sup>14</sup> Keene testimony.

<sup>15</sup> B Admin. Rec. at 14.

<sup>16</sup> B Admin. Rec. at 14.

<sup>17</sup> B testimony.

<sup>18</sup> C testimony.

<sup>19</sup> B testimony. At first, Mr. B admitted that the children were neglected one time—apparently meaning the night of August 20. Later, he appeared to testify that they had a babysitter. Given his admission that he was seriously intoxicated that evening, giving weight to his testimony about what happened on August 20 is difficult. Moreover, if weight is given to Mr. B’s testimony, his testimony that neglect occurred only once would help establish that Ms. C’s ability to parent was not substantially impaired by an addictive or habitual use of an intoxicant.

<sup>20</sup> B Admin. Rec. at 14.

<sup>21</sup> Under 2 AAC 64.290(a)(1), hearsay evidence is admissible if a reasonable person would rely on it. The reporter’s statement has some indications of reliability. For example, the report was correct that L and H Sr. had been

Mr. B's intoxication on August 20 left the children without a caregiver present on August 20 who could protect the children from normal risks.

At the hearing, however, Child Protective Services Specialist Jerry Webb suggested a different reason why the evidenced supported a conclusion that the children were at substantial risk on August 20. The evidence shows that Mr. B was a danger to his children when he was intoxicated. It also shows that even if another sober caregiver is present, that person might not be able to protect the children from harm when Mr. B is intoxicated.<sup>22</sup> Thus, in this case, Mr. B's testimony that he became very intoxicated on August 20, 2016, due to the strength of the homebrew, provides proof that the children were at a substantial risk of harm due to Mr. B's habitual or addictive intoxication. OCS's substantiation of four counts of maltreatment by Mr. B on August 20, 2015, is sustained.

**B. Has OCS met its burden of proof regarding Ms. C?**

With regard to Ms. C, OCS admitted at the hearing that its main witness against Ms. C was unavailable. Without additional evidence, OCS was unable to prove the allegations against Ms. C.

As stated above, OCS's main theory against Ms. C is the allegation that both parents were too intoxicated on August 20, 2015, to care for the children. Because no alternative caregiver was initially present, OCS concludes that Ms. C's intoxication put the children at risk. Yet, as stated above, OCS is unable to prove that Ms. C was too intoxicated to keep the children safe from ordinary harm that day, at least up until her mother arrived. The evidence certainly suggests that Ms. C may have been incapacitated, but it does not prove it. In the absence of proof that Ms. C's incapacitation created a substantial risk on August 20, 2015, OCS cannot prevail under AS 47.10.011(10).

Moreover, even if OCS had proved that Ms. C had put the children at risk on August 20, it has not proved that Ms. C was an addictive or habitual user of an intoxicant or that her addictive or habitual use substantially impaired her ability to parent. Ms. C's mother told the investigator that Ms. C does not neglect her children.<sup>23</sup> Ms. C's cousin, X O, testified that she was a frequent visitor at the household and, although she had seen Ms. C high, she had never seen Ms. C

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drinking, and was also correct that L's mother was getting fed up with getting called in to facilitate their drinking. OCS, however, must keep the name of the reporter confidential. The layers of hearsay involved in this reporting, and the fundamental problem that sometimes a reporter will get facts wrong or have a bias, make it untenable to rely solely on the anonymous report to reach a conclusion regarding a material fact.

<sup>22</sup> Keene testimony.

<sup>23</sup> C Admin. Rec. at 16.

incapacitated to where she could not care for her children.<sup>24</sup> This evidence tends to show that Ms. C's ability to parent has not been substantially impaired by habitual or addictive use of an intoxicant.

Again, this record does provide a sense that Ms. C has had a drinking problem in the past, and may have had some impairment of her ability to parent. The record does not, however, establish that more likely than not Ms. C's drinking problem was addictive or habitual or that it *substantially* impaired her ability to parent. Accordingly, OCS has not met its burden of proof that Ms. C committed maltreatment on August 20, 2015.

#### **IV. Conclusion**

1. The four counts of maltreatment alleged against H B, Sr., in OCS Case 000000 are substantiated.
2. The four counts of maltreatment alleged against L C in OCS Case 000000 are reversed as not substantiated.

DATED this 4th of November, 2016.

By: Signed  
Bride A. Seifert  
Administrative Law Judge

### **Adoption**

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 16th day of December, 2016.

By: Signed  
Douglas Jones, Manager  
DHSS Medicaid Program Integrity

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

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<sup>24</sup> O testimony.