

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

In the Matter of)	
)	
S K)	OAH No. 16-0686-SAN
_____)	Agency No.

DECISION

I. Introduction

The Office of Children’s Services has alleged that S K became drunk and incapacitated while alone in a hotel room with her six-month-old child M. It has substantiated a finding of child neglect against her. Ms. K has appealed.

This case was consolidated for hearing with OAH Case No. 16-0594-SAN, a substantiation matter involving both Ms. K and M’s father, T T, but relating to different alleged conduct and a different period. The consolidated hearing convened in Village A on October 5, 2016. T T was present in person. S K participated by telephone from City B, where she was recovering from the birth of a child. Although she testified, she preferred that Mr. T take the lead in the argument and questioning that was done on her behalf. The evidence relating to the December incident was complete by the time the Village A hearing closed the afternoon of October 5. A later, telephonic hearing session gathered additional evidence relating to the other substantiation matter.

Because the December 11, 2015 incident was a discrete event, the cases will not be consolidated for decision. This decision addresses only the December 11 incident, and draws only on the evidence taken in the Village A hearing.

II. Evidence Admitted

The burden of proof in this *de novo* hearing lies with the Office of Children’s Services. Evidence was admitted under the standard set out in 2 AAC 64.290(a)(1), which permits the Administrative Law Judge to consider evidence upon which a reasonable person might rely in the conduct of serious affairs.¹

¹ This case is not governed by the Administrative Procedure Act, AS 44.62.330 et seq., and the restriction on use of hearsay found in that statute does not apply.

With respect to Case 16-0686-SAN, testimony was taken from Ms. K, Mr. T, and William Rogers, an OCS Protective Services Specialist. Administrative Record pages 1-10, 150-159, and 172-181 were admitted over objection.² Page 11 was admitted without objection.

Items 182-184 of the Administrative Record are recordings which the parties agree were made by the Anchorage Police Department on December 11, 2015. The voice of Ms. K can be heard on Item 183, a 39-minute recording. The voice of Mr. T can be heard on Item 184, a 57-minute recording. Item 182 is a short recording of an interview with B N, a bellman at the No Name Hotel in Anchorage. On behalf of Ms. K, Mr. T objected to the recordings on the grounds that they are inaccurate and that he is “pretty sure” they were “clipped,” although he could not point to any particular basis to believe this was so. Ruling was reserved on his objection until I could listen to the recordings. Having done so, I now overrule the objection, noting that the recordings appear to be complete records of the events they purport to cover, with the exception that Item 183 does not begin until after the officers are already inside Ms. K’s hotel room.

III. Factual Findings

In December of 2015, S K traveled from her home in Village A to Anchorage to attend a well-baby check for her six-month-old child, M. M was a rather vulnerable baby, undersized even for six months.³ Ms. K and M stayed at the No Name Hotel. At approximately 11:00 p.m. on the night of December 10, Ms. K began drinking in the hotel room.⁴ Later that night, she spoke by phone with the child’s father, T T, who was at their family home in Village A. It seemed to Mr. T that Ms. K was “incapacitated.”⁵ He was concerned for the baby’s welfare, and he contacted Anchorage emergency services.⁶

Shortly after 3:00 a.m., Anchorage police officers responded to the No Name. They could not rouse Ms. K with extended knocking and calling out over the course of several minutes, and eventually entered the room with a master key.⁷ They found Ms. K passed out and the baby sleeping.⁸ They were eventually able to rouse Ms. K using physical pressure points, and a

² Pages 1-4 and 172-181 were admitted only to show procedural history.

³ R. 8.

⁴ Testimony of S K.

⁵ R. 184 at 49:00 (recording of Mr. T). At the hearing, Mr. T admitted that she was “drunk,” alleging that the police officers took advantage of her because she was in that state.

⁶ R. 158. Ms. K apparently called 911 during the night as well, but it was Mr. T’s call that triggered a response.

⁷ R. 154, 158.

⁸ R. 158. One officer reported that the baby was crying, but it seems more likely that the baby was not crying at the moment of entry.

recording was made after she woke up that confirms she was highly intoxicated.⁹ A portable breath test gave an alcohol level of .32.¹⁰ Ms. K was taken into custody, and M was delivered to the care of relatives in Anchorage.¹¹

Ms. K has only a blurred memory of what happened between 11:00 p.m. and 3:00 a.m. She believes she drank about two cups of liquor. She believes she dialed 911 four times. She does not know why. To her credit, she is quite straightforward and honest about her condition, and does not make excuses for it.¹²

Mr. T claims Ms. K had arranged a babysitter for M. He says, inconsistently, that the sitter was not there because she had “stepped out” or because her “phone had died.” However, Mr. T is unwilling to say who the sitter was. Moreover, hotel staff do not seem to have observed any sitter. Ms. K, while appearing to be intoxicated and unable to care for the baby, asked the bellman to take care of the baby for her.¹³ Based on this evidence, I find that Ms. K became highly intoxicated without a babysitter, while she was the sole caregiver for M.

Mr. T alleges that the officers mistreated Ms. K in some way after they entered her room.¹⁴ Even if this were true—and no evidence from any source supports his allegation—it would be irrelevant to whether she was able to care for M prior to their arrival. On that question, everyone who interacted with her, including Mr. T himself, concluded she was incapacitated, and the recording made by the police confirms their impression.

Although hotel staff had heard the baby crying in Ms. K’s room and were concerned that the child was not being cared for, M did not appear to have come to any harm while her mother was incapacitated.¹⁵

Based primarily on the police reports, OCS substantiated a finding of child neglect by S K.¹⁶

IV. Discussion

This appeal arises from OCS’s investigation and substantiation of alleged child abuse or neglect under the “Child Protection” provisions of AS 47.17. It relates to whether Ms. K’s name

⁹ R. 183. Ms. K is confused and belligerent on the recording.

¹⁰ R. 159.

¹¹ R. 184.

¹² Testimony of S K.

¹³ Recorded interview with B N (R. 182).

¹⁴ Testimony of Mr. T: “They obviously did something.”

¹⁵ R. 151, 154.

¹⁶ R. 7.

should appear on the “central registry” of those who have been substantiated for committing child abuse or neglect, established under AS 47.17.040.¹⁷

The Child Protection provisions include references to related “Child in Need of Aid” (CINA) provisions in AS 47.10. However, Chapter 47.17 and Chapter 47.10 each have a different focus: AS 47.17 seeks to determine whether a person (typically an adult) has abused or neglected a child, while AS 47.10 seeks to determine whether a child is a “child in need of aid.” These questions are often, but not always, two sides of the same coin. This decision is a determination of whether S K neglected M T on the night of December 11, 2015, not a determination of whether M is a child in need of aid.

In the Child Protection provisions of AS 47.17, the Legislature included specific statutory definitions that govern the handling of reports of alleged child abuse or neglect. The first and most important of these sets out the definition of “child abuse or neglect,” as that term is used throughout AS 47.17.¹⁸ The statute then further defines terms such as “maltreatment,” “neglect,” “mental injury,” and “sexual exploitation.”¹⁹

The allegations in this case involve neglect.²⁰ For purposes of substantiation under the Child Protection chapter, “neglect” is statutorily defined as “the failure by a person responsible for the child’s welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”²¹ Under this definition, therefore, the first question in this case is whether Ms. K failed to provide necessary food, care, clothing, shelter, or medical attention for M on the night in question. If she did, she neglected the child. This is not the end of the inquiry, however. To uphold a substantiated finding of neglect, it is also necessary to find that the child’s health or welfare was “harmed or threatened” by the parent’s conduct.²²

By being intoxicated to the point that she could not be roused by normal stimuli, and reaching an alcohol level of .32, Ms. K placed herself in a state in which she was not “provid[ing] . . . care” for M. She was M’s sole caregiver at the time. There was no basis to expect that anyone else—certainly not the hotel bellman, whom she asked—would do this job for her. This

¹⁷ Appeal to the Office of Administrative Hearings is provided under 7 AAC 54.255(b)(7).

¹⁸ AS 47.17.290(3).

¹⁹ See AS 47.17.290(9), (10), (11), (17).

²⁰ R. 1, 7.

²¹ AS 47.17.290(11).

²² See AS 47.17.290(3). Despite this simple structure, OCS typically makes its neglect substantiation decisions in the first instance under the rubric of “child maltreatment,” which requires importing concepts from a different chapter. Although this decision uses the definition for the alleged conduct—neglect—that is written right into the statute being applied, the result would not be different using OCS’s more circuitous approach.

was neglect under the statutory definition. The child’s health or welfare was “threatened” by this situation because this was a helpless infant and, had the police not intervened, she could have been deprived of any adult care or oversight for many hours. Accordingly, both prongs of the statutory definition of “child abuse or neglect” in AS 47.17.290(3) have been met, and it is appropriate for Ms. K to be placed on the central registry.

V. Conclusion

OCS established by a preponderance of the evidence that S K committed child neglect with respect to M T on December 11, 2015. The finding to that effect entered on May 18, 2016, in connection with Protective Services Report 0000000, is affirmed.

DATED: March 1, 2017.

By: Signed
Christopher Kennedy
Administrative Law Judge

Adoption

The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, adopts this Decision and Order 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 Rule 602 of the Alaska Rules of Appellate Procedure within 30 days after the date of this decision.

DATED this 7th day of April, 2017.

By: Signed
Name: Douglas Jones
Title: Medicaid Program Integrity Manager

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