

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

In the Matter of)	
)	
M T)	OAH No. 16-0765-SAN
_____)	Agency No.

DECISION

I. Introduction

The Office of Children’s Services (OCS) received a report that M T had verbally and physically abused her daughter L. OCS investigated. It did not find physical abuse, but it did make a substantiated finding of child maltreatment due to mental injury. It notified Ms. T that her name would be placed on the Child Protection Registry. Ms. T requested a hearing to challenge OCS’s substantiated finding that she had caused mental injury to L.

The evidence presented by OCS demonstrated that Ms. T verbally abused L. L is a vulnerable child with a substantial history of abuse from other care providers. Given her vulnerable state, Ms. T’s verbal abuse placed L at a risk of mental injury. As a result, the substantiated finding and Ms. T’s placement on the Child Protection Registry is **AFFIRMED**.

II. Facts¹

Ms. T comes from a family background rife with alcoholism and various forms of abuse. She was physically and sexually abused as a child. She has two daughters. L, the daughter involved in this case, is currently 16 years old.² Ms. T became pregnant with L while still in high school. Ms. T has had her own recurrent problems with alcoholism; she was incarcerated due to a felony assault that occurred when she was drinking. She wanted L to not be subject to the same type of background she grew up with. Ms. T placed L with family members, and then surrendered custody of L.

L was adopted in 2007 by a non-relative. Ms. T had hopes that L would grow up in a better environment than she did. Unfortunately, L ended up getting exposed to alcohol abuse, and was physically abused in her new home. L then tried to commit suicide when she was 13 and was put into a residential treatment program.³

¹ The factual statement is based upon the testimonies of Ms. T, the OCS caseworker Rosalie Rein, and specific references to the Agency Record, as noted.

² Agency Record, p. 5.

³ Agency Record, pp. 7 – 10.

Village A gave custody of L back to Ms. T in 2013. Ms. T, against medical advice, removed L from her residential treatment program. Shortly thereafter, L was drinking. Her mother admits to slapping her, and L ran away from her mother's home to her grandmother's home. L was then placed in a boarding school in Village B in 2014. L got into trouble for drinking and was removed from the school. L then came to her mother's home, which she promptly left to go to her aunt's home. In March of 2016, the aunt went back to Village A for a memorial potlatch, so L moved back into her mother's home. Within days, L left her mother's home and reported that her mother was hitting her, slapping her, and being verbally abusive to her.⁴

Ms. T denied striking her daughter and being verbally abusive to her. She testified that L was rebelling against her rules, and was trying to get around her refusal to allow L to go to the memorial potlatch. She testified that L was lying and manipulating the situation.

There was a video interview of L. In it, she reported that her mother does not like her, and tells her that she is sorry that she took L back. She also reported that her mother slaps her, kicks her, slaps her face, and scratches her, as recently as just several days before her video interview. Her reporting is very matter of fact, monotone for the most part, she is withdrawn, and does not look at the interviewer.⁵ The OCS report indicates that there were not any marks on L.⁶ The OCS report shows that L has failing grades at school.⁷

Neither L nor Ms. T were entirely credible. L had no marks to support her claims of physical abuse and the OCS caseworker did not find sufficient evidence to make a finding of physical abuse. Ms. T totally discounted L's reporting, and essentially stated that L was lying to manipulate the situation. However, on the other hand, L and her mother clearly do not get along, and L has stayed with other people most of her life.

III. Discussion

A. The Relevant Statutes and Regulations

The Alaska legislature has enacted several statutory schemes designed to protect children from abuse, maltreatment, and neglect.⁸ These laws give OCS a range of possible responses and remedies, depending on the level and immediacy of harm faced by the children. If the level of

⁴ Agency Record, pp. 7 – 10.

⁵ March 23, 2016 Video Recording.

⁶ Agency Record, p. 8.

⁷ Agency Record, p. 9.

⁸ See AS 47.10.005 - AS 47.10.990 (Child in Need of Aid (CINA) statutes); AS 47.17.010 - AS 47.17.290 (child protection).

abuse, maltreatment, or neglect is cause for concern, but does not immediately threaten the health and safety of the child, OCS can investigate and make a finding that the report of abuse, maltreatment, or neglect has been substantiated.⁹

Substantiated abuse, maltreatment, and neglect is reported on a list, established by AS 47.17.040, known as the "central registry." The central registry contains all investigative reports (but not reports of harm) filed by the Department of Health and Social Services (DHSS).¹⁰ These reports are confidential, but can be used by governmental agencies with child-protection functions, inside and outside the state, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.¹¹ Cases involving the central registry established by AS 47.17.040 are not subject to the Administrative Procedure Act (AS 44.62.330 - AS 44.62.630).¹² The central registry is the only registry involved in this case.¹³

OCS may issue a substantiated finding of abuse, maltreatment, or neglect based upon probable cause.¹⁴ Mental injury, the type of maltreatment alleged here, encompasses a broad spectrum of conduct. It includes not only actual mental injury, but also placing the child at a substantial risk of mental injury by "a pattern of rejecting, terrorizing, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury."¹⁵ A substantiated finding by OCS will be affirmed following an administrative hearing if OCS proves, by a preponderance of the evidence, that the child was placed at a substantial risk of mental injury.

B. Risk of Mental Injury

As discussed above, neither Ms. T nor L were entirely credible. However, L is clearly troubled. She has been shuttled in and out of various placements. She has been abused. She has a documented suicide attempt. At her young age, she is already displaying problems with alcohol use. She is failing school. She is definitely vulnerable. Even though she was not entirely credible, her repeatedly leaving Ms. T's home is a foreseeable response to being verbally abused by Ms. T over an extended period of time.

Although Ms. T is most likely correct in her reporting that L is trying to manipulate the situation, the weight of the evidence shows that Ms. T has verbally abused her daughter. As a

⁹ This is typically referred to as a "substantiated finding of abuse or neglect."

¹⁰ AS 47.17.040(a).

¹¹ AS 47.17.040(b).

¹² 7 AAC 54.255.

¹³ There is also a "centralized" registry, which is used for licensing background checks. See AS 47.05.330. This case does not involve placement on that registry.

¹⁴ *In re XY*, OAH No. 10-0312-DHS (Commissioner of Health and Social Services, 2011).

¹⁵ AS 47.10.011(8)(B)(i).

result, the evidence shows that it is more likely true than not true that Ms. T has repeatedly told her daughter that she does not like her, and that she wishes that she had not taken her back. If L were a normal teen, this would be troubling enough. However, given L's history and clearly vulnerable state, it meets the statutory definition of placing L at a risk of mental injury by a "pattern of rejecting . . . behavior that would, if continued, result in mental injury."¹⁶

The Division has therefore met its burden of proof by a preponderance of the evidence that Ms. T has maltreated her daughter L. This results in a substantiated finding of child abuse, maltreatment, or neglect and placement of Ms. T on the Child Protection Registry created under AS 47.17.040.

IV. Conclusion

OCS's substantiated finding that Ms. T maltreated her daughter and the subsequent placement of Ms. T on the Child Protection Registry is AFFIRMED.

DATED: November 21, 2016.

By: Signed _____
Lawrence A. Pederson
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 16th day of December, 2016.

By: Signed _____
Douglas Jones
Medicaid Program Integrity Manager
Department of Health and Social Services

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

¹⁶ AS 47.10.011(8)(B)(i).