

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

In the Matter of	)	
	)	
S C. N	)	OAH No. 19-0073-SAN
_____	)	Agency No.

**DECISION**

**I. Introduction**

The Office of Children’s Services (OCS) placed S N on the Child Protection Registry based on a substantiated finding that Mr. N had committed an act of child maltreatment against his teenage son in September 2018. Mr. N requested a hearing to challenge those findings and his placement on the Child Protection Registry. The hearing was held telephonically on August 30, 2019. Mr. N represented himself at the hearing and testified on his own behalf. Assistant Attorney General Erik Fossum represented OCS. OCS presented testimony from Protective Service Specialist II (PSSII) G Ns.<sup>1</sup>

OCS met its burden of establishing, by a preponderance of the evidence, that Mr. N committed the acts on which the substantiated finding of physical abuse was based. Therefore, Mr. N’s placement on the Child Protection Registry due to the substantiated finding is upheld.

**II. Facts**

Mr. N is the father of minor sons F (A), M, B, and L, and daughter M.<sup>2</sup> At the time of the incident in question in September 2018, Mr. N’s children were ages fourteen, six, five, three, and fifteen years old, respectively.<sup>3</sup> They all resided together in City A with Mr. N and his girlfriend, Y Q, who is the mother of the three younger children.<sup>4</sup> Mr. N is divorced from the mother of A and M.

On September 10, 2018, A reported to a school administrator and a school resource officer at School A High School that on the previous day he had been injured in an altercation with his father.<sup>5</sup> A said that he had been playing football with his younger brothers, and his brother M fell and started crying. A continued:

---

<sup>1</sup> PSSII Ns recently changed her name; at the time of the incident she was known as G H, and she is identified as such in the Agency Record (AR) in this case.

<sup>2</sup> AR 000004, 000012.

<sup>3</sup> *Id.*

<sup>4</sup> Mr. N also has an adult son, V, who lived elsewhere at the time of the incident.

<sup>5</sup> AR 000012 (unredacted).

He stated he went inside the house and Y ... started yelling at him and saying he is too rough on the younger boys; then told him he was giving her attitude. He stated he argued with her and then went into his room and slammed the door. Y opened the door and they argued some more and then his father comes in the room and tells him to stand up; but he does not stand up so father grabs him by the shirt and pulls him up. He stated he felt his shirt rip and he started yelling at this father and tried to hit him to pull him off; he stated while his father was pulling him around by his shirt he fell and hit his eye on the dresser. He stated his father never hit him and this is the first time this has happened.[<sup>6</sup>]

The officer also noted that A added that his father told him “I’m this close to killing you” and made a gesture “showing [a] small amount with two fingers.”<sup>7</sup>

Later on September 10, A essentially repeated this report in an interview with OCS investigator PSSII Ns.<sup>8</sup> He elaborated, stating that he had basically refused his father’s directive to stand up.

Then he grabbed me by my shirt and started swinging me around. I hit my face on the dresser. He kept telling me to get up from the ground. I wasn’t getting up. ... My shirt was ripped up. ... He swung me around four times. It hurt like I had whiplash. ... Yesterday was the first time this happened with my dad.<sup>9</sup>

PSSII Ns also interviewed A’s older sister M on September 10, 2018. M stated she did not witness the incident and “only knows about [it] from what A told her.”<sup>10</sup> He told her that “he was giving their step-mother (Y) attitude and their father came in his bedroom and grabbed his shirt and was flinging him around the room,” and that their “father wanted A to look at him while he was talking to him.”<sup>11</sup>

PSSII Ns interviewed Mr. N on September 10. She recorded his relevant comments as follows:

[T]he day of the incident he was upstairs ... and could see the boys outside playing football ... . He stated he heard M (age 6) crying. He ... asked A what happened to his brother and he said he didn’t know; however, the other boys stated A had tackled M. He stated A and M have a history of fighting but he believes A doesn’t hurt him on purpose. ... A had a smirk on his face when he was talking to him so he sent him to his room. ... [A] short time later [Y] ... and A got into a yelling match over the incident and A went back into his room after slamming the door. S stated when he went into A’s bedroom he was sitting on the bed; he ... knows A well and could tell by the look on his face that he was angry. [H]e told A to stand up and look at him face to face and he wouldn’t do it so he ... grabbed [A] by the shirt under the arms

---

<sup>6</sup> AR 000009-10 (unredacted).

<sup>7</sup> AR 000048.

<sup>8</sup> AR 000012.

<sup>9</sup> *Id.* (unredacted).

<sup>10</sup> AR 000011 (unredacted).

<sup>11</sup> *Id.*

and [A] forced himself backwards and his shirt was going up around his body; he ... was trying to get A to stand up and he was trying to get away. He stated he held on to him for maybe 10 seconds it all happened so fast and then he walked away. He ... could still see A and he was crying. ... [H]e gave A about 10-15 minutes and then A came out and apologized to [Y] and everything went back to normal and nothing else was said about the incident. S stated this has never happened before. [He] denied that he put his hands on A's neck or choked him.[<sup>12</sup>]

A was examined on September 10 by a nurse at Alaska CARES.<sup>13</sup> The nurse recorded her observations as follows: “[l]eft flank and upper scapula with diffuse bruising; right lateral back with three linear bruise marks approx 3 cm each; bilateral posterior axilla with purple colored bruising and linear mark on right and bruising and abrasion on the left; diffuse circumferential petechial bruising with central areas of linear pattern injury, bruising extends from right mid posterior neck to just under left ear; bruising greater on the right; periorbital bruising and swelling on right eye lid.”<sup>14</sup> The nurse also noted “bruising upper and lower extremity described by [A] to be from football.”<sup>15</sup>

Based on Ms. Ns’ investigation, OCS substantiated one finding of maltreatment against Mr. N based on the September 9, 2018 incident: a finding of physical abuse for causing injury to A during their physical altercation. Mr. N requested an administrative hearing on or about December 31, 2018. In his appeal letter, Mr. N stated the following:

Though these allegations were substantiated, I respectfully disagree with the final decision in the event between my son [A] and I.

I would like to state that the marks that were on him were self-inflicted as he was pulling away from me as I was holding his shirt, I would like to make sure that this is documented in the reports taken by OCS ... , I never raised or laid hands on him to intentionally physically hurt my son.

This whole situation I strongly believe was taken out of context due to the actual events that happened. ... I do not believe that I am a risk to my children or any other child. Being put on this registry would create many barriers for and could risk me losing my job, where I am the sole provider for my family.[<sup>16</sup>]

Mr. N’s administrative hearing was originally scheduled to take place in April 2019. The hearing was delayed several times, however, primarily due to the fact that Mr. N had moved temporarily to City B, and OCS experienced some difficulties in setting up opportunities for him to

---

<sup>12</sup> AR 000010.

<sup>13</sup> Alaska CARES (Child Abuse Response Evaluation Services) is a multi-disciplinary child advocacy center in City A.

<sup>14</sup> AR 000056.

<sup>15</sup> AR 000051.

<sup>16</sup> AR 000018.

review confidential forensic interview materials at its City B office. Ultimately, the hearing was held on August 30, 2019. The record was closed on that date, and the matter was taken under advisement.

### III. Discussion

OCS maintains a central registry of all investigation reports.<sup>17</sup> 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.<sup>18</sup> At the conclusion of an investigation, OCS may find that an allegation has been substantiated. A substantiated finding is one where the available facts gathered from the investigation indicate that more likely than not, a child has been subjected to maltreatment under circumstances that indicate the child’s health or welfare is harmed or threatened thereby.<sup>19</sup>

Alaska Statute 47.17.290(3) states that “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 the child’s health or welfare is harmed or threatened thereby.”<sup>20</sup> The statutory definition of “maltreatment” leads us to Alaska’s “child in need of aid” provisions: “Maltreatment means an act or omission that results in circumstances in which there is reasonable cause to suspect that a child may be a child in need of aid, as described in AS 47.10.011.”<sup>21</sup> AS 47.10.011 has twelve separate paragraphs, each of which sets out a distinct definition of what constitutes maltreatment. In this case, OCS has substantiated a single finding of physical abuse, which is covered by AS 47.10.011(6), defining a “child in need of aid” as a child who 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 ... the child’s parent ... .”<sup>22</sup>

In this administrative appeal by Mr. N, it is OCS’s burden is to prove, by a preponderance of the evidence, that Mr. N committed the act of physical abuse that is the basis for OCS’s substantiated finding against him.<sup>23</sup> “Preponderance of the evidence” means that a disputed fact is shown to be more likely true than not true.<sup>24</sup>

---

<sup>17</sup> AS 47.17.040.

<sup>18</sup> AS 47.17.040(b).

<sup>19</sup> OCS Child Protection Manual, Ch. 2.2.10.1 (Rev. 5/16/15), *available at*: <http://dhss.alaska.gov/ocs/Documents/Publications/CPSManual/cps-manual.pdf>.

<sup>20</sup> AS 47.17.290(2).

<sup>21</sup> AS 47.17.290(9).

<sup>22</sup> AS 47.10.011(6).

<sup>23</sup> *In Re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health & Social Services, 2013).

<sup>24</sup> 2 AAC 64.290(e).

The factual record presented in this matter establishes that a physical altercation took place between Mr. N and his son A on September 9, 2018. Mr. N does not deny that the altercation occurred. It is also undisputed that A had physical injuries, essentially bruising on his neck and torso, as well as “petechiae” (broken blood vessels under the skin) on his face near his right eye, when he was examined by the Alaska CARES nurse the next day, September 10, 2018.

In his appeal papers, Mr. N contends that “I never raised or laid hands on him to intentionally physically hurt my son,” and that “the marks that were on him were self-inflicted as he was pulling away from me as I was holding his shirt.”<sup>25</sup> In his testimony at the hearing, Mr. N emphatically denied that he ever pulled or swung A around by his shirt or that A ever hit his eye or his face on a dresser.<sup>26</sup> Mr. N, however, had no explanation for the injuries that were still visible on A 24 hours after the altercation. He speculated that A may have lied about the source of the injuries, perhaps due to being angry with Mr. N about discipline he had imposed on A that summer. But Mr. N also testified that he could not explain where or how A suffered the injuries in the first place.<sup>27</sup>

As mentioned above, PSSII Ns was OCS’s only witness to testifying at the hearing. A N did not testify, so the only evidence on which to evaluate the credibility of A’s version of events is the record gathered by Ms. Ns. Based on that record, it is evident that A’s statements to her and to the school resource officer were consistent. The credibility of A’s statements is also corroborated by the fact that he recounted the same version of events to his older sister M, shortly after the incident had taken place.

However, regardless of whether A’s version of events is fully true, OCS met its burden of proving that Mr. N committed the act of physical abuse at issue in this case. Mr. N’s own admissions are sufficient for this purpose. He admitted that he initiated the physical altercation with A. Then, although he testified he had no idea how A became injured on his face or near his eye, he admitted that the bruises on A (probably referencing the injuries to A’s torso) were “self-inflicted as he was pulling away” from Mr. N as he was holding onto his shirt. In other words, Mr. N grabbed onto his son and attempted to physically control and manhandle him, and in the process A ended up being injured. Even if this was not intentional on Mr. N’s part, it meets the definition of physical

---

<sup>25</sup> AR 000018.

<sup>26</sup> N testimony; *see* AR 000009-10, 000012 (unredacted).

<sup>27</sup> N testimony.

abuse: actions by a parent that cause a child to “suffer[] substantial physical harm, or ... a substantial risk that the child will suffer substantial physical harm ... .”<sup>28</sup>

Evaluating the evidence in this manner, Mr. N’s argument in defense of his actions appears to be an implied argument that his actions toward A constituted reasonable parental discipline of his son. However, there is no dispute that A suffered injuries as a result of the altercation. While parents have a statutorily recognized right to exercise reasonable corporal discipline,<sup>29</sup> striking a child hard enough to leave a recognizable, visible mark that persists over the course of several days constitutes unreasonable discipline and rises to the level of an act of physical abuse.<sup>30</sup> Striking a child with sufficient force to cause an injury or leave a mark or swelling lasting more than 24 hours constitutes behavior causing “substantial physical harm.”<sup>31</sup> In addition, there is no meaningful distinction between causing injuries by directly striking a child, and causing injuries by initiating a physical altercation that results in injuries to the child. The undisputed facts of this case are sufficient to distinguish what occurred here from reasonable parental discipline, and these facts establish physical abuse by Mr. N.

Under the specific facts of this case, Mr. N caused injury to A by initiating and engaging in a physical altercation with the boy. Notwithstanding that he did not intend to hurt A and may have been attempting to engage in parental discipline, his actions caused injury to his son to the extent of causing bruising to his body and petechiae on his face, near his eye. Therefore, OCS met its burden of establishing by a preponderance of the evidence that it properly substantiated a finding of physical abuse against Mr. N.

#### **IV. Conclusion**

OCS’s single substantiated finding that Mr. N engaged in physical abuse of his son A, and Mr. N’s placement on the Child Protection Registry due to that substantiated finding, are affirmed.

DATED this 21<sup>st</sup> day of November, 2019.

Signed  
\_\_\_\_\_  
Andrew M. Lebo  
Administrative Law Judge

---

<sup>28</sup> AS 47.10.011(6).

<sup>29</sup> See AS 47.05.065(1): “[P]arents have the following rights and responsibilities relating to the care and control of their child while the child is a minor: . . . (B) . . . the right to exercise reasonable corporal discipline.”

<sup>30</sup> See *In re F. T.* OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013) (parent who caused a bruise in the course of disciplining a child committed physical abuse).

<sup>31</sup> *In Re N.N.*, OAH No. 15-1224-SAN (Commissioner of Health & Social Services, 2015).

## 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 19<sup>th</sup> day of December, 2019.

By: *Signed*

Name: Doniel Wolfe

Title: Regulations & Policy Analyst

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]