

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

In the Matter of)	
)	
P D)	OAH No. 21-2057-SAN
<hr style="width: 40%; margin-left: 0;"/>)	Agency No.

DECISION

I. Introduction

P D has a minor son. On February 16, 2021, the Office of Children’s Services (OCS) received a report of harm. After investigating that report, OCS sent Mr. D notice that it was substantiating a finding that he had neglected his son. Mr. D disagreed and requested a hearing challenging the finding.

The evidence in this case shows that Mr. D neglected his son by becoming intoxicated and being unresponsive while his son was in his sole care. Consequently, OCS’s substantiated finding is upheld.

II. Facts

The facts in this case were established through a contested hearing.

A. February 16, 2021, Incident

Mr. D and his partner W X have a son N, who was 20 months old at the time of the events in this case.¹ Because of a history of alcohol abuse, Mr. D has received services from Providence City A Counseling Center.²

At roughly 11:00 a.m. on February 16, 2021, Mr. D was phoned by a representative from the City A Counseling Center to schedule an appointment. The representative noted that Mr. D sounded impaired during the call, was slurring his words, and seemed confused and sleepy. Mr. D confirmed that he was home caring for his minor son at the time.³

Because the conversation with Mr. D was out of the ordinary, he seemed impaired, and since he said he was alone caring for his son, at roughly 2:00 p.m. that afternoon, the City A Counseling Center representative contacted OCS and the City A Police Department to perform a welfare check. Based on the potential for harm that existed, OCS gave the report its highest priority and assigned a case worker for immediate follow-up.⁴

Due to a request for a welfare check from both the City A Counseling Center and OCS,

¹ R. 4, 17-112; P D Testimony.
² R. 113; P D Testimony; Margit Garry Testimony.
³ R. 4; Margit Garry Testimony.
⁴ R. 4-5; Margit Garry Testimony.

Lieutenant Daniel Mott and Officer Chris Shumate from the City A Police Department arrived at the D home at roughly 3:20 p.m. on February 16, 2021.⁵ When they knocked on the door of the home and announced their presence as police officers, there was initially no answer. After calling out numerous times and continuing to knock on the door, they eventually could hear what sounded like a small child inside the home. They could also see and hear the doorknob attempting to be turned back and forth from the inside of the home. The officers then opened the unlocked door and entered the home.⁶

Upon entering the home, they observed N clothed in only a soiled, droop diaper. Mr. D was unresponsive on a mattress in the middle of the living room floor. However, he had not roused or risen when the officers entered the home. Initially the officers were concerned regarding whether he was even alive and discussed calling emergency medical services. They ultimately shook him, yelled out his name and patted him on the face. Eventually, he woke up and tried to stand. When he did, however, he was stumbling and falling over. Other than N and Mr. D, there was nobody else in the home.⁷

While in the home, the officers noted the smell of alcohol and observed empty pill bottles and an empty bottle of Vodka on the kitchen counter. They testified that it was obvious from the odor of alcohol and Mr. D's stumbling and slurred speech, that he had been drinking and was also potentially under the influence of medications.⁸

During this same time, N was also very active and moving about throughout the home. He was also operating the remote control on the television. At one point, Mr. D pointed to and asked Lieutenant Mott something about the firearm he was carrying on his duty belt. Lieutenant Mott testified that N heard and knew exactly what they were talking about. N then pointed to the location where Mr. D kept his gun. Although Mr. D's gun was on a shelf out-of-reach, Lieutenant Mott testified that, given the overall circumstances that existed, he was in fear of the child's safety. This was apparently based on Lieutenant Mott's observations including N's unrestricted and unsupervised access to the home, his age, and level of understanding.⁹

Lieutenant Mott testified that given these circumstances, it was obvious that N could not be left with Mr. D, and it was decided to contact his partner, Ms. X so that she could supervise

⁵ Lieutenant Daniel Mott Testimony; *see also*, R. 9-14.

⁶ Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony.

⁷ Lieutenant Daniel Mott Testimony.

⁸ Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony.

⁹ Lieutenant Daniel Mott Testimony.

N. Ms. X was then phoned at work, took the rest of the day off, and returned to the family's home so that she could supervise N.¹⁰

Finally, Lieutenant Mott testified that Mr. D did not provide a clear answer for his impairment. Although he discussed the fact that he may have been taking some medications, Mr. D never did clearly point to the reason for his not waking until after the officers were already in the home and despite their numerous attempts to call-out and announce their presence. The officers also never did perform a field sobriety test.¹¹

B. March 2, 2021, Incident

Similar to the February 16, 2021, incident, a March 2, 2021, incident also involved a call between Mr. D and the City A Counseling Center. On that date, Mr. D contacted the City A Counseling Center and informed them that he was going to stop by later in the afternoon. He self-disclosed having drunk four alcoholic beverages and his speech was slurred. He also indicated that he was home alone with N. This suggested that he was caring for N while under the influence of alcohol.¹²

OCS subsequently determined that Mr. D did show up at the counseling center later that afternoon. However, N was not with him and instead, N had been left with Ms. X.¹³ Because of these facts, and because there was already an open and existing report from February 16, 2021, the March 2, 2021, report was screened out and not substantiated.¹⁴

C. June 11, 2021, Incident

On June 11, 2021, Mr. D contacted and reported to the City A Police Department that Ms. X had stolen his debit card.¹⁵ Upon investigation by officers, he was observed to have a couple of scrapes on his chest and an abrasion on his elbow that he said occurred when he and Ms. X wrestled over his bank card in the living room of their home. Mr. D reported that the card was his, but that the money in the account was Ms. X's because her payroll checks were deposited into the account. At the time, he was observed having a strong odor of alcohol on his breath and slurred speech. N was not present during the altercation because he was in the family's car. The couple was separated for the night.¹⁶

¹⁰ Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony.

¹¹ Lieutenant Daniel Mott Testimony.

¹² R. 15-16.

¹³ R. 117.

¹⁴ R. 16; Margit Garry Testimony.

¹⁵ R. 123.

¹⁶ R. 123.

Although the incident was screened in, it was ultimately not substantiated. Interviews and information gathered during the investigation revealed that N was in the car with another adult at the time and did not witness the incident. While Mr. D was intoxicated at the time, there was no evidence that N was exposed to the argument or domestic violence.¹⁷

D. OCS Investigation of the February 16, 2021, Incident

After receiving the initial report of the February 16, 2021, incident, OCS assigned Protective Services Specialist Vivien Siemens, a/k/a Vivien McCormick, to follow-up and investigate the report.¹⁸ In doing so, Ms. Siemens conducted at least two home visits, and observed N and interviewed Ms. X and Mr. D numerous times.¹⁹

1. N

N was observed in the family's home on February 16 and 19 and again on July 7, 2021. On all occasions, the home was relatively clean and free of clutter. During these observations, N was very active and mobile. He watched videos and played games. He was also very affectionate toward both his mother and father. He spoke little but seemed to understand both basic Spanish and English without difficulty. There were no danger issues noted.²⁰

2. P D

Mr. D was interviewed in the home on February 16, 17, 19, April 27, and July 7, 2021.²¹ During the interview conducted on the date of the incident giving rise to this case, he smelled of alcohol, but did not appear intoxicated. His eyes were red, and his demeanor was drowsy. He said he had not slept in two days and reported having severe insomnia. He also acknowledged having an unloaded gun in an unlocked box on a shelf out of N's reach. He pointed to several medication bottles on the high shelves in the living room and said they are needed because of his drinking and that he "did it to myself." He also acknowledged having been arrested in 2016 for driving under the influence. He further acknowledged that he drinks large amounts of whiskey as it was the only way to sleep and keep the pain away.²² He showed an appointment card with City A Counseling Center said that he was looking forward to receiving services because he needs help.²³

¹⁷ R. 124; Margit Garry Testimony.

¹⁸ Margit Garry Testimony.

¹⁹ R. 6, 113-20; Margit Garry Testimony.

²⁰ R. 6, 115-16, 118.

²¹ R. 114-20.

²² R. 114.

²³ R. 116.

In the interview on April 27, 2021, Mr. D reported that he had not been drinking and that he was continuing to receive counseling services from the City A Counseling Center. He also appeared happier and healthier than in previous interviews.²⁴

In the interview on July 7, 2021, Mr. D acknowledged continuing to drink alcohol, but said that he no longer drinks hard alcohol, only beer. He also reported that the incident on February 16, 2021, occurred because he had taken cold medicine and then laid down to take a nap with N.²⁵

3. W X

Ms. X was interviewed in the family's home on February 16, 19, April 27, and July 7, 2021.²⁶ As she reported, Mr. D has a history of alcohol use, including a recent hospitalization resulting from the same. He also has a history of severe insomnia and a pattern of drinking to excess at night to pass out and fall asleep. However, she is unaware of any substance abuse involving his prescription medications. His drinking had been much heavier two to three years earlier, but since he had been attending counseling at the City A Counseling Center, his drinking had lessened.²⁷

Ms. X reported that she is the sole provider in the home and that Mr. D is unemployed. She said that during the weekdays, he would watch N and that she would come home during lunch breaks. She said that the incident on February 16, 2021, was highly unusual.²⁸

E. The Substantiation

Following Ms. Siemens's investigation of the February 16, 2021, incident, OCS notified Mr. D that it had made a substantiated finding that he had neglected N.²⁹ The basis for this finding was OCS's conclusion that "[t]he child was at substantial risk of physical injury by virtue of being unsupervised for an unknown period of time."³⁰

F. The Hearing

Mr. D requested a hearing to challenge OCS's substantiated finding of neglect. That hearing was originally scheduled and begun on January 24, 2022. However, as the hearing began, there were concerns regarding whether Mr. D was suffering from impaired capacity. He

²⁴ R. 117.

²⁵ R. 119.

²⁶ R. 113-14, 116-18.

²⁷ R. 113.

²⁸ R. 114.

²⁹ R. 1-3.

³⁰ R. 6.

mumbled and slurred his speech and came across as only semi-coherent. When he was on his landline phone, he could be heard dropping the receiver on the floor repeatedly and would then apologize after picking it back up.³¹

He was also argumentative during the hearing and could often be heard crying. Mr. D repeatedly disconnected from the call, often without explanation, and had to be called back.³²

Although at the outset of the hearing, Mr. D was asked specifically about whether he was under the influence of alcohol or drugs, he did not answer the question when asked. Later in the hearing, however, he did indicate that he was not taking any prescribed medications. Based on these events, the hearing begun on January 24, 2022, was cancelled, and rescheduled to February 23, 2022.³³

The hearing ultimately occurred on February 23, 2022, without incident. Jennamarie Test participated representing OCS. Mr. D participated representing himself. Testifying on behalf of OCS were Protective Services Specialist Margit Garry, as well as Lieutenant Daniel Mott and Officer Chris Shumate, from the City A Police Department. Mr. D testified on his own behalf.

G. Exhibits and Testimony at Hearing

At time of the hearing, OCS moved for the admission of the entire record in the case. The record consisted of 132 pages of Bates stamped documents. None of the documents were individually marked as exhibits, but were instead, simply referenced by their Bates numbers. An itemization of the record is as follows:

- R. 1 – 3, OCS notice of substantiated finding, dated July 28, 2021;
- R. 4 – 8, OCS Protective Services Report, Case ID 000121, Report #129933 (February 16, 2021, incident);
- R. 9 – 14, OCS Protective Services Report, Case ID 999121, Report #1293808 (March 2, 2021, incident);
- R. 17 – 112, Providence City A Counseling Center Records for P D;
- R. 113 – 120, OCS interview notes;
- R. 121, P D request for appeal of substantiated finding; and

³¹ Order Rescheduling Hearing (January 24, 2022).

³² Order Rescheduling Hearing (January 24, 2022).

³³ Order Rescheduling Hearing (January 24, 2022); Notice of Rescheduled Hearing (February 15, 2022).

- R. 122 – 132, OCS Protective Services Report, Case ID 999121, Report # 129936 (June 11, 2021, incident).

When OCS moved to admit these documents at the hearing, Mr. D did not object. Consequently, they were all deemed admitted and taken into consideration in the case.

Later in the hearing and the questioning of Ms. Garry, Mr. D sought to object to her testimony concerning his previous hospitalization for alcohol abuse and counseling at the City A Counseling Center. His objection was on the basis that he had allegedly been told by Ms. Siemens that if he provided a release for these documents, they would not be used against him at time of hearing.³⁴ However, because Ms. Garry was not referring to any such exhibits during her testimony and because all exhibits including Mr. D’s hospitalization and counseling at City A Counseling Center had previously been admitted, without objection, his objection was considered waived and overruled.³⁵

Mr. D testified that in their home, Ms. X and himself do not keep anything dangerous or harmful within N’s reach. They have child latches on all the drawers and do not keep any chemicals or cleaners under the counters that N can access.³⁶ He further testified that on February 16, 2021, Ms. X had left for work at between 9:00 and 10:00 a.m. that morning. At some point, he and N had laid down to take a nap. The next thing he knew, he was being awoken by the City A Police Officers. He said he was not on illicit drugs and that alcohol and prescription medication were the only factors at issue. He admitted having had a shot or two of alcohol that morning as well as having drank alcohol the night before.³⁷

When questioned, Mr. D acknowledged having had issues with alcohol in the past. At the time of February 16, 2021, incident, he said he was still in the process of getting his alcohol use under control. He further admitted that the officers were in his unlocked home with N for approximately four and a half minutes before he even realized they were there.³⁸

Ms. Garry provided testimony concerning the original report received from the City A Counseling Center on February 16, 2021, the report being screened in and assigned to Ms.

³⁴ P D Testimony.

³⁵ Mr. D’s objection is moot since: 1) the documents are not really being used against him—they merely provide background context, with all contested findings of fact in this case being based solely on testimony; and 2) the objection would only apply in any event to the Providence City A Counseling Center and medical record documents.

³⁶ P D Testimony.

³⁷ R. 121; P D Testimony.

³⁸ P D Testimony.

Siemens for follow-up, the investigation Ms. Siemens conducted, and OCS's subsequent substantiated finding of neglect based on the investigation.³⁹ Lieutenant Daniel Mott and Officer Chris Shumate also testified regarding their conduct of the welfare check at the D home on February 16, 2021, as well as what they observed in the home at the time.⁴⁰

III. Discussion

A. *The Child Protection Registry*

OCS maintains a child protection registry.⁴¹ That registry contains OCS investigative reports and substantiated findings of child maltreatment. The reports and substantiated findings are confidential but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.⁴²

After conducting an investigation of child maltreatment, OCS may find that an allegation has been substantiated. A substantiated finding is one where the available facts gathered from the initial assessment 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.⁴³ An individual's placement on child protection registry, due to a substantiated finding of maltreatment, has the potential to limit an individual's ability to hold certain certifications and licenses, or to participate in activities and businesses, whether as an owner, manager, shareholder, director, or employee, that are regulated by the Department of Health and Social Services.⁴⁴

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."⁴⁵ The statutory definition of maltreatment is found in the "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."⁴⁶

³⁹ Margit Garry Testimony.

⁴⁰ Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony.

⁴¹ AS 47.17.040.

⁴² AS 47.17.040(b).

⁴³ 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>.

⁴⁴ AS 47.05.325 - 330.

⁴⁵ AS 47.17.290(2).

⁴⁶ AS 47.17.290(8).

For the purposes of this case, a "child in need of aid," under AS 47.10.011, in relevant part, means a child who has been physically harmed, neglected, placed at a substantial risk of mental injury, or the parent's ability to care for the child 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."⁴⁷

OCS substantiated maltreatment by Mr. D. Its notice, and the agency record, demonstrated that it was substantiating maltreatment for neglect.⁴⁸ OCS has the burden of proof by a preponderance of the evidence (i.e., that it is more likely true than not true) that the alleged acts of abuse or neglect actually occurred).⁴⁹

B. Neglect

Neglect is statutorily defined as when a "parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental health and development."⁵⁰ To substantiate neglect, OCS must not only meet this definition but must also show that that N's "health or welfare is harmed or threatened thereby."⁵¹

The OCS Initial Assessment Summary, which substantiated neglect, reads, in the pertinent part:

the father chose to drink alcohol, possibly to excess, and mixed this with his prescription medications while he was the sole caregiver to his 20 month old son. The combination of alcohol and prescription medications caused the father to pass out and he was not able to be roused when law enforcement came to the home and ultimately had to force their way into the home when they were unable to get a response from P and could hear the child jiggling the doorknob. The child was at substantial risk of physical injury by virtue of being unsupervised for an unknown period of time.⁵²

The facts of this case are relatively straightforward and uncontested. Here, Mr. D has acknowledged and admitted that he has had problems with alcohol in the past and that on February 16, 2021, he was still in the process of getting his alcohol use under control. He further admitted to having mixed both prescription medications and alcohol on the morning in

⁴⁷ AS 47.10.011(6), (8)-(10).

⁴⁸ R. 1-132.

⁴⁹ *In re K.C.G.*, OAH No. 13-1066-SAN (Commissioner of Health and Social Services, 2013), available at: <https://aws.state.ak.us/OAH/Decision/Display?rec=5952>.

⁵⁰ AS 47.10.014.

⁵¹ AS 47.17.290(3).

⁵² R. 6.

question.⁵³

Although Mr. D sought to minimize the significance of his non-responsiveness when the City A Police Department officers arrived at his home, the testimony of Lieutenant Mott and officer Shumate paints a very concerning picture. N was an extremely active, bright, and aware 20-month-old child. He was fully awake and moving about the home when Mr. D was unresponsive. Despite repeatedly knocking on the door and announcing their presence, Mr. D did not awaken. He did not even wake-up after the officers entered the home and called to him. It was only once they physically patted his face and yelled out his name that he eventually arose, roughly four and a half minutes after the officers first entered the home.⁵⁴

While Mr. D's actions and inactions may have been less alarming had N been older, they are particularly concerning given N's young age. Toddlers of N's age can be extremely inquisitive and possess virtually no knowledge of the harms and perils that exist, even within their own home. For instance, harm can arise from their playing with sharp objects such as knives or scissors, appliances such stoves, open water such as might be found in a sink, toilet, or bathtub, or from hazards from falling after climbing onto objects. As a result, they require nearly constant supervision. It was this monitoring and supervision that Mr. D was required to provide and that he in fact failed to provide, because he was under the influence of alcohol and prescription medication.⁵⁵

The testimony of the officers also demonstrates that it is more likely true than not true that Mr. D was intoxicated to the point of being unresponsive while N was in his sole care and control. Further, it was not just the fact that Mr. D was unresponsive while N was in his care. As the officers testified, even after Mr. D was awakened, he still exhibited strong signs of being excessively impaired by alcohol based on his stumbling and falling over, and slurred speech.⁵⁶ So, even if he had been awake and responsive when the officers first entered the home, Mr. D was still not in a condition to appropriately supervise a 20-month-old toddler.

Based on these facts, OCS has met its burden on the issue of neglect. It has shown that Mr. D intoxication, when N was in his care, constituted a failure to exercise the "care and control necessary for the child's physical and mental health and development."⁵⁷ OCS has also shown

⁵³ P D Testimony.

⁵⁴ Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony; P D Testimony.

⁵⁵ Margit Garry Testimony; Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony.

⁵⁶ Lieutenant Daniel Mott Testimony; Officer Chris Shumate Testimony.

⁵⁷ AS 47.10.014.

that this lack of care and control threatened N's welfare. N, a 20-month-old toddler, was effectively unsupervised and alone in a home full of risks and dangers. He could have potentially exited the unlocked home without Mr. D's knowledge, another person could have entered the home and taken him away, or he could have subjected himself to an untold number of dangers within the home without Mr. D's knowledge. OCS has therefore established that Mr. D maltreated N.

IV. Conclusion

OCS's substantiated finding of maltreatment due to neglect is upheld.

DATED this 21st day of March 2022

Signed

Z. Kent Sullivan
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 20th day of April, 2022.

By: *Signed*

Name: Jillian Gellings

Title: Project Analyst

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