

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

In the Matter of)	
)	
M S)	OAH No. 21-1883-SAN
<hr style="width: 80%; margin-left: 0;"/>)	Agency No.

DECISION

I. Introduction

The Office of Children’s Services (“OCS”) had been monitoring M S’s care of her grandchildren for many months as an unlicensed relative placement when it received a report of a domestic violence event in the home. OCS had been concerned for some time about persons Ms. S allowed to watch or spend time with the children and about unsafe and unsanitary conditions in the home. Based on the totality of the circumstances, OCS made substantiated findings that Ms. S had neglected the children and the findings would appear on the Child Protection Registry. This appeal concerns those substantiated findings.

OCS provided evidence of many circumstances in Ms. S’s home and with the people she allowed around the children, most of which was uncontradicted by Ms. S. Each circumstance alone might not constitute neglect. But when considered as a whole, these circumstances satisfy OCS’s burden to show it is more likely than not that Ms. S failed to provide adequate shelter or exercise the care and control necessary to protect the children’s health and development. Accordingly, OCS’s substantiated findings are affirmed.

II. Facts

This matter was triggered by an incident on June 7, 2021. At the time, Ms. S was caring for her grandchildren B, age 3, and U, age 23 months.¹ The children were placed in Ms. S’s care as an unlicensed relative placement in April 2021 because of OCS’s concerns with the parents, including drug use and verbal abuse.² Prior to this placement, the children and their parents had already been staying in Ms. S’s home off and on.³

OCS observed Ms. S’s home numerous times prior to the June 7 incident, both in person and over video because of COVID-19 precautions. In home visits during April 2021, OCS learned that E M, Ms. S’s fiancé, was serving as the children’s babysitter and that he was

¹ R. 000008.

² *See, e.g.*, R. 000056-78.

³ Wilusz testimony.

currently on an ankle monitor with pending felonies and subject to a domestic violence restraining order from his wife and daughter.⁴ OCS informed Ms. S that Mr. M needed to move out of the home.⁵ According to Ms. S, he did so and she never left the children alone with them again.⁶ OCS records include conflicting reports on whether Mr. M slept in the home, including an admission by Ms. S that “he did spend the night maybe once or twice because he was my fiancé.”⁷

Regardless of where he slept, Mr. M appeared to be perpetually present in the home. He was present during home visits.⁸ During a June 3, 2021 home visit, Mr. M stated that he spent his days in the home and played with the kids during the day.⁹ At one point, Ms. S had a teenage babysitter also present in the home during the day while Ms. S was at work, but the babysitter later quit because of Mr. M’s presence and criminal background.¹⁰ The substantiated finding on appeal here include conflicting statements from Ms. S: that she “reported that she left the children with E while she was at work” and that she “assured the Family Services staff that she never leaves the kids with E.”¹¹

Ms. S and Mr. M argued frequently, though there is conflicting evidence whether Mr. M had been physically abusive — Ms. S testified he had not, but OCS noted Ms. S previously saying this was not the first time “E left bruises on me.”¹²

Another person who was reportedly either living in or at least “in and out of the house” at this time is T E. There is conflicting evidence whether Mr. E had a romantic relationship with Ms. S, her daughter, or both.¹³ Regardless, he was a person in the children’s life and someone Ms. S left the children with until June 2, 2021 when she returned to find the child naked after a bath and became suspicious of Mr. E abusing the children.¹⁴ According to Mr. M, Mr. E had also been using drugs while staying in Ms. S’s home.¹⁵

⁴ R. 000011, 000066, 000069.

⁵ R. 000069.

⁶ S testimony.

⁷ R. 000026.

⁸ *See, e.g.*, 000022, 000065.

⁹ R. 000024.

¹⁰ S testimony; R. 000026.

¹¹ R. 000010.

¹² R. 000010; S testimony (describing frequent arguments).

¹³ S testimony; unsigned letter purporting to be from T E, submitted by Ms. S; R. 000018.

¹⁴ R. 000022-23.

¹⁵ R. 000023.

Home visits also revealed increasingly unsanitary and potentially dangerous hazards in Ms. S's home. Visits in January, February, and March 2021 found the home generally clean.¹⁶ In May, the OCS representative observed trash bags piled up and blocking the gate to access the house, clothing spread out in the living room, and dishes piled in the sink.¹⁷ Ms. S stated at the time she was going through the children's clothes to get rid of items that no longer fit.¹⁸ But when OCS returned on June 3, 2021, there were still piles of clothes in the home.¹⁹ Of greater concern, the OCS representative found the home smelled of ammonia and there was cat urine, feces, and vomit throughout the living room, kitchen, hallway, and in children's room, including on the lower bunk of their bunk beds.²⁰ OCS also observed knives and bug spray within easy reach and saw U reach and take the bug spray.²¹ U also spilled a plate of sausages on the floor and was then eating from the floor.²² Ms. S would not allow OCS to enter a bedroom, stating that the children's mother had been using methamphetamines in that room and that Ms. S did not allow the children to go in there either.²³ OCS visited the home that day to follow up on reports of physical abuse by Ms. S and sexual abuse by Mr. M.²⁴ OCS ultimately determined that it could not substantiate the reports of abuse.²⁵

OCS also took hair follicle samples from the children on June 3. The results later came back positive for marijuana and amphetamines for B and positive for amphetamines for U.²⁶

On June 7, 2021, Ms. S and Mr. M argued while driving with the children. According to contemporaneous reports, Mr. M pulled over and punched Ms. S inside the car and Ms. S then exited the car and punched the window, shattering but not breaking the glass — all while the children sat in the backseat.²⁷ Mr. M drove the children back to Ms. S's home while Ms. S caught a ride back with a neighbor.²⁸ Ms. S and Mr. M continued to argue inside the home. Ms.

¹⁶ R. 000061, 000062, 000064.

¹⁷ R. 000076.

¹⁸ *Id.*

¹⁹ R. 000023.

²⁰ Selden testimony; R. 000018-19, 000021-22.

²¹ Selden testimony; R. 000018, 000021.

²² Selden testimony; R. 000021.

²³ R. 000021-23.

²⁴ Selden testimony; R. 000018.

²⁵ *Id.*

²⁶ R. 000089-90.

²⁷ R. 00009-10, 000026, 000045, 000048, 000051, 000054, 000080.

²⁸ R. 000095.

S shoved Mr. M away and he pushed her into a wall.²⁹ B was inside the home at the time and witnessed the physical altercation.³⁰ Ms. S then left with the children. According to Ms. S, Mr. M proceeded to destroy property and make a mess throughout the home.³¹ He then cut his ankle monitor and fled.³² At the hearing Ms. S claimed that Mr. M had not previously been physically abusive and that she had no further relationship after the June 7 incident.³³

OCS visited the home the following day, on June 8, 2021. The representative found cat feces on the floor by the front door, by the refrigerator, next to the couch, and in the hallway leading to the bathroom where there were four overflowing litter boxes on the floor.³⁴ In the children's room, the bottom bunk no longer had a mattress, exposing wood slats that the children could fall through.³⁵ There were no sheets or blankets on the bed.³⁶ In the living room there was a lighter sitting on a window sill in easy reach.³⁷ B was eating strawberries off the floor.³⁸ Ms. S reported the damage Mr. M had caused to the home the day before, but the OCS representative noted "the trailer did not look differently than it had on Thursday, June 3rd."³⁹

On June 9, Ms. S, contacted OCS to request approval for a new babysitter.⁴⁰ OCS ran a courtview search and found that this person had a DUI.⁴¹ Ms. S initially stated he was not living in her home, but later said that he was and that she had moved him in to babysit.⁴² OCS had previously informed Ms. S that she could not move anyone new into her home without prior approval from OCS.⁴³ Ms. S later tried to claim he had moved in because of a misunderstanding.⁴⁴

²⁹ R. 000095; S testimony.

³⁰ R. 000025.

³¹ S testimony; R. 000045, 000048, 000051, 000054-55.

³² R. 000096. After his arrest for the June 7 incident, Mr. M claimed it was Ms. S who caused the property damage. He also then claimed to have been living in the home and watching the children while Ms. S was at work. R. 000028.

³³ S testimony.

³⁴ R. 000026.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ R. 000082.

⁴¹ *Id.*

⁴² R. 000082, 000084.

⁴³ R. 000080.

⁴⁴ R. 000085

Following its investigation of the June 7 incident, OCS made four substantiated findings against Ms. S for purposes of the Child Protection Registry — one of “neglect” and one of “mental injury” for each of the children.⁴⁵

Ms. S appealed. With her appeal, Ms. S submitted a letter from K G stating that Mr. G and his wife had been watching the children while Ms. S was at work.⁴⁶ Ms. S stated the same at the hearing, explaining that Mr. G is a co-worker.⁴⁷ The record includes extensive records of conversations between Ms. S and OCS during the first half of 2021, including discussions about childcare and who was watching the children, and in none of these conversations had Ms. S mentioned Mr. G or his wife.

A hearing was held on November 10, 2021. OCS provided testimony from Protective Services Specialists Analisa Selden and Samantha Wilusz, both of whom had observed Ms. S’s home and been involved in her case. Ms. S testified on her own behalf.

At the hearing, OCS stated that it was reversing its substantiated findings of mental injury, but maintained substantiated findings for neglect.

III. Discussion

OCS maintains a Child Protection Registry for conducting background checks for limited purposes on persons seeking to provide certain services, such as childcare.⁴⁸ This Registry reflects any “substantiated findings under AS 47.10 [Child in Need of Aid] or AS 47.17 [Child Protection].”⁴⁹

Here, the only substantiated findings at issue are for neglect under AS 47.10.011(9).⁵⁰ This statute specifies that a child may be considered a child in need of aid if “conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect.”⁵¹ Neglect is “fail[ure] 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.”⁵² OCS has the burden to show by a preponderance of the evidence that Ms. S neglected her grandchildren.

⁴⁵ R. 000001-5.

⁴⁶ R. 000034.

⁴⁷ S testimony.

⁴⁸ AS 47.17.040.

⁴⁹ AS 47.17.040(a).

⁵⁰ R. 000009.

⁵¹ AS 47.10.011(9).

⁵² AS 47.10.014.

OCS argues that Ms. S neglected the children by failing to provide adequate shelter and failing to exercise care and control by allowing dangerous persons in and out of her home.

A. Ms. S Did Not Provide Adequate Shelter or Exercise Necessary Care and Control in the Home.

OCS argues that the condition of Ms. S's home amounted to neglect. Neglect includes a failure to provide adequate shelter and a failure to exercise necessary care and control necessary for a child's health and development.⁵³ General messiness in a home is not neglect. But when a home is so unkempt that it is unsanitary or unsafe, that home is not providing the shelter or care a child deserves. For example, the Alaska Supreme Court has affirmed a finding of neglect under the child in need of aid statutes where children were living in a home that was "extremely dirty and contained unsafe physical conditions" including piles of dirty clothes, broken glass on the floor, dirty dishes piled in a non-functioning sink, alcohol bottles around the home, and illegal drug use occurring in the home.⁵⁴

OCS observed similarly unsanitary and unsafe conditions, even before the June 7 incident where Mr. M is accused of damaging property. In particular, the June 3, 2021 home visit revealed cat feces, urine, and vomit throughout the home, including in the children's bed. OCS observed one of the children eating food off the floor, as toddlers are prone to do, but this is the same floor that was littered with cat feces. OCS also observed dangerous items within reach, including knives and bug spray, and witnessed U grab the bug spray. OCS observed similar conditions again on June 8, including cat feces, urine, and vomit and a lighter left within easy reach.

Ms. S testified that she did not recall any cat feces in her home.⁵⁵ That is consistent with OCS's observation on June 3, 2021 that Ms. S "appeared oblivious to the cat feces."⁵⁶ Based on that observation and OCS representatives finding cat feces throughout the home on two different occasions, it is more likely than not that the unsanitary conditions OCS observed were accurate.

It also appears more likely than not that Ms. S allowed persons using drugs in the home and in contact with the children. Follicle tests for both children came back positive for amphetamines, including methamphetamine. Ms. S admitted that her daughter used meth in the

⁵³ AS 47.10.014.

⁵⁴ *Audrey H. v. State, Office of Children's Services*, 188 P.3d 668, 674 (Alaska 2008).

⁵⁵ S testimony.

⁵⁶ R. 000018.

home, though she stated she did not allow the children in that room. Mr. E — with whom Ms. S left the children alone — was also using drugs in the home, at least according to Mr. M. While the record does not indicate from whom the children were exposed to amphetamines, the positive tests suggest it was happening in the home. The Alaska Supreme Court has affirmed a child in need of aid finding based on neglect for a positive hair follicle test for methamphetamine alone, reasoning that absent evidence of drug exposure outside the home, the follicle test was clear and convincing evidence of exposure while under the parents' care in the home.⁵⁷ The children's positive tests here similarly support a finding of neglect.

A pile of clothes or sink full of dishes alone may not be neglect. But the totality of circumstances in Ms. S's home — piles of clothes and dirty dishes, cat feces, vomit, and urine on the floor and in the children's bed, dangerous substances and instruments in easy reach, and apparent exposure to amphetamine use — show an inadequate shelter and a failure to exercise necessary care and control to protect the children's health and safety. Accordingly, the evidence supports OCS's substantiated finding of neglect.

B. Ms. S's Pattern of Leaving the Children with, or Exposing the Children to, Unknown or Dangerous Persons Further Demonstrates Neglect.

OCS further argues that Ms. S committed neglect by exposing the children to numerous dangerous persons. Exposing children to unknown or dangerous persons can constitute neglect for purposes of child in need of aid statutes. For example in *Phoebe S. v. State, Department of Health & Social Services*, the Court affirmed a child in need of aid finding based on neglect where the parent "repeatedly left the children with questionable individuals" and placed them "in dangerous proximity to sex offenders."⁵⁸

As a whole, the record shows a pattern by Ms. S of surrounding herself with people known to have a dangerous or criminal background or who were relatively unknown to Ms. S. Ms. S claims that Mr. M had not physically abused her prior to the June 7 incident. Yet the record reflects admissions by Ms. S of prior violence. More importantly, Ms. S knew he had a history of violence. Mr. M was under a protective order for committing domestic violence against his wife and daughter. He also had outstanding felony charges and was on ankle monitor. Whether or not Ms. S is telling the truth about leaving the children alone with him, the

⁵⁷ *Annette H. v. Dep't of Health & Social Servs., Office of Children's Services*, 450 P.3d 269, 266 (Alaska 2019).

⁵⁸ No. S-15112, 2014 WL 1691614, at *5-6 (Alaska Apr. 23, 2014).

record indicates he was perpetually present in the home and spent large amount of time with the children.

Ms. S also had Mr. E living in the home and watching the children. Mr. E reportedly used drugs and Ms. S suspected him of abusing the children.

Ms. S asked to have another person considered as a babysitter, but when OCS ran a background check it revealed a DUI. Ms. S then revealed she had already moved him into her home, though later she tried to claim it was a misunderstanding.

Ms. S testified at the hearing that she had been leaving the children with a co-worker, Mr. G, and his wife while she was at work. She also submitted a letter from Mr. G with her appeal. But the record includes notes and reports from Ms. S's interactions with OCS throughout the first half of 2021, including numerous conversations about who or could babysit the children. In none of these conversations did Ms. S mention Mr. G as a babysitter or ask OCS to approve him as a babysitter, as OCS had required. That inconsistency calls into question the credibility of Ms. S's testimony.

The issue here is not the children's exposure to a particular person, but Ms. S's overall pattern of exposing the children to unknown persons or persons with a known history of violence. The evidence shows Ms. S leaving the children with teenage neighbors, a person she moved into her home to babysit without first clearing it with OCS or running a background check, and with Mr. E who was reportedly abusing drugs. And Mr. M was in her home on a daily basis, interacting with the children — with or without others present — even though Ms. S knew he had a history of domestic violence against his own wife and daughter. The positive hair follicle tests also show the children were exposed to someone who was using amphetamines. This pattern is consistent with the type of behavior the Courts have found to constitute neglect. Coupled with the unsanitary conditions of the home, Ms. S's pattern of leaving with or exposing the children to unknown or dangerous persons demonstrates a failure to exercise the care and control necessary for the children's health and development.

IV. Conclusion

OCS's findings of neglect here do not come down to one incident, person, or condition in the home. It is about the totality of the environment Ms. S created for her grandchildren. Ms. S no doubt cares deeply for these children. But at the same time, she allowed them to live in a home littered with cat feces, vomit, and urine, including on the floor where the children were

observed eating food and in their own bed. Dangerous objects were left within their reach. And dangerous and unknown persons were in and out of the home, sometimes living there, sometimes left in charge of the children, and apparently sometimes using amphetamines to the point that the children tested positive. Mr. M's dangerous past proved prophetic when he became physically abusive and damaged property in front of the children. Taken together these circumstances amount to an inadequate shelter and a failure to exercise the care and concern necessary for the children's health and development. Accordingly, OCS's substantiated findings of neglect are affirmed.

Dated: November 18, 2021

Signed

Rebecca Kruse
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 22nd day of December, 2021.

By: Signed

Name: Jillian Gellings
Title: Project Analyst, DHSS

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