

[REDACTED]

APPELLANT

v.

[REDACTED] COUNTY

DEPARTMENT OF SOCIAL SERVICES

* BEFORE T. AUSTIN MURPHY,
 * AN ADMINISTRATIVE LAW JUDGE
 * OF THE MARYLAND OFFICE
 * OF ADMINISTRATIVE HEARINGS
 * OAH No.: DHR-[REDACTED]
 * DSS No.: [REDACTED]

* * * * *

DECISION

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STATEMENT OF THE CASE

On March 7, 2009, the [REDACTED] County Department of Social Services (local department) notified the Appellant that it had found her to be a person allegedly responsible for indicated child abuse. The notice also informed the Appellant that she had a right to request a contested case hearing to challenge the local department's decision. On April 10, 2009, the Appellant appealed.

On August 5, 2009, I held a contested case hearing at the local department's office in Landover, Maryland. Md. Code Ann., Fam. Law § 5-706.1(b) (2006).¹ The Appellant was present and was represented by [REDACTED], Esquire. [REDACTED], Esquire, represented the local department.

¹ Unless otherwise noted, all references to the Annotated Code of Maryland, Family Law Article are to the version published in the 2006 Replacement Volume, with the exception that all references to Family Law section 5-714 will be to the version published in the 2008 Supplement.

Procedure in the case is governed by the contested case provisions of the Administrative Procedure Act, procedural regulations of the Department of Human Resources, and the Rules of Procedure of the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 07.01.04, 07.02.26, and 28.02.01.

ISSUES

- (1) Is the local department's finding of indicated child abuse correct?
- (2) Is the Appellant properly identified as the person responsible for the indicated child abuse?

SUMMARY OF THE EVIDENCE

Exhibits

The local department submitted the following exhibits, which I admitted into evidence:

- LD 1. February 3, 2009 Children and Family Services Intake Worksheet
- LD 2. February 5, 2009 Washington, D.C. Children and Family Services Interim Report
- LD 3. February 5, 2009 [REDACTED] Service Progress Report
- LD 4. [REDACTED] County Police Department Medical-Legal Form for Abused Children
- LD 5. Packet of medical records from Children's National Medical Center
- LD 6. March 4, 2009 Child Protective Services Child Abuse Report Final

The Appellant submitted the following exhibits, which I admitted into evidence:

- Appellant 1. February 26, 2009 Maryland Family Risk Assessment
- Appellant 2. February 3, 2009 Rule Out Service Documentation
- Appellant 3. Four photographs of the Appellant's second floor and the child's bedroom
- Appellant 4. Brown extension cord

Testimony

The local department presented the testimony of [REDACTED], Child Protective Services Social Worker for the local department. The Appellant testified on her own behalf.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Appellant is the foster mother of [REDACTED], born [REDACTED], who was [REDACTED] years old in [REDACTED] when the incident that led to this finding occurred.
2. The household consists of the Appellant, her mother, and [REDACTED].
3. On or about [REDACTED], the Appellant and [REDACTED] had returned to the home after a bible study class. On the way home, the Appellant told [REDACTED] that she should clean her room when they got home.
4. After they arrived home, the Appellant reminded [REDACTED] that she had to finish cleaning her room. The Appellant went to her room and [REDACTED] went to her room. Several minutes later, [REDACTED] came to the Appellant's room and stated that she had finished cleaning the room.
5. The Appellant went to check [REDACTED] room and put her to bed. On the way to the room, the Appellant noticed that she had forgotten to drape an extension cord around the banister at the top of the steps and took it with her to remind her to drape it around the banisters.²
6. When the Appellant got to [REDACTED] room, she noticed that [REDACTED] had not finished cleaning the room. [REDACTED] was on the floor of the bedroom at the bottom of the bed, occupied with a stuffed animal on the floor.
7. The Appellant told [REDACTED] that the room was still messy and, while stating as much, swung the extension cord across her body so that it would strike papers which were in an array

² The extension cord is draped around the banisters to remind anyone going downstairs that the alarm is on and it should be turned off to avoid setting off the alarm.

on [REDACTED] bed. At the same time, [REDACTED] got up from the floor next to the bed and was struck by the cord on her back right shoulder.

8. Following the incident, the Appellant took [REDACTED] to the bathroom and viewed the area of [REDACTED] back without noticing any mark.

9. The next day, the Appellant again viewed [REDACTED] shoulder area and found no sign of an injury.

10. At school that day [REDACTED] told a school staff member that she was struck with a cord used for Christmas lights.

11. Because [REDACTED] was serviced by the District of Columbia Department of Social Services (D.C. local department), the incident was investigated by a worker from the D.C. local department.

12. [REDACTED] had made two prior allegations of abuse against two other caretakers which were found to be unsubstantiated prior to this incident.

13. While [REDACTED] was riding from school in the D.C. local department's worker's automobile, she stated to the worker that she wanted to leave the Appellant's home before the incident occurred.

DISCUSSION

The Appellant challenges the local department's finding that she is responsible for indicated child abuse. The local department bears the burden of establishing, by a preponderance of the evidence, that this finding is consistent with the law and supported by credible evidence. COMAR 07.02.26.14B(2). If I find that the law and the evidence do not support the local department's finding, I may modify the finding to unsubstantiated or ruled out. COMAR 07.02.26.14D.

A finding of indicated means “that there is credible evidence, which has not been satisfactorily refuted, that abuse . . . or sexual abuse did occur.” Md. Code Ann., Fam. Law § 5-701(m). A finding of unsubstantiated means “that there is an insufficient amount of evidence to support a finding of indicated or ruled out.” Md. Code Ann., Fam. Law § 5-701(y). A finding of ruled out means “that abuse . . . or sexual abuse did not occur.” Md. Code Ann., Fam. Law § 5-701(w).

If I conclude that the Appellant is responsible for “indicated” child abuse, the local department will enter the Appellant’s name into its central registry and place next to it a “marker, code, flag, or other symbol” to “identify” that the Appellant is a person responsible for indicated child abuse. COMAR 07.02.26.02B(12); *see also* Md. Code Ann., Fam. Law § 5-714(e)(1)(ii); COMAR 07.02.07.10; COMAR 07.02.26.14C. If I conclude that the Appellant is responsible for “unsubstantiated” child abuse, the local department may include the Appellant’s name in its central registry as part of the “identifying information” related to the investigation of the case. Md. Code Ann., Fam. Law § 5-714(d)(1),(e)(1)(i) and (ii); *see also* Md. Code Ann., Fam. Law § 5-701(l); COMAR 07.02.26.02B(13)(d); COMAR 07.02.07.02B(20)(b)(iv); COMAR 07.02.07.10A. If I conclude that child abuse should be “ruled out,” I will order the local department to expunge from its central registry any “identifying information” related to this investigation; I will also order that the local department expunge the finding and its identification of the Appellant as a person responsible for child abuse from the related reports of suspected abuse, assessments, and investigative findings. Md. Code Ann., Fam. Law §§ 5-714(d)(2), 5-707(b)(2); COMAR 07.02.07.10B.

Maryland law defines child abuse as follows:

(b) *Abuse*. – “Abuse” means:

(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed....

Md. Code Ann., Fam. Law § 5-701(b).

The regulations at COMAR 07.02.07.12 set out the following criteria for findings of indicated, unsubstantiated, and ruled out child abuse:

A. Indicated Child Abuse.

(1) Physical Abuse Other than Mental Injury. Except as provided in §A(3) of this regulation, a finding of indicated child physical abuse is appropriate if there is credible evidence, which has not been satisfactorily refuted, that it is more likely than not that the following four elements are present:

- (a) A current or prior physical injury;
- (b) The injury was caused by a parent, caretaker, or household or family member;
- (c) The alleged victim was a child at the time of the incident; and
- (d) The nature, extent, and location of the injury indicate that the child's health or welfare was harmed or was at substantial risk of harm.

...

B. Unsubstantiated Child Abuse. A finding of unsubstantiated child abuse is appropriate when there is insufficient evidence to support a finding of indicated or ruled out child abuse. A finding of unsubstantiated may be based, but is not required to be based, on the following:

- (1) Insufficient evidence of a physical or mental injury, sexual molestation, or sexual exploitation;
- (2) Insufficient evidence that the individual alleged to be responsible for the child abuse was a parent, caretaker, or household or family member;
- (3) The lack of a credible account by the suspected victim or a witness;
- (4) Insufficient evidence that the child's health or welfare was harmed or was at substantial risk of being harmed; or

(5) Despite reasonable efforts, an inability to complete the investigation due to factors such as:

(a) Lack of access to the child or individual alleged to be responsible for the child abuse; or

(b) Inability to obtain relevant facts regarding the alleged child abuse.

C. Ruled Out Child Abuse. A finding of ruled out child abuse is appropriate if child abuse did not occur. A finding of ruled out may be based on credible evidence that:

...

(2) In the case of physical abuse:

(a) The alleged abuser was not responsible for the injury for reasons including, but not limited to, one of the following:

(i) The contact with the child was accidental and unintended and under the circumstances, the injury was not foreseeable; or

(ii) The injury was a result of the child's medical condition; or

(b) The child's health or welfare was not harmed or at substantial risk of being harmed.

(3) The individual identified as responsible for the injury or sexual molestation or exploitation was not the child's parent, caretaker, or household or family member; or

(4) The alleged victim was not a child at the time of the incident.

A "child" is defined as an individual under the age of eighteen. Md. Code Ann., Fam. Law § 5-701(e); COMAR 07.02.07.02B(6).

In this case, the Appellant testified that when ██████████ did not clean her room as instructed, she swung the extension cord to draw ██████████ attention to the papers which ██████████ had failed to put away. The Appellant testified that she was not angry and, in fact, the evidence would support that statement. The Appellant picked up the cord on the way to the

room as a reminder to sling it around the banisters on the way back to her bedroom. At that point, she had no idea that ██████ had failed to follow her instructions. The Appellant further testified that she aimed the cord at the papers on the bed. The Appellant was credible. She spoke clearly and responded to questions without appearing to be evasive. Her demeanor was forthright and direct during the time she was on the stand and throughout the hearing. I believe that the incident was an accident.

The Appellant cited *Taylor v. Harford County Dep't of Soc. Serv.*, 384 Md. 213 (2004) as a basis for her position that she should not be identified as a person responsible for indicated child abuse because the incident was accidental. The Appellant's reliance on *Taylor* is improper because *Taylor* was based upon the regulation which existed at the time the actions in *Taylor* took place. That regulation was subsequently rewritten and became effective November 19, 2007. Prior to November 19, 2007, COMAR 07.02.07.12C called for a ruled out disposition if the act causing the injury was accidental or unintentional and not reckless or deliberate. The regulation which went into effect on November 19, 2007 allows for a ruled out disposition if the contact with the child was accidental and unintended and, under the circumstances, the injury was not foreseeable.

I have already explained that I found the act to be accidental and unintended. However, under the new regulation, the cause of the injury must not be foreseeable. The evidence that the child was on the floor and not on the bed at the time that the Appellant swung establishes that the injury was not foreseeable. There was no attempt to strike the child and she was not within reach of the cord when the Appellant first swung the cord. Just because the injury occurred does not render it foreseeable. This is not a situation in which the Appellant was aiming the cord toward

the child, but at the papers on the bed. It was only because the child got up that the cord struck the child.

For the above reasons, I find that the contact with the child was accidental and unintended and under the circumstances, the injury was not foreseeable. Under COMAR 07.02.07.12C(2)(a)(i), the appropriate disposition by the local department should be ruled out.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and Discussion, I conclude, as a matter of law, that the local department has not established by a preponderance of the evidence that the finding of indicated child abuse is supported by credible evidence and is consistent with the law. COMAR 07.02.26.14B(2) and 07.02.07.12C.

I further conclude, as a matter of law, that the finding should be modified to ruled out child abuse and that this finding is supported by credible evidence and is consistent with the law. COMAR 07.02.07.12C(2)(a)(i).

I further conclude, as a matter of law, that the local department has not established by a preponderance of the evidence that the Appellant is an individual responsible for indicated child abuse. COMAR 07.02.07.10C.

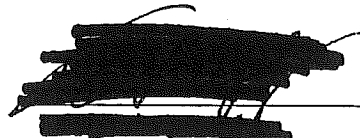
I further conclude, as a matter of law, that the local department may not identify the Appellant as a person responsible for child abuse in a central registry and may not include the name of the Appellant in "identifying information" related to the investigation of this case. *See* Md. Code Ann., Fam. Law §§ 5-714(d)(2), (e)(1), 5-701(1); COMAR 07.02.26.02B(12), (13); *see also* Md. Code Ann., Fam. Law § 5-707(b)(2).

ORDER

I **ORDER** that the Prince George's County Department of Social Services' finding of indicated child abuse and its identification of the Appellant as the person responsible for that child abuse is **MODIFIED** to ruled out; and further,

I **ORDER** that the Prince George's County Department of Social Services shall expunge the identification of the Appellant as an alleged or suspected child abuser from the report of suspected child abuse, from "identifying information" related to the investigation of this case, and from all assessments and investigative findings in its records of this case.

September 22, 2009
Date decision mailed

A signature that has been completely redacted with black ink, leaving only the name of the official below it.

Administrative Law Judge

TAM/
108234

REVIEW RIGHTS

This is the final decision of the Department of Human Resources. Any party aggrieved by this decision may file a petition for judicial review with the circuit court for the county where the party resides or has a principal place of business within thirty days of the date of this decision. Md. Code Ann., State Gov't § 10-222 (Supp. 2008); Md. Rules 7-201 through 7-210. The Office of Administrative Hearings is not a party to any review process.

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