

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. S-12/17-674
)
Appeal of)
)

INTRODUCTION

The petitioner appeals the decision of November 8, 2017 by the Department for Children and Families, Registry Review Unit substantiating a report from March 2016 that she placed her daughter, who was one year old at that time, at risk of physical harm.¹ Following multiple telephone status conferences over the course of several months, a hearing in the matter was held on March 8, 2019. The following findings of fact are based on the testimony and evidence presented at the hearing. The record was held open until March 15, 2019, to allow petitioner an opportunity to file additional argument, but she declined to do so.

FINDINGS OF FACT

1. The petitioner is the mother of one child, a daughter, born in March 2015.

¹The review decision noted that the Department had determined that petitioner would not be substantiated for physical abuse due to conflicts in the statements made at the time of the incident by petitioner and petitioner's live-in boyfriend.

2. A few months before the incident that gave rise to the substantiation in this case, the petitioner had become separated from her husband, RW, the father of the minor child, and had begun living with a boyfriend JB.

3. The petitioner testified at hearing that she had known JB for many years because they had grown up in the same town but denied knowing him well or being aware of his prior history of criminal activity, or his reputation for violence and domestic abuse.

4. Petitioner's current memory of the events of March 29, 2016 is imperfect. She was able to recall certain events, but not others and could not remember at what time things occurred, or how long certain activities lasted.

5. Petitioner was extremely anxious and distraught throughout the course of the hearing. She testified that she had been diagnosed with bipolar disorder, major depression and attention deficit disorder, and stated that while she did participate in talk therapy, the only medication she had been prescribed was to help her sleep and that she elected not to take it.

6. Petitioner testified that on the morning of March 29, 2016, she and JB had had an argument that either had to do with her being too loud while he was trying to sleep, or

with the breakfast that she had prepared for him being unsatisfactory, or both. One or more objects had been thrown during the argument, although it was not clear what was thrown (either a frying pan or a spatula) or who threw it (petitioner or JB). Petitioner stated that it was only after the argument had ended and matters had calmed down that she left the apartment to do errands. She gave varying conflicting accounts of where JB was when she left (in the living room watching television, in the bedroom, but not sleeping), but recalled that the minor child was in her "bouncy chair" and that JB could see her from where he was.

7. Petitioner stated she was very stressed at that point, and recalled going to the library, which she then learned was not yet open, to an ATM in a CVS drugstore to check her bank balance, to the property management office for her apartment, and to look for discarded cigarettes on the ground because she really needed a cigarette. She guessed, but could not specifically recall, that she was only gone for 20 or 30 minutes.

8. Petitioner testified that upon her return JB was in a panic and very agitated, holding the minor child, who had "bumps on her forehead", and that he was insisting that they

needed to go to the hospital immediately to get treatment for her injuries.

9. While petitioner asserted that she brought her child to the hospital as soon as possible thereafter, the Department produced evidence demonstrating that petitioner had been filmed at the ATM at approximately 11:00 a.m. that morning (after which petitioner had testified that she headed back to her apartment which was only a few minutes away) but that she did not arrive at the hospital until 1:16 p.m. Petitioner acknowledged that the hospital was only a 5 minute drive from her apartment and could not explain what had occurred during the two hours between the time she returned home and arrived at the hospital, other than saying that she needed to calm herself, JB, and the situation down, and that she needed to find and dry a clean shirt for the child.

10. At the hospital, during a subsequent ambulance ride to another hospital, at the second hospital, as well as during an interview with a police official at the second hospital, petitioner repeatedly gave false information about the circumstances of the injury. Petitioner admitted that she had lied and also indicated she had never told officials the complete truth. She testified that JB told her to lie, and that she did so. Several explanations were proffered in

this regard. Petitioner said she lied and said the child fell out of a booster seat (at the urging of JB) because she had put the child in a "bouncy chair" that the child's father MW, had previously told her was no longer a safe place for the child, due to the child's size and she did not want MW to be mad at her. She also said she lied to deflect attention away from JB, (again at his urging) because the police did not like him and because they would suspect him because of his criminal past. Petitioner told additional lies to medical personnel and authorities about where she was when the injury took place stating alternatively that she was in the shower, that there was loud music playing, or that she was in the basement doing laundry. She also provided inconsistent information on where JB was at the time.

11. Petitioner admitted that she was scared and worried that everyone was mad at her. She also testified that she lied because she was afraid of JB. A few weeks prior to the incident involving the minor child JB had become violent with her. While riding in petitioner's car JB had punched her very hard in the neck, and then he had gotten out of the car and kicked at the windshield and broken it. She stated that when JB became violent he got a blank look on his face. She further testified that within a short time after the events

that led to the substantiation, JB had beaten her up and was arrested for that incident.

12. With respect to the nature of the injuries sustained by the minor child, during the hearing the petitioner testified that there were "bumps" on the child's forehead. However, in contrast to that description, the Department submitted photographs of the child taken at the hospital that show lacerations, scratches and bruising on the child's face, forehead and eyes. Petitioner became overwrought when asked to review the photographs and comment on the type of injuries they depicted or how they might have been caused.

13. Ultimately, petitioner acknowledged that she agreed with hospital personnel who had told her that the injuries were inconsistent with a fall (whether from a bouncy seat or a booster chair) and that instead the injuries had been intentionally inflicted by an adult. Petitioner believes JB caused the injuries. She also stated that she did not know that JB would harm her child, that she could not have known, but that she perhaps should have known based on his propensity for violence. Her justification for this uncertainty was that she had seen him with his daughter, and had never known him to be violent with his own child.

14. A week after the injury to the minor child, petitioner in a private (non DCF initiated) family court proceeding, voluntarily gave up custody of the child to RW, the child's father, and agreed to a regimen of supervised visitation.

15. Following a "review meeting" held on August 14, 2017, the Department issued a review decision, dated November 8, 2017, upholding the substantiation for risk of physical harm. This appeal ensued.

16. Overall, the petitioner struck the hearing officer as candid but emotionally fragile. She appeared contrite but still overwhelmed by the difficulties that led to her substantiation, and its aftermath. Since that time, she has availed herself of therapy, but not medication and expresses a sincere desire to get her life back on track.

17. However, it must be found that the actions of petitioner on March 29, 2016 *did* pose a substantial risk of physical harm to her child. Petitioner admitted leaving the minor child in the apartment with JB, who had no legal responsibilities to the child and who was known to be a volatile individual, with a criminal record; a history of violence; and was someone with whom she had just had a serious altercation. Leaving her daughter alone with JB

exposed the child to a risk of harm. In addition, although the evidence in this proceeding does not establish the mechanism which resulted in the physical injury to the minor child, nor who caused those injuries, it is indisputable that those injuries occurred, and petitioner's lengthy delay in taking her daughter to the hospital and her repeated lies to medical personnel about the mechanisms that caused the injuries created additional risk of harm. It must be found that, under these circumstances, the petitioner knew or should have known that each of these actions posed an immediate and significant risk of physical harm to her daughter.

ORDER

The decision of the Department to substantiate the petitioner for risk of physical harm to her daughter is affirmed.

REASONS

The Department for Children and Families is required by statute to investigate reports of child abuse and to maintain a registry of all investigations, unless the reported facts are unsubstantiated. 33 V.S.A. §§ 4914, 4915, and 4916. The statute provides an administrative review process to individuals challenging their placement in the registry. 33

V.S.A. § 4916a. At an administrative review, a report is considered substantiated if it is "based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912 (16). If the substantiation is upheld at the administrative review level, the individual can request a fair hearing pursuant to 33 V.S.A. § 4916b(a) and 3 V.S.A. §3091(a). The hearing is *de novo*, and the Department has the burden of proving by a preponderance of the evidence the facts underlying the substantiation.

Pertinent sections of 33 V.S.A. § 4912 provide as follows:

(1) "Abused or neglected child" means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. . .

. . .

(6) "Harm" can occur by:

(A) Physical injury or emotional maltreatment;

. . .

(11) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

. . .

(14) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental

means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

Policy 56 of the DCF Family Services Policy Manual provides that risk of harm can be substantiated when a person responsible for the child's welfare: "Engaged in a single, egregious act that caused the child to be at significant risk of serious bodily injury."

Based on the above findings, it must be concluded that the Department has met its burden of establishing that the petitioner's actions in leaving her daughter inadequately supervised on the morning of March 29, 2016, in delaying medical treatment of obvious injury to the child, and in knowingly and repeatedly providing false information as to the mechanism of the injury to the child exposed her child to a significant risk of serious physical harm, as defined in the above-cited statutory provisions.

Thus, the Department's decision to substantiate the petitioner for risk of harm of physical abuse of her child must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4(D).

#