

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-09/19-605
)
Appeal of)
)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families Registry Review Unit (Department) substantiating a report that she placed her grandson at risk of physical harm during one occasion in May-July 2018. The following facts are based on evidence supplied by the parties at hearings held December 2nd and December 9, 2019.

FINDINGS OF FACT

1. For a number of years, petitioner and her husband have had their adult daughter and her two children (a boy I.G. and a girl M.G.) living in their home due to the daughter's (A.J.) continuing struggles with opioid addiction. According to evidence presented by the Department, the Department had interaction with A.J. and the children's father, who is also suffering from drug addiction, as far back as 2013.

2. The Department's decision to substantiate petitioner for "risk of harm" of physical abuse or neglect was made on August 30, 2018 and was based on one incident involving petitioner's grandson I.G., then age 5, when he left petitioner's house and walked down a highway unattended (hereafter referred to as "the incident"). The date of the actual incident was not able to be specifically identified by either party. However, the report that led to the substantiation was made to the Department on July 13, 2018 by petitioner's granddaughter's counselor. The counselor called the Department to make the report because she is a mandated reporter for allegations of child abuse under state law. The counselor reported that petitioner herself is the person who told her about the incident. The Department substantiated petitioner because it alleges that petitioner had agreed to be the primary caretaker of the children and not to leave the children unsupervised with her daughter and the incident occurred when the children were left alone with their mother. Petitioner disputes this and says her agreement to act as primary caretaker, as outlined below, happened after the incident. The counselor's report of the timing of the incident at issue is at the heart of this case.

3. At hearing, petitioner confirmed that she is the person who told the counselor about the incident in question. Petitioner testified that she was speaking with the counselor on the phone and mentioned this incident, which according to petitioner had happened some weeks before, because she was trying to obtain more counseling for both the grandchildren. In any event, it is undisputed that the incident happened and that it occurred sometime prior to July 13, 2018 in the early morning after petitioner left for work.

4. Petitioner testified that she leaves for work about 6:30 a.m. and that on the day in question she saw her grandson sleeping in the same room as her daughter right before she left the house. Petitioner's daughter's female partner and petitioner's granddaughter were also sleeping in the home. Petitioner's husband had already left for work. Petitioner testified that later on that morning her daughter called her at work to report the following: the daughter awoke to find that her 5-year-old son was gone from the room, the daughter heard a car horn honking and looked outside and could see her son walking down the road unattended and wearing only shorts (or pajamas) but no shirt or shoes. According to what her daughter told petitioner on the phone, the daughter's girlfriend, who stayed there periodically but

did not live in the home permanently, drove down to pick up the child who was estimated to be about a quarter mile away from the home. Petitioner's home is on a state highway outside the Town of Alburgh.

5. Petitioner testified that at the time of the incident her daughter was not actively doing drugs and was responsible for watching both children during the day while she was at work. Petitioner stated that she typically left for work at 6:30 a.m. and returned home after 3:00 p.m. Petitioner stated that sometime after the incident, the daughter again was believed to be using drugs and that as a result of this report she attended a meeting with the Department on June 21st at which time the terms of a safety plan to care for the children was made. In other words, the petitioner stated that the incident involving the child walking unattended down the road occurred prior to June 21st. The plan that was agreed to and submitted into evidence was titled "Safety Plan" and was dated June 21, 2018. Petitioner stated at hearing that she agreed at that meeting (1) to serve as the primary caretaker of her grandson and granddaughter, (2) that her daughter would not be left unsupervised with the children, and (3) that the daughter's girlfriend would not be allowed at the home. Petitioner

stated that after that meeting, she hired two (2) babysitters who would care for the children during the day while she was at work and that the children were not left unsupervised with her daughter after she agreed to the June 21st safety plan.

6. The Department recounted a different timeline through two (2) witnesses. First, a counselor from Northwestern Counseling and Support Services testified that she worked as a counselor for petitioner's granddaughter M.G. and that she had a home visit on Thursday, July 12, 2018 and that petitioner, petitioner's daughter A.J., and the two children were at the residence during the visit. She testified that during that visit the petitioner told her about the incident with I.G. walking down the road and that petitioner reported it had happened "last week", meaning the week of Sunday, July 1st through Saturday, July 7th. The counselor testified that she also witnessed other incidents¹ at the home that caused her to be concerned and, along with the incident relayed by petitioner, were sufficiently serious that she was believed she was required to make a report of suspected abuse or neglect to the Department. The counselor made the report the following day, Friday, July 13th. The

¹The other incidents that the counselor reported to the Department in her call on July 13, 2018 did not serve as a basis for the Department's substantiation and are therefore irrelevant to this case.

counselor's testimony about the home visit and her report of the occurrence and timing of the incident is confirmed by the Department's intake record of her call to the Department. At hearing, petitioner disputed the counselor's testimony and again stated that she had told the counselor about the incident much earlier during a phone call. Petitioner stated that she also recalled a visit to the home by the counselor when she was present, when other incidents of concern to the counselor occurred, but that this was on a different date from the phone call. However, the petitioner could not provide a clear timeline as to when the phone call she described occurred, only that it had happened before the June 21st safety plan meeting when she agrees she consented both to be primary caregiver for her grandchildren and not to leave the children unattended with her daughter. The counselor was unequivocal both about the date of her home visit and that it was at this visit that petitioner first told her about the incident thus leading to her report to the Department.

7. The Department's second witness was a family support social worker with the Department. She testified that she works with high risk families to attempt to support and strengthen families to allow children to stay in their homes. She testified that the Department has been working

with petitioner's daughter A.J. since October 2013 due primarily to reports of recurrent drug use. She further testified that after reports to the Department in 2013 and again in 2015 that petitioner was a part of the various safety plans that the Department made with A.J. and that petitioner agreed at the various safety meetings that occurred in 2013 and 2015 to become the primary caregiver for the children and not leave them unsupervised with her daughter A.J. The worker testified that, at one point after petitioner had agreed to be the children's caretaker, she recalled petitioner taking Family Medical Leave (FMLA) from her job so that she could care for the children. During her own testimony, petitioner confirmed that she had taken FMLA leave at one point to care for the children because she had been unable to find adequate childcare at that time.

8. The worker stated that the Department received another report about A.J.'s drug use in March 2018 and that petitioner and A.J. attended a meeting, referred to as a WWW meeting. A WWW meeting uses a format in which the discussion is focused on "what is working well", problems that need to be worked on, and next steps. The meetings are facilitated by Northwest Family Counseling Services or another social

service agency, notes are taken and posted during the meeting as visuals, and a safety plan is developed.

9. The worker testified that there was another WWW meeting on May 17, 2018 but that petitioner was ill and so was not present for that meeting and only her daughter A.J. attended. The worker testified that she next met with A.J. on June 14th and A.J. reported that she had completed a counseling program and asked about moving to unsupervised contact with the children. The worker indicated that she could not allow that until she received documentation of completion of the counseling. She stated that a follow-up WWW meeting was scheduled for June 21, 2018.

10. The worker testified as follows regarding the June 21st meeting: the meeting was facilitated by staff from the Northeastern Family Institute. Petitioner and her daughter attended, but were both late, so the meeting was somewhat abbreviated. Prior to the meeting, it had been reported that A.J. had relapsed (between June 14th and June 17th), so at the meeting the relapse was discussed. Because the meeting ended quickly due to the late start, she spoke with petitioner and A.J. after the meeting about (1) the necessity that petitioner continue to serve as the primary caregiver, (2) that A.J. could not be left unsupervised with the children,

and (3) that A.J.'s female partner Q could not have contact with the children. She stated that she relayed that those requirements would need to stay in place until A.J. returned to and completed treatment and that both petitioner and A.J. agreed to those terms. Subsequently, the worker wrote those items up as a written safety plan that was provided to A.J. The worker testified that if petitioner had not agreed to the listed terms on that date, the Department would have required that a different plan be in place to allow the children to remain in petitioner's home. Critically, there was no reported discussion of the incident having occurred at this meeting.

11. The fact of this meeting and petitioner's agreement to the terms listed above are not disputed by petitioner; she confirms that she agreed to those terms on June 21st. On re-direct, petitioner again asserted that she never violated the terms of that safety plan and hired babysitters to care for the children or had help from her sister to care for the children after June 21st and the children were not left unsupervised with the mother after that date.

12. A follow-up WWW meeting was scheduled for July 2018. However, due to the report of the incident and A.J.'s continuing struggle to maintain drug free for any extended

period of time, a CHINS (Child in need of care or supervision) investigation was conducted which led to the filing of a CHINS petition and eventual transfer of the children to state custody.

13. It is undisputed that petitioner self-reported the incident to the counselor. However, she argues that it is non-sensical to think that she would have reported it to the counselor if she was in violation of the June 21st safety plan. While petitioner appears honestly to recollect both that she reported the incident to the counselor in a phone call and that the incident with I.G. occurred prior to the June 21st meeting with the Department, her recollection is not credible given the evidence presented by the Department.

14. Based on the reported incident of the 5-year old walking unattended down the road and without adequate clothing or shoes, and petitioner's agreement to serve as the primary caregiver and not to have her daughter left unsupervised with the children, the Department determined by letter dated August 20, 2018 that petitioner had put her grandson "at risk of physical harm" and consequently placed petitioner's name on the Child Protection Registry. Petitioner requested a Commissioner's Review of the substantiation on September 10, 2018. A Commissioner's

Review hearing was held on July 23, 2019. By letter dated August 14, 2019, petitioner was notified that the substantiation was upheld. She filed a timely appeal with the Board on September 13, 2019.

15. As of the dates of hearing in December 2019, the petitioner's daughter remained in petitioner's home, but the children are living in foster care homes.

ORDER

The decision of the Department substantiating the petitioner for risk of physical harm regarding her grandson is affirmed.

REASONS

The Department 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 for individuals challenging their placement on the registry. 33 V.S.A. § 4916. 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). Appeals from a substantiation determination are heard de novo and the Department bears the burden of establishing the substantiation by a preponderance of the evidence. See *In re R.H.* 189 Vt. 15, 14 A.3d 267, 2010 VT 95, at ¶16; *In re Selivonik*, 164 Vt. 383, 670 A.2d 831 (1995); Fair Hearing No. B-01/12-69.

Pertinent sections of Vermont's Child Protection Statute that defines mandated reports of child abuse and neglect are 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:

. . .

(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, including as a result of:

(A) a single egregious act that has caused the child to be at significant risk of serious physical injury;

. . .

33 V.S.A. § 4912.

It is undisputed that the incident of petitioner's 5-year-old grandson walking down the highway unattended and while not wearing a shirt or shoes occurred on some date prior to July 13th when the counselor made the report to the Department. The only issue in dispute, and the crux of the basis for the substantiation against petitioner, is whether the incident occurred before or after the June 21st meeting when petitioner again agreed to be the children's primary caregiver and not to leave them unsupervised with their mother.

Petitioner appeared honest in her demeanor when she testified that she believed the incident occurred after the June 21st meeting. However, she had no written notes regarding the dates in 2018 when any of the events discussed above occurred; rather, she is relying entirely on her memory. Testimony from all witnesses makes clear that petitioner has been dealing with the extremely stressful problem of her daughter's drug addiction, while working full time, for many years. Finally, petitioner has agreed to be the primary caretaker of the children several distinct times over the years and it would be understandable if the dates of all these events were not clear in petitioner's mind.

The evidence from the Department's witnesses, when considered together, demonstrate that the incident occurred after the June 21st meeting. First, the social worker testified that she met with A.J. days before the June 21st WWW meeting and A.J. raised the issue of having the Department lift the requirement that she could not be left unsupervised with the children. The worker indicated that the requirement must remain in place. Second, the incident, which unquestionably demonstrated a risk of harm to I.G., was not discussed at the June 21st WWW meeting. If indeed, as asserted by petitioner, she had reported it to the counselor prior to the June 21st meeting, it seems highly likely that the incident would have been reported by the counselor, a mandated reporter, to the Department and would have been discussed at the meeting since the entire focus of the WWW meetings is to review concerns regarding the children's safety and plan steps to protect them from future harm. Finally, the counselor testified that the petitioner told her during the July 12th home visit that the incident happened a week before. The counselor is a mandated reporter and made a report to the Department the next day, July 13th. The Department's case note from July 13th confirms the counselor's recollection of the incident. Given the

counselor's duty to report and the fact that she made a timely report on July 13th, it is also logical to infer that if she had learned of the incident on a previous date she would have made a previous report to the Department.

Petitioner appears to be a loving parent and grandparent who has given years of support to a daughter struggling with drug addiction. However, based on the above findings it must be concluded that the Department has met its burden of establishing that on the date of the incident petitioner had agreed to be the primary caretaker for the children and agreed that she would not leave her daughter unsupervised with the children and that leaving the children unsupervised with A.J. constituted a single egregious act that recklessly exposed her grandson to a risk of serious physical harm, as defined in the above-cited statutory provisions.

Thus, the Department's decision to substantiate the petitioner must be affirmed. See 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4(D).

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