

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BOARD OF APPEALS

In Re:) Docket No. 05-2011-L-1856
)
[APPELLANT'S NAME 1], and) **REVIEW DECISION AND FINAL ORDER**
[APPELLANT'S NAME 2])
)
) Children's Administration-CPS Review
Appellants) Client ID. No. [NUMBER 1]

I. NATURE OF ACTION

1. The Department of Social and Health Services Division of Children & Family Services/Child Protective Services (Department) gave notice to [APPELLANT'S NAME 1] and [APPELLANT'S NAME 2] (the Appellants) of its determination that an allegation they had negligently treated or maltreated a child was founded. The Appellants each wrote a letter to the Department to challenge the finding and seek review by the Department. On June 28, 2011, the Department filed a Motion to Dismiss for Lack of Jurisdiction. Attached to the Motion were four exhibits. The ALJ conducted a prehearing conference on June 30, 2011. The Appellants filed a response to the Motion to Dismiss on July 11, 2011. An Order Setting Motion Schedule was mailed on July 18, 2011. The Administrative Law Judge (ALJ) issued an Initial Order on Motion to Dismiss for Lack of Jurisdiction on October 5, 2011.

2. This Final Order incorporates the Petition for Review for the easy reference of the reader.¹ The Appellants timely filed a petition for review on October 12, 2011. The petition states:

We ask for a review of the initial decision because:

1. Lie that was given by CPS service after letter received that lead us to think that allegation of physical abuse is a mistake.
2. Total lack of communications from CPS with our family.
3. Lack of English to understand the meaning of letter sent.

¹ The content of these documents is replicated without comment or correction.

4. CPS decision of abuse made on a few minutes video that is not what is seems. We only had good intencions toward our [RELATIVE 3] – to save her from overdose and sudden death from it.
5. CPS made us at fault without any hearing or court.
6. Our recovering [RELATIVE 3] and other [RELATIVES] will confirm that we have strong loving family without any abuse.
7. Where is US justice if good parents can be stamped as “definetly child abusers” and do not given right to be heard?

Please give us a chance to be heard.

Only with true love in our hearts we ask for review and contest hearing.

Attached to the Petition for Review is a copy of the Appellants' two-page response to the Department's Motion to Dismiss.

3. The Department did not file a response to the petition for review.

II. FINDINGS OF UNCONTESTED FACTS

Attached to the Department's Motion to Dismiss are Exhibits A to D. These exhibits are the source of facts for purposes of this motion, as is the letter from the Appellants which was received by the Office of Administrative Hearings on October 11, 2011.

1. On April 5, 2010, DSHS/Division of Children and Family Services (DCFS) issued a Founded Allegation of physical abuse, naming [APPELLANT'S NAME 1] and citing intake number [NUMBER 1] regarding an incident on or about November 10, 2009.

2. The allegations were that while the [RELATIVE 1] and [RELATIVE 2] were checking their [RELATIVE 3] into a substance abuse treatment facility, the [RELATIVE 3] went into the bathroom of the facility to get high. The [RELATIVE 1] forced his way into the bathroom, pushed the [RELATIVE 3] hard to the floor, while the [RELATIVE 2] stood over the [RELATIVE 3], kicking her. The incident was recorded on camera.

3. On the same date, the same notice was mailed to [APPELLANT'S NAME 2]. Exhibits C and D show the return receipts associated with the Notice of Founded Allegation which show a date of delivery for the [RELATIVE 1], [APPELLANT'S NAME 1], of April 22, 2010, and for [APPELLANT'S NAME 2], of April 29, 2010.

4. On May 12, 2011, the Office of Administrative Hearings (OAH) received a request for a fair hearing regarding the Child Protective Services (CPS) finding of abuse on behalf of both parties.

5. The Appellants have been struggling for several years with their youngest [RELATIVE 3], [NAME 1], and her drug addiction. The Appellants admit that in April 2010 they did receive notice that, as they state, "we were guilty".

6. In November of 2010, the Appellants became informed that the Founded Allegation was now part of their criminal history and that it would be impacting their employment. The Appellants' [RELATIVE 3] is now dealing with her addiction, is getting assistance through the [COUNTY] County Superior Court system with the hope that eventually her problem will be resolved.

III. CONCLUSIONS OF LAW

1. The Petition for Review of the Initial Decision was timely filed and is otherwise proper.² Jurisdiction exists to review the Initial Decision and to enter the final agency order.³

2. The Initial Findings of Fact are supported by substantial evidence in the hearing record and are adopted as findings in this decision.⁴ None of the facts in the documents that provide the basis for the findings have been contested.

3. The Appellant does not challenge the Conclusions of Law made by the ALJ in the Initial Order.

4. There are certain jurisdictional documents that must be present in the file or entered as exhibits in a proceeding regarding a CPS founded finding of child abuse and/or neglect. The first is the letter from the Department to the Appellant that provides the legal and factual bases for the founded finding. This notice letter frames the issues that the Department

² WAC 388-02-0580.

³ WAC 388-02-0560 to -0600.

⁴ RCW 34.05.464(8) referencing RCW 34.05.461(3).

and Appellant must address, and that guides the ALJ in determining whether the evidence in the record supports the founded finding.⁵

5. The second jurisdictional document is the Appellant's letter to a CPS supervisor asking for review of the finding. In order to challenge a founded CPS finding, the alleged perpetrator must make a written request to CPS to review the founded CPS finding of child abuse or neglect. The request must be provided to the same CPS office that sent the CPS finding notice within twenty (20) calendar days from the date the alleged perpetrator receives the CPS finding notice.⁶ The Appellants did not send letters to a CPS supervisor seeking review of the founded findings against them.

6. The procedure to challenge a CPS founded finding of child abuse set out in the Washington Administrative Code and in the Revised Code of Washington is unambiguous.

WAC 388-15-085, "How does an alleged perpetrator challenge a founded CPS finding," states as follows:

(1) In order to challenge a founded CPS finding, the alleged perpetrator must make a written request for CPS to review the founded CPS finding of child abuse or neglect. The CPS finding notice must provide the information regarding all steps necessary to request a review.

(2) The request must be provided to the same CPS office that sent the CPS finding notice within twenty calendar days from the date the alleged perpetrator receives the CPS finding notice (RCW 26.44.125).

WAC 388-15-089(1), "What happens if the alleged perpetrator does not request CPS to review the founded CPS finding within twenty days," states as follows:

If the alleged perpetrator does not submit a written request within twenty calendar days for CPS to review the founded CPS finding, no further review or challenge of the finding may occur.

RCW 26.44.125(2) states as follows:

Within twenty calendar days after receiving written notice from the department under RCW 26.44.100 that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the

⁵ WAC 388-15-065, -069, and -073.

⁶ WAC 388-15-085.

department review the finding. The request must be made in writing. If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

7. These regulations and this statute not only say that the Appellants had to file their requests for DSHS/CPS to internally review the founded finding of child abuse CPS had entered against them within the allotted 20-day period, they also say that if they fail to do so, they have lost the right to further review or challenge of the finding. These regulations and this statute specifically prohibit further appeal or review of the CPS finding. The Appellants did not ever file a request for internal review. Their petitions for review were received by the OAH more than a year after they received the notices of a founded finding against them. The Appellants have lost their right to further challenge the CPS finding of child abuse through administrative review, or adjudicative hearing.

8. The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

IV. ORDER

The Initial Order of Dismissal is **affirmed**.

Mailed on this 10th day of May, 2012.

MARJORIE R. GRAY
Review Judge

Attached: Reconsideration/Judicial Review Information
Copies have been sent to: [APPELLANT'S NAME 2], Appellant
[APPELLANT'S NAME 1], Appellant
Sharon Gilbert, Program Administrator, MS: 45710
Mareen Bartlett, Department's Representative
Rynold C. Fleck, Administrative Law Judge, [CITY] OAH