

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,212

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Appeal of)

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INTRODUCTION

The petitioner appeals to the Human Services Board for an order expunging from the "registry" maintained by the Department of Social and Rehabilitation Services (SRS)

a report of child abuse allegedly perpetrated by him. The issue is whether the report was "substantiated" within the meaning of the pertinent statutes.

FINDINGS OF FACT

The following findings are based on the testimony of a day care provider who was caring for the petitioner's son during the period in question. On February 26, 1993, the day care provider for the petitioner's then-4 1/2-year-old boy noticed that the boy had two circular bruises on his left cheek that looked like the "tips of fingers". When the petitioner and his then wife (the petitioner is now divorced) came to pick up the boy that day the day care provider asked them about the bruises. The petitioner's wife turned to the petitioner and said, "It's your fault". The petitioner responded, "I didn't hit him that hard". When the day care provider questioned the petitioner further the petitioner told her that he had hit the boy while in the bathroom after the boy had soiled his pants, but the petitioner again denied that he had hit him "that hard".

The petitioner's wife became upset and the couple quickly left the day care with their son.

For several days after this conversation the day care provider fretted whether or not to report the incident. On March 4, 1993, the day care provider mentioned the incident to a preschool teacher who came to the day care to work with the boy once a week because the boy had been identified as being developmentally delayed. Although the boy's bruises had faded by that time, the teacher advised the day care provider to report the incident to SRS. The day care provider then called SRS in the teacher's presence.

The preschool teacher testified at the hearing that she was present when the day care provider called SRS, and that the day care provider's testimony at the hearing regarding her observation of the bruises

and her conversation with the boy's parents was consistent with what the day care provider told her and SRS at the time the incident was reported.

The SRS investigator who investigated the incident at the time also corroborated the consistency of the day care provider's version of the incident. The investigator also testified that as part of her investigation she met with the petitioner and his wife at the SRS district office on March 18, 1993. The petitioner's wife told her that the bruises were related to an incident in which she had heard the boy screaming while he was in the bathroom with the petitioner. The wife told the investigator that when she went into the bathroom the boy had a bloody nose, and that the next day the petitioner had admitted to her that he had hit the boy in the face because the boy had soiled his pants. The petitioner's wife had been granted a Family Court relief from abuse order against the petitioner based, in part, on this incident.

At the meeting with the SRS investigator, however, the petitioner denied that he had hit the boy. He told the investigator that the bruises and the bloody nose had probably occurred when the boy fell off the toilet and hit his face. However, at the meeting both the petitioner and his wife admitted to problems they had disciplining the boy and both agreed to attend parenting classes.

The SRS investigator attempted to interview the boy at the day care, but the boy was totally uncommunicative with her. Based on the investigator's report of her findings, SRS "substantiated" the incident as one of child abuse against the petitioner for striking the boy in the face forcefully enough to cause bruises.

At the hearing the petitioner denied the testimony of the day care provider and the SRS investigator as to what he had admitted to them. He testified that he only hit the boy on the arm because he wouldn't stay on the toilet. He also stated that the boy only had a small amount of blood on his nose, and that the boy often got a bloody nose when he had a "temper tantrum". Despite the efforts of the hearing officer to direct the petitioner's attention and testimony to the incident that was the subject of this hearing, much of the petitioner's testimony concerned subsequent allegations of abuse concerning his wife and a man she lived with after she and the petitioner were separated. Unfortunately, this testimony was distracting and confusing, and did nothing to enhance the petitioner's credibility regarding the incident in question.

The hearing officer deemed the day care provider, the preschool teacher, and the SRS investigator to be highly credible witnesses. The petitioner, on the other hand, has given contradictory responses over time when questioned about the incident, and, even now, seems more focused on claims against his ex-wife than on the incident that is the subject of this hearing.

Based on the credible testimony of the day care provider, the consistency of which is corroborated by the preschool teacher and the SRS investigator, it is found that in late February, 1993, the petitioner became angry with his son over toileting problems and struck his son in the face with sufficient force to bloody the boy's nose and to leave bruises on the boy's cheek that lasted several days.

ORDER

The petitioner's application to expunge the report of child abuse made against him is denied.

REASONS

The petitioner has made application for an order to expunge a substantiation of abuse placed by SRS in

its registry. This application is governed by 33 V.S.A. § 4916 which provides in pertinent part as follows:

(h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.

Under the statute's definitions, a report is substantiated when "the commissioner or the commissioner's designee has determined after investigation that a report 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(10). At the hearing it is the Department's burden to establish by a preponderance of the evidence that the child has been abused or neglected.

Abuse and neglect are specifically defined in the regulations which are set out in pertinent part as follows:

(2) An "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. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(3) "Harm" can occur by:

(A) Physical injury or emotional maltreatment;

...

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

...

33 V.S.A. § 4912

In this case it must be concluded that the Department has met its burden that the child in question was abused by the petitioner within the meaning of the above provisions. The bruises left on the child's face from the petitioner hitting him meet the above definition of a "physical injury" because they are a temporary disfigurement. See Fair Hearings No. 13,796 and 10,687. "Harm" can occur under the statute when a physical injury occurs. The Department's decision that harm occurred in this case because the petitioner hit his son with such force as to leave a mark on his cheek for several days is consistent with the statute. Thus, the substantiation of abuse must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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