

2. A hearing in this matter was held on November 25, 2002. The Department presented the testimony of the SRS social worker who investigated the matter, the guidance counselor, the school nurse, and a teacher from the children's school, and the petitioner's Reach Up worker at the time in question. All the Department's witnesses appeared to have a good recollection of the events in question, and much of their testimony was not disputed by the petitioner.

3. The school witnesses testified that the petitioner's son, who was then age four, and who had significant developmental disabilities, came to his preschool three times a week accompanied only by his sister. On those mornings the witnesses stated that he had not been fed, was dressed in filthy clothes, and was still wearing a soiled diaper that did not appear to have been changed from the night before. The witnesses stated that they took it upon themselves each day to provide fresh diapers for the boy, feed him breakfast, and maintain a supply of clean clothes that he could change into.

4. The witnesses also testified that they were concerned that the petitioner's daughter, then age seven, and who attended school at the same place as her brother, was being placed in charge of her brother for extended periods of time, and that this was too much responsibility for a child of that

age to handle. The witnesses observed that the girl appeared overly anxious and obsessed about her brother's welfare.

5. The petitioner did not dispute the above testimony. She testified that the children's father, with whom she was living at the time, was an abusive alcoholic who didn't work or provide any care for the children. As a result, the petitioner was required to work in order to keep the family's ANFC grant. She stated that she had to leave the house early each morning to go to work, and that she had no choice but to rely on her daughter and the school to change, clothe, and feed her son. She stated that she was afraid to fully reveal her situation to anyone for fear that her husband would abuse her and that she would lose custody of her children.

6. The petitioner's Reach Up worker at that time testified that he was unaware of the petitioner's childcare problems.

7. It appears that after SRS investigated the matter no further action was taken in light of the school's willingness and ability to continue to intervene in providing the necessary care for the children.

ORDER

The petitioner's request to expunge the report that she neglected her children from the Department's registry is denied.

REASONS

The Department of Social and Rehabilitation Services 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 further provides:

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 not substantiated 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.

33 V.S.A. § 4916(h)

The statute at 33 V.S.A. § 4912 defines abuse and neglect, 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. . .

(3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:

(A) Inflicts, or allows to be inflicted, upon the child, physical or mental injury; or

. . .

(C) Fails to supply the child with adequate food, clothing, shelter or health care. . .

. . .

(7) "Mental injury" includes a state of substantially diminished psychological or intellectual functioning of a child as evidenced by an observable and substantial impairment; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the parent or guardian to exercise a minimum degree of care toward the child.

In this case the Department presented convincing evidence that in 1987 the petitioner sent her four-year-old son to preschool on a regular basis in the care of his seven-year-old sister, and that he arrived at school not having been fed, changed, or properly clothed. It must be concluded that this constituted "harm" to the boy within the meaning of the above provisions.

The evidence also shows that the petitioner at that time regularly placed her seven-year-old daughter in the position of having to look after her handicapped brother, and that this caused the girl to be upset and anxious about her brother's

welfare. It must be concluded that this constituted "harm" in the form of "mental injury" to the child within the meaning of the above provisions.

It is clear from the evidence that the petitioner was in an extremely difficult and stressful situation at that time, and that she may have perceived her options as being limited. However, although judgement in hindsight may seem harsh, it is nonetheless clear that the petitioner placed her concerns about her family's privacy, and perhaps her own physical well being, ahead of the physical and emotional needs of her children. It is indeed fortunate that the children were able to receive a significant part of their basic care at the time from their school. However, it cannot be concluded that the petitioner's actual and self-perceived situation at the time means that the children were not subject to neglect by the petitioner within the meaning of the above statute.

For these reasons the petitioner's request at this time to expunge the report of neglect from the Department's registry is denied.

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