STATE OF VERMONT

HUMAN SERVICES BOARD

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| In re | ) | Fair Hearing No. 18,719 |
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| Appeal of | ) | |
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## INTRODUCTION

The petitioner appeals a decision by the Department of Aging and Disabilities to place his name in the registry for abusing a mentally disabled adult.

## FINDINGS OF FACT

1. The petitioner works as a caretaker for developmentally disabled adults in his own home. He has done this work for over seven years. A year and a half ago, he became the caretaker of a mentally disabled twenty-three-year-old man, R.S. The petitioner describes R.S. as a person with a lot of emotional issues interacting with other people and a lot of trouble telling the truth. However, R.S. was able to work at a job alongside other people. R.S. is committed to the care of the Department of Mental Health.

2. On June 18, 2003, the petitioner had gone on a fishing trip and R.S. was with a respite worker who was to stay with him overnight because the petitioner planned to go on a trip to the city early the next morning. While he was

fishing, he drank four to five beers. The petitioner returned home from his fishing trip and was washing his boat when he encountered R.S. He began to teasingly squirt him with the hose when he realized that R.S. was upset. He was told by the respite worker that R.S. had had a difficult day with his girlfriend.

3. Shortly thereafter when the petitioner went in the house, he heard a message on his telephone answering machine that his girlfriend had been rushed to the hospital. When he told R.S. what had happened R.S. became agitated because he had wanted to spend some time talking with the petitioner and it appeared that would no longer be possible. R.S. said to the petitioner, "I wish the f------ bitch would die." The petitioner became angry and grabbed R.S.' left arm, twisting it behind his back and forcing him down to the floor. He then yelled in R.S.’ face, "The world doesn't revolve around you." He held R.S. on the grown for a short time. This "take down", as the petitioner described it, was witnessed by the respite worker.

4. When the petitioner let him up, R.S. was furious and said he was going to call the police. He attempted unsuccessfully to do so and then locked himself in his room. He subsequently opened a window and ran away. The respite

worker went to find him and the petitioner called both R.S.' case manager and the police to report that the petitioner had eloped. The calls were made about 8:00 p.m.

5. R.S.' case manager arrived within the hour and found two police cars at the petitioner's house. R.S. had called the police from a pay phone and they had returned him to the petitioner's home. The case manager talked with the police who were reluctant to return R.S. to the petitioner's custody particularly because he had refused to take a breathalyzer test. The case manager took responsibility for R.S. and spoke with the respite worker about what had happened. She described R.S. as humiliated and very upset by the incident.

6. Shortly thereafter, the petitioner, who had not been involved with these discussions, came out of the house and confronted R.S. The case manager observed the two have a verbal altercation in which they argued about what had happened. R.S. accused the petitioner of trying to choke him while the petitioner denied that this had happened. At one point, the petitioner grabbed R.S. by the chin and said loudly in his face, "this is not choking." The case manager sent the respite worker to get R.S.' belongings and then took him to a respite care home for the night. Following this incident, R.S. was moved to another permanent caretaker.

7. The petitioner says he took R.S. down because he was anxious himself and could not deal with R.S.' behavior at that point. He described the take down as a lapse in judgement which might have been worsened by his use of alcohol that day. He claims that R.S. was not injured although he complained of a sore shoulder. He claims that the next week R.S. came to see him and wanted to come back to live with him. He feels the take down was a useful lesson for R.S. about how R.S.' thoughtless statements can prompt strong reactions in people which might cause him to get hurt.

8. R.S.' case manager says that the petitioner was doing a good job with R.S. before this incident and that R.S.' incidence of elopement, which had been about twice per month before he lived with the petitioner had been significantly decreased. However, she felt the incident that night amounted to an "unnecessary restraint" and she was also concerned about the alcohol use and the lack of anger management displayed by the petitioner. She reported the matter to the Adult Protective Services (APS) division of SRS.

9. APS investigated the case and concluded that while R.S. was emotionally charged, disrespectful and rude on the day in question, the petitioner's response to that behavior was an unnecessary restraint which caused intimidation, fear

and humiliation for R.S. APS proposed to substantiate this behavior as abuse of an adult. The petitioner had an opportunity to dispute that matter before the Commissioner, but following that hearing, the proposal to substantiate was not reversed.

10. It is found as virtually undisputed that the petitioner, in anger, did grab the mentally disabled adult's arm, twist it behind him and force him to the ground where he was held for a few minutes while the petitioner yelled into his face. It is also found that the petitioner later held the face of the mentally disabled adult and yelled into it. It is undisputed that the mentally disabled adult while not physically hurt was upset and humiliated by this behavior, eloped from the home and called the police for assistance.

## ORDER

The decision of DAD to substantiate a finding that the petitioner abused a mentally disabled adult is upheld.

## REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports regarding the abuse of disabled adults and to keep those reports that are substantiated in a registry under the name of

the person who committed the abuse. 33 V.S.A. § 6906, 6911(b). Persons who are found to have committed abuse may apply to the Human Services Board pursuant to 33 V.S.A. § 6906(d) for relief on the grounds that the report in question is “unsubstantiated”.

The statute defines “disabled adult” as a "person eighteen years of age or older, who has a diagnosed physical or mental impairment." 33 V.S.A. § 6902(5). There is no disagreement in this case that R.S. is a disabled adult. Abuse is defined as:

> “Abuse” means:
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> (A) Any treatment of an elderly or disabled adult which places life, health or welfare in jeopardy or which is likely to result in impairment of health;
>
> (B) Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain, or unnecessary suffering to an elderly or disabled adult;
>
> (C) Unnecessary confinement or unnecessary restraint of an elderly or disabled adult.
>
> (E) Any pattern of malicious behavior which results in impaired emotional well-being of an elderly or disabled adult.
>
> V.S.A. § 6902

The petitioner admits that he forced the disabled adult to the floor in a moment of anger and held him there while he yelled in his face. This act was not an accident nor was it

necessary in order to protect either party. This incident placed the welfare of the disabled adult in jeopardy, recklessly exposed him to unnecessary harm, pain or suffering, and unnecessarily restrained him. This act thus meets the definition of abuse found in paragraphs A, B, and C above. Thus, PATH had ample justification to find that the petitioner should be placed in the registry as having abused a disabled adult under the above regulation.

The petitioner has suggested that he had cause to take the action because the disabled adult said hurtful things to him about his newly hospitalized girlfriend. In addition, he believes that his actions taught the disabled adult a valuable lesson about the potential harm to him in provoking distraught persons. Even if the petitioner is correct on these points, the statute does not allow a person, particularly a caretaker who should know better, to treat a disabled person in this way. The Commissioner's representative suggested to the petitioner that taking steps to control his anger and alcohol consumption could form for the basis for an expungement in the future. As it now stands, however, PATH has acted within the dictates of the statute in substantiating this abuse by the petitioner and the Board is thus bound to uphold it. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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