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SHIRLEY BAIZA, Respondent

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**BEFORE THE DEPUTY COMMISSIONER
STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF MENTAL RETARDATION SERVICES**

IN THE MATTER OF:

**SHIRLEY BAIZA,
Respondent**

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DOCKET NO. 09.10-097583J

**INITIAL ORDER,
PLACING RESPONDENT'S NAME on ABUSE REGISTRY**

The hearing in this matter was held in Nashville, Tennessee, on March 5, 2008, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Deputy Commissioner of the Tennessee Department of Finance and Administration, Division of Mental Retardation Services.

Initially, Respondent Shirley Baiza expressed surprise that she had a right to an attorney. Ultimately, Respondent acknowledged that she had received the State's letter of December 18, 2007, advising her of such right, although Respondent indicated that she did not receive the Undersigned's opening letter. Respondent was given a clear choice, at the hearing, between moving for a continuance, to obtain counsel, and electing to represent herself. After due consideration, Respondent elected to represent herself in this matter.

Mr. Fredrick Zimmermann, Assistant General Counsel, Tennessee Department of Finance and Administration, Division of Mental Retardation Services, represented the State.

The subject of this appeal is whether or not Respondent Baiza should be placed on the "Abuse Registry," i.e. the registry of those persons who have abused, neglected, or misappropriated the property of vulnerable individuals. Placement on the Abuse Registry bars an individual from future employment as a caregiver for such persons.

After consideration of the record and arguments of the parties, it is **DETERMINED** that the evidence was **SUFFICIENT** to show that the Respondent engaged in a pattern of abuse of a vulnerable person, such that Respondent Shirley Baiza's name should be placed on the Abuse Registry.

This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent appealed the Department of Mental Retardation Services' (DMRS) intention to have her name placed on the Abuse Registry. Such intention was based on DMRS' investigation into allegations that the Respondent abused "J", a vulnerable person, who is hearing impaired, legally blind, non-verbal, and who lives in a care-home, run by Sunrise Community of Tennessee, in Clarksville (Sunrise).

2. It was undisputed that Respondent Shirley Baiza was employed by Sunrise and worked at the care-home where J resides, during the August to September 2006

period in question. During portions of that period, Respondent was charged with the care of J.

3. Witness DeShawna Meriweather worked at the same care-home as the Respondent, during the August to September 2006 period in question. Meriweather testified that on several occasions, she observed the Respondent call J a “bitch,” tell J that she is “going to fuck you up,” snatch J’s cup from J, be “mean and loud” with J, and raise her hand to J, causing J to flinch. Meriweather was, likewise, firm that she has never seen the Respondent actually hit J. Meriweather continued that because of Respondent’s conduct, J began flinching when anyone approached her. Meriweather has worked as a caregiver in J’s care-home from 2003 forward and had never seen her (J) flinch until the Respondent became one of J’s caregivers.

4. Meriweather further testified that the Respondent was upset with J because J had touched her (Respondent’s) food. J has a habit of licking plates and other objects in order to meet her sensory needs, associated with her medical/mental health conditions.

5. Meriweather admitted that, close to or on the day that led to the report of abuse, she asked the Respondent “(W)hy you texted our team leader and was telling her all this junk that’s going on in the house – that’s supposed to be going on in the house?”

6. Respondent and Meriweather dispute whether their personal altercation was on the same day that led to the abuse charges. Meriweather believes that the reporting of the abuse of J occurred on a Friday and that the Meriweather/Respondent altercation did not occur until that next Monday. Respondent believes that the two (2) incidents

occurred on the same day, with the altercation occurring first and the alleged abuse thereafter.

7. The subject of the Meriweather/Respondent verbal altercation was whether or not the Respondent improperly handled “a mop bucket left with dirty water.”

8. Team Leader Nuray reported the alleged abuse to Paula _____, a supervisor at Sunrise.

9. Witness Renee Farrow, who has been employed by Sunrise for seven (7) years, has provided care for J for roughly six and a half (6.5) years. Farrow reported that, on one (1) occasion, she was arriving to relieve the Respondent and observed Respondent say to J, “I know you did it. I’m going to fuck you up. Fuck you, bitch.” Respondent then raised her hand at J, in a threatening manner. Farrow continued that when making daily reports to oncoming staff, during staff changes, roughly twice a week, Respondent would say, “Let me tell you what this fucking bitch did today,” in J’s presence.

10. Farrow continued that J had sufficient sight to open the refrigerator, identify which soda or cup belonged to the Respondent, and to lick that particular one. Farrow further testified that when she wore her hair in a shape, similar to that of the Respondent, J would flinch, as well as “cover and block.”

11. Farrow stated that when the Respondent and she worked a shift together, Respondent usually cared for “C,” who is arguably a more difficult client. Farrow admitted that she has never seen the Respondent curse at or raise a hand to C. Farrow testified that she thinks J irritates the Respondent more than C does.

12. Anita Watkins Ransom, another Sunrise employee, testified that, on one occasion, in August 2006, J had taken some of the Respondent's food or drink, so, the Respondent cursed J.

13. Ransom continued that on another occasion, when J had possession of something of the Respondent's, the Respondent pushed J, causing her to stumble backwards, almost crashing into an entertainment center. Ransom reported that on another occasion, she overheard the Respondent making a daily report to a relief staffer, saying, "(T)he bitch got my drink,she messed with my food." Ransom continued that she has observed the Respondent shake her fist at J.

14. Ransom still provides care to J. Ransom continued that about a month after the Respondent departed, J stopped flinching.

15. Ransom conceded that she did not complete a written incident report form until September 18, 2006. Ransom explained that she had made a timely oral report to her Team Leader, and understood that the matter was under internal investigation and consideration by Sunrise managerial staff, until Sunrise managerial staff advised her to reduce her oral report to writing.

16. Respondent Baiza testified that she never used profanity near J, never raised her hand or fist to J, and never intimidated J. Respondent continued that the allegations were "bogus," that the other two (2) of the State's witnesses are "friends" of Meriweather's, and that the "allegations were raised because of the altercation between Ms. Meriweather and myself."

17. Melanie Wilson, the State's Investigator, testified that Ms. Ransom completed the first Reportable Incident Form and that Meriweather and Farrow were discovered by her (Wilson), only in the course of investigating Ransom's allegations.

18. Based on her three (3) years as an Investigator and eight (8) years as Director of a Provider Agency, Wilson testified that staff often are late, even up to a year late, and very hesitant to report abuse because they fear retaliation from their employer or the abuser. Wilson indicated that she also investigates situations wherein staff, who have reported abusers, have received retaliation.

19. Wilson testified that she felt that Meriweather, Watkins/Ransom, and Farrow were "sharing the truth..." Wilson continued that the credibility of the allegations is enhanced by the fact that:

A. She had "three different witnesses who had witnessed similar things on different occasions,"

B. The three different witnesses "didn't have groups of clubs outside of working together,"

C. The three witnesses "worked different shifts and all had witnessed similar actions by Ms. Baiza."

D. One of the witnesses "was shocked," when told of the allegation, but then said, "Well, yes, I've seen that happen."

E. She "didn't get a feel that there was a conspiracy or anything else like that," unlike in some other cases that she has investigated.

F. The interviews of Meriweather and Farrow were based on her (Wilson's) review of time sheets, regarding who worked with J. Meriweather and Farrow did not come to Wilson; Wilson approached them.

20. Wilson further testified that "the fact that the allegation was reported and first discovered in that conversation regarding the (Meriweather/Baiza) verbal altercation does not in any way decrease the validity or credibility of that witness or the allegation."

21. Respondent did not provide copies of her employment evaluations, examples of commendations, if such exist, or call any supervisors or co-workers to testify on her behalf.

CONCLUSIONS OF LAW

1. Residents of homes for vulnerable persons have the right to be free from physical, mental, sexual and verbal abuse, neglect, corporal punishment and involuntary seclusion. Pursuant to T.C.A. Section 68-11-1001 et seq., the Tennessee Department of Health maintains a Registry of individuals who have been proven to have abused or neglected vulnerable persons and therefore may never again be employed to work with such persons.

2. As the petitioning party, the State bears the burden of proof, by a preponderance of the evidence, to show that the Respondent's name should be placed on the Abuse Registry. Respondent does not have the burden of proving herself innocent.

3. Respondent's theory of this matter is that Witness DeShawna Meriweather concocted the allegations in question because the two (2) of them had had a verbal altercation.

4. For sake of argument, the Undersigned carefully examined the demeanor of every witness, assuming Respondent's theory to be accurate, and in light of the staff members' failure to report incidents within four (4) hours, as required by Rule. Certainly, by the date of the hearing, Ms. Meriweather's tone and demeanor, in particular, suggested a strongly-held, negative view of the Respondent. The tone of testimony and demeanor of Farrow and Ransom appeared truthful.

5. Weighing heavily upon the skill and experience of Investigator Wilson, and in light of the consistency of three (3) different witnesses' reports of witnessing similar things on different occasions, the different shifts worked by the witnesses, which may lessen the probability of a strong, personal relationship between them , one (1) witness appearing shocked at the allegations, but then conceding that "Well, yes, I've seen that happen," the fact that Meriweather and Farrow did not come to Wilson; Wilson approached them, the incident reports entered as Exhibits, DMRS' investigation, and Respondent's failure to present compelling contrary proof, once the burden shifted to the Respondent, it is **CONCLUDED**, by a preponderance of evidence, that, Respondent Baiza has engaged in a pattern of abuse – verbal abuse through directly cursing J and indirectly by referring to J, in J's presence, by "colorful" names other than her (J's) own, physical abuse by pushing J and by yanking things from J, and intimidation by raising her hand to or at J.

6. It is further **CONCLUDED** that such conduct constitutes abuse and neglect of a vulnerable person, as such terms are defined in TCA Section 68-11-1004(a)(3), constitutes violation of Chapter 18, "Protection from Harm," of the DMRS' Provider Manual, and is conduct inconsistent with J's staffing plan. Thus, the State **MET** its burden of proof. Further, DMRS' earlier determination is found to be **SUBSTANTIATED**.

7. Therefore, based on the above, it is hereby **ORDERED** that the **NAME** of Respondent **SHIRLEY BAIZA** be **PLACED** on the **ABUSE REGISTRY**, maintained by the Tennessee Department of Health, for the protection of vulnerable individuals.

This Initial Order entered and effective this the _____ day of __April__, 2008.

Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 24th day of April, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division