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5-21-2009

DIVISION OF INTELLECTUAL
DISABILITIES SERVICES, Petitioner, v.
KAMELA MERCHANT, Respondent

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**BEFORE THE DEPUTY COMMISSIONER OF THE
TENNESSEE DIVISION OF INTELLECTUAL DISABILITIES SERVICES**

IN THE MATTER OF:)
)
DIVISION OF INTELLECTUAL)
DISABILITIES SERVICES)
Petitioner)
)
v.)
)
KAMELA MERCHANT,)
Respondent)

**Docket No. 09.10-102302J
ABUSE REGISTRY**

INITIAL ORDER

This matter came to be heard on May 21, 2009, before John Hicks, Administrative Judge, sitting for the Deputy Commissioner of the Tennessee Division of Intellectual Disabilities Services (Division) in Nashville, Tennessee. Staff attorney Frederick Zimmermann represented the Division. The Respondent Kamela Merchant was present and not represented by counsel.

The subject of this hearing was the Respondent's appeal of the Division's notice of intent to place the Respondent's named on the registry of persons who have abused or intentionally neglected a vulnerable individual (Abuse Registry).

After consideration of the record it is determined that the name of Respondent Kamela Merchant name **SHALL BE PLACED** on the Abuse Registry. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Respondent was employed by Preferred Alternatives, Inc. (PAI) as a direct care staff member. PAI contracts with the Division to provide care to persons with developmental disabilities in community settings.

2. On January 24, 2008, Respondent was charged with the care and responsibility of two vulnerable persons. Respondent was responsible for driving the agency van to and from the doctor's office.

3. Upon leaving the doctor's office, one of the vulnerable persons refused to put on his seatbelt. Respondent became upset. Respondent intentionally accelerated backwards and slammed on the brakes. The vulnerable person was thrown from his seat. After the vulnerable person got back in his seat he again refused to fasten his seatbelt. Respondent then accelerated forward and again threw the vulnerable person from his seat and into the seat in front of him.

CONCLUSIONS OF LAW

1. Tenn. Code Ann. Sec. 33-2-402(1) defines "abuse" as:

...the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;
2. Tenn. Code Ann. Sec. 33-2-402(4) defines "misappropriation of property" as:

...the deliberate misplacement, exploitation, wrongful, temporary or permanent use of belongings or money without consent;
3. Tenn. Code Ann. Sec. 33-2-402(5) defines "neglect" as:

...failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm;
4. Tenn. Code Ann. §68-11-1004(a)(3) defines "vulnerable person" as:

...anyone who is under eighteen (18) years of age, or who, by reason of advanced age or other physical or mental condition, is vulnerable to or who has been determined to have suffered from abuse, neglect, or misappropriation of property, and who was, at the time of the commission of an alleged offense, receiving protective services from a state agency pursuant to law, or in the care of either a state agency, or an entity that is licensed or regulated by a state agency, or an entity providing services under the provisions of a contract between that entity and a state agency.

5. Tenn. Code Ann. § 68-11-1001(a) provides that an Abuse Registry shall be maintained that contains the names of individuals who have been determined to have abused, neglected, or misappropriated the property of vulnerable individuals.

6. The Division carried its burden of proof by a preponderance of the evidence that the Respondent Kamela Merchant neglected a vulnerable individual and therefore her name should be placed on the Abuse Registry pursuant to T.C.A. §§68-11-1001 et. seq.

7. Based upon the foregoing, it is hereby **ORDERED** that the name of **Kamela Merchant be placed** on the registry of persons who have abused or neglected a vulnerable individual.

This Initial Order entered and effective this 25th day of August, 2009.

John Hicks
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25th day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division