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CAROLYN WRIGHT TAYLOR, 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:)
)
)
CAROLYN WRIGHT (TAYLOR),) **DOCKET NO. 09.10-100438J**
Respondent)
)

INITIAL ORDER,
NOT PLACING RESPONDENT’S NAME on ABUSE REGISTRY

The hearing in this matter was held in Memphis, Tennessee, on October 29, 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 (DMRS). Mr. Fredrick Zimmermann, Assistant General Counsel, Tennessee Department of Finance and Administration, Division of Mental Retardation Services, represented the State. Ms. C. J. McMorrان, Director, West Tennessee Regional Office of DMRS, served as the State’s party representative. Respondent Carolyn Wright (Taylor) represented herself.

The subject of this appeal is whether or not Respondent Carolyn Wright (Taylor)’s name 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 due consideration of the record and arguments of the parties, it is **DETERMINED** that the evidence was **INSUFFICIENT** to show that the Respondent abused or neglected a vulnerable person. Therefore, Respondent Carolyn Wright (Taylor)'s name should **NOT** 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 Carolyn Wright (Taylor) 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 four (4) separate Complaints alleging that in July 2007, Respondent engaged in physical, verbal, and emotional abuse of a vulnerable person, "JW," which were substantiated.

2. DMRS' investigation found that the Respondent:

- A. Mistreated JW repeatedly over a period of time, often in retaliation for having a behavioral episode or trying to move at an inopportune moment;
- B. Yelled at JW, called her very derogatory names;
- C. Physically abused JW by slapping her in the face and striking her arms, legs and/or back with switches, a flyswatter and belts; and,
- D. Tied JW's hands together and taped her wrists to her wheelchair; and
- E. Restrained JW with a gait belt.

As a result, JW is intimidated by and afraid of the Respondent.

3. In July, 2007, Respondent was employed as a personal assistant with Comprehensive Counseling Network (CCN), Memphis, TN, an agency which provides care for vulnerable individuals. Respondent was charged with the care and responsibility for her sister, JW. Respondent and JW reside together.

4. JW is either forty-seven (47) or forty-nine (49) years of age, is non-verbal, has Profound mental retardation with an IQ of 20, Pica, cerebral palsy, spastic quadriplegia, a history of elopement, a history of self-injurious behavior, has strict dietary requirements and positioning requirements for eating, and requires assistance with her all of her activities of daily living (ADLs). From July 2007 to the date of the hearing, the entity providing care for JW has changed from the Comprehensive Counseling Network to Brenda Richardson Homes to Tennessee Personal Assistance (TPA).

5. It was undisputed that the Respondent did not care for vulnerable persons, other than her sister JW, from July 2007 to the date of the hearing. Respondent previously worked for United Parcel Service, until JW was removed from Arlington Developmental Center, where JW had been raped, which resulted in a son, had her ear lobe bitten-off, and had had a plastic fork stuck into her stomach.

6. Mr. Shannon Buchanan, of CCN, testified that JW is a “high needs” patient and added scoliosis to JW’s list of medical conditions. Mr. Buchanan testified that all of the caregivers at JW’s residence were relatives of one another, which caused a great deal of continuous discord and conflict. Mr. Buchanan continued that a number of JW’s staff members filed complaints with the State, thinking that the Complaints were confidential.

The Complaints ranged from failure to have food available for JW to lack of electricity in the home, to staff members being asleep, etc.

7. Mr. Buchanan testified firmly that he never personally saw any abuse, lack of food, lack of electricity, etc. in JW and Respondent's home. Mr. Buchanan continued that their home was clean and that the lawn was well-kept.

8. Mr. Buchanan testified that caring for JW was "a pleasure," but that the constant bickering and conflict in JW's home caused CCN to petition to drop JW as a client.

9. Mr. Buchanan provided staff members training on JW's Individual Support Plan (ISP) and has served as a Trainer on ISPs for the State, as well as operated his own Training business.

10. Mr. Buchanan is not a relative of the Respondent.

11. Twenty-eight (28) year old Sherea Smith is Respondent's God-daughter and one of the persons who filed a written Complaint. Ms. Smith appeared at the hearing, but declined to testify orally, except to say that her written statement/Complaint was true and accurate.

12. Respondent Carolyn Wright (Taylor) is Witness Chequita Wright's Aunt. Ms. Wright appeared, being under subpoena. Ms. Wright testified that much of "her" Statement/Complaint was in the handwriting of the Investigator and was signed by her "under duress," having just been released from hospitalization for a miscarriage by C-section. Ms. Chequita Wright did not testify that the Statement/Complaint was true or accurate.

13. Deloris Wiggington is not a relative of the Respondent. Ms. Wiggington served as a direct care staff member for JW. Ms. Wiggington testified that the Respondent had “pet names” for JW that some considered offensive, when taken out of context, such as the nickname “Ugly.” Ms. Wiggington admitted hearing others say that they had heard the Respondent call JW a bitch.

14. Ms. Wiggington testified that the “Investigator told her to write down that there was abuse, or she (Ms. Wiggington) would lose her job.”

15. Ms. Wiggington further testified that she had personally observed the Respondent “tap JW with a switch,” when JW chewed her (JW’s) clothing. Ms. Wiggington also testified that she had personally observed the Respondent tape JW’s hands together, with a soft mitten or sock, though never to the wheelchair. Ms. Wiggington continued that she did not find either procedure to be inappropriate because, left to her own devices, JW would chew on her own clothes until she “gagged” and “vomited” from forcing her clothes far down into her throat. Ms. Wiggington testified that she viewed the procedures as genuine efforts to “keep JW from harm’s way.”

16. Ms. Wiggington continued that she had never observed the Respondent tie JW to a wheelchair, using a gait belt, and, that both food and electricity were always available. Ms. Wiggington further testified that the Respondent often cooked a large amount of food, so that some would be available for staff.

17. Ms. Alicia Marie, JW’s Behavioral Analyst since June 2005, a person not related to the Respondent, served as Respondent’s first witness. Behavioral Analyst Marie recalled that food and electricity were always available during her weekly visits in

July 2007, that she never heard the Respondent call JW derogatory names, that often the Respondent was the only staff member present, despite JW's 2 to 1 staff ratio per her ISP, and that she had only seen "hugs" and "wonderful, positive interactions between Carolyn and JW."

18. Based on her six (6) years of experience as a Behavioral Analyst, Behavioral Analyst Marie further testified that she could sense when a "client feels threatened by someone" and that "JW has never had an adverse reaction to Carolyn." Behavioral Analyst Marie continued that "JW often tries to follow Carolyn." Behavioral Analyst Marie called an occurrence when the Respondent cried about lack of reliable and adequate staff for JW.

19. Behavioral Analyst Marie did recall an occasion when she observed a gait belt on the side of JW's wheelchair, but continued that she had never observed JW restrained in her wheelchair by the gait belt. Behavioral Analyst Marie explained that if JW was not sitting upright after breakfast, JW would vomit, due to severe GERD.

20. Behavioral Analyst Marie testified that when she observed the mitten around JW's wrists, she informed the Respondent that such a procedure is considered abuse. After that occasion, Behavioral Analyst Marie never saw a mitten used to restrain JW's hands again.

21. Respondent admitted having used a mitten or sock around JW's hands, in an effort to prevent JW from choking on her clothing, but also testified firmly that once Behavioral Analyst Marie informed her that use a mitten around JW's hands was considered abuse, she never used that technique again.

22. Non-relative Connie Voll, JW's Nutritionist since June 2007, testified that she has never seen a lack of food or electricity in JW and Respondent's home.

Nutritionist Voll continued that JW can be aggressive, pull others' hair, and pinch others, at times. Voll continued that JW always receives three (3) meals a day, plus snacks.

Nutritionist Voll further testified that because of her Pica, JW will grab curtains, tea towels, socks, or anything and place it in her mouth and down her throat. Voll continued that JW would take the blue portion of her incontinence pad and place it down her (JW's) throat, if not watched carefully.

23. Nutritionist Voll testified that use of a gait belt, to keep JW upright in her wheelchair, in light of her GERD and tendency to vomit, was not inappropriate.

24. Nutritionist Voll agreed that there are Platforms, for the purpose of keeping a client upright. Nutritionist Voll further testified that such a platform had been ordered for JW, but did not arrive until March 2008. Nutritionist Connie described JW's State-furnished gait belt as being made of "firm nylon with ridges and Velcro straps."

Nutritionist Voll continued that once the Platform arrived, she never saw the Respondent use the gait belt to keep JW upright, again.

25. Nutritionist Voll testified that she has never heard the Respondent call JW an inappropriate name. Voll continued that she has heard the Respondent call JW "Sweet Dog," but considers that nickname to be a term of affection, in context. Voll emphasized that JW always seeks hugs from the Respondent.

26. Non-relative Beauty Salon Operator Peggy Robinson testified that when the Respondent required breast cancer surgery, even then, she "came out of the hospital,

working” for JW. Robinson continued that if she had a sister who was a vulnerable person, “she’d place that sister in Carolyn’s care.” Robinson also commented that the Respondent takes JW on outings.

27. Beauty Salon Operator Robinson further testified that she worked for Home Solutions, a firm that cares for vulnerable individuals, at some point. Based on her training in that regard, Robinson testified that it is remarkable how the Respondent has trained JW to eat with a spoon and drink from a cup. In contrast, when JW was first released from Arlington Developmental Center, JW ate by placing her head in the plate.

28. Relative David Wright, the Respondent’s brother, testified that he and Respondent’s mother died in 1999. JW has been in Respondent’s care since that time. Mr. Wright described JW as being “in the best physical and mental condition ever” and that her style of eating has gone from “barbaric” to “civilized;” JW now eats “with silverware.” Mr. Wright emphasized that the Respondent takes JW on outings and makes JW a part of the family, “never hidden away.”

29. Mr. Wright and Beauty Salon Owner Robinson testified that they had observed tape on JW’s tee shirts, for the purpose of preventing JW from disrobing.

30. Mr. Wright described the Respondent as not working outside of the home that she shares with JW, under constant financial pressure, and receiving approximately \$779 in Social Security disability payments. Mr. Wright indicated that there was no possibility that the Respondent was caring for JW “only for the \$600 check she receives, because Carolyn could make more in the private sector.”

31. Mr. Wright continued that food has never been absent from JW's home; there is even a freezer. Mr. Wright further testified that the Respondent paid for their mother's funeral; their mother had no life insurance.

32. Mr. Wright opined that the Complaints and problems started because other family members were unable to distinguish between business and pleasure, that nieces were allowed to live with the Respondent and JW, that the nieces were often vindictive, and that the nieces often had male visitors when they were supposed to be staffing JW.

33. Respondent Wright testified that she has taken coursework to learn how to better care for JW, that JW is "her life," that she stopped using a switch (a technique her mother had used) in 2000, that she has taken Youth Villages' course on Adolescents, that she is proud of teaching JW how to eat with silverware, and that she washed windows for the Builder, in order to afford a home large enough for she and JW. Respondent noted that she is able to earn a limited income, without disturbing her Social Security payments.

34. Caregivers brought JW to the hearing, so that she could be present for a portion of it. When JW saw the Respondent, JW smiled broadly and nearly leaped into Respondent Carolyn Wright's arms.

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. Witness Sherea Smith, who filed a complaint, was a relative of the Respondent. Smith refused to testify, at the hearing, other than to confirm the accuracy of her complaint. Witness Chequita Wright testified that her complaint was filed under duress and declined, specifically, to indicate that it was true and accurate.

4. Witness Deloris Wiggington testified that she was threatened with job loss, by the Investigator, if she did not prepare a Statement that showed abuse. Therefore, her written Statement is **DISREGARDED**, although Ms. Wiggington's testimony at the hearing is **CONCLUDED** to be **CREDIBLE**.

5. Mr. David Wright's testimony is **CONCLUDED** to be **CREDIBLE**; however, given the family relationship with the Respondent and possibility that Mr. Wright might be required to care for JW if the Respondent were placed on the Registry, the weight given his testimony is lessened.

6. Non-familial witnesses Shannon Buchanan, Deloris Wiggington, Behavioral Analyst Marie, Nutritionist Connie Voll, and Beauty Salon Operator Peggy Robinson, many of whom are trained professionals in working with vulnerable persons and who have no interest in the outcome of the instant matter, all testified that:

A. Respondent was a devoted caregiver for JW,

- B. Respondent and JW's home had never lacked food or electricity,
- C. Respondent had never called JW derogatory names, though Respondent had pet nicknames for JW,
- D. The mitten or sock hand restraints were designed to protect JW from choking on her clothes, but were discontinued the moment Behavioral Analyst Marie informed Respondent that their use could be considered abuse,
- E. The gait belt was used to keep JW upright in her wheelchair, until the platform was available, in order to prevent JW from vomiting, due to GERD.

The testimony of Witnesses Buchanan, Wiggington, Marie, Voll, and Robinson is **CONCLUDED** to be **CREDIBLE** and is **CREDITED**.

7. Based on the above, including the behavioral/physical testimony of JW herself, the following are **CONCLUDED to be UNFOUNDED/UNSUBSTANTIATED**:

- A. Respondent mistreated JW repeatedly over a period of time, often in retaliation for having a behavioral episode or trying to move at an inopportune moment;
- B. Respondent yelled at JW;
- C. Respondent called JW very derogatory names;
- D. Respondent physically abused JW by slapping her in the face and striking her arms, legs and/or back with switches, a flyswatter and belts, in July 2007;
- E. Respondent taped JW's wrists to her wheelchair;
- F. JW is intimidated by and afraid of the Respondent;
- G. Respondent failed to make certain that adequate food and electricity were available.

8. Based on the above, the following are **CONCLUDED to be TRUE:**

- A. Respondent restrained JW with a gait belt, for the purpose of keeping JW upright in her wheelchair, after meals, until a proper Platform could be obtained;
- B. Respondent tied JW's hands together, with a sock or mitten, for the purpose of hampering JW's tendency to place clothing, diaper parts, and other items in her mouth, choking, gasping, and/or vomiting, until she was advised that such conduct could be considered abuse.

9. Although the Respondent admittedly used the unorthodox method of sock or mitten hand restraint, until advised by professional Behavioral Analyst Marie, that such was improper, it is **CONCLUDED** that Respondent used that method in an effort to avoid harm to JW. It is **NOTED** especially that as soon as Respondent was advised not to use socks or mittens in that manner, Respondent stopped such conduct immediately. Although Respondent admittedly used a gait belt to keep JW upright in her wheelchair, until a proper Platform could be obtained, it is **CONCLUDED** that Respondent used that method in an effort to assist JW in avoiding flares of GERD and vomiting.

10. Thus, based on the record as a whole, it is **CONCLUDED** that the conduct by Respondent, when placed in context, **DOES NOT** constitute abuse [T.C.A. § 33-2-402(1)] or neglect [T.C.A. § 33-2-402(5)] of a "vulnerable person", as defined in T.C.A. § 68-11-1004(a)(3).

11. Thus, DMRS' earlier investigation is found to be **UNSUBSTANTIATED;** the State **FAILED TO MEET** its burden of proof.

12. Therefore, based on the above, it is hereby **ORDERED** that the **NAME** of Respondent **CAROLYN WRIGHT (TAYLOR)** **NOT BE PLACED** on the **ABUSE REGISTRY**, maintained by the Tennessee Department of Health, pursuant to T.C.A. § 68-11-1001, *et seq.* It is also **NOTED** that Respondent's conduct does not violate the provisions of Chapter 18 of the DMRS Provider Manual "Protection from Harm" and/or applicable service plan(s) for the vulnerable person.

This Initial Order entered and effective this the __18th__ day of __December__, 2008.

Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 18th day of December, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division