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2-5-2009

STEPHEN H. NORRIS, Petitioner, v. JIMMY  
FOX, Respondent/Appellant

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**BEFORE THE DEPUTY COMMISSIONER  
TENNESSEE DIVISION OF MENTAL RETARDATION SERVICES**

<b>STEPHEN H. NORRIS,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>Docket No. 09.10-101300J</b>
	)	<b>ABUSE REGISTRY</b>
	)	
<b>JIMMY FOX,</b>	)	
<b>Respondent/Appellant.</b>	)	

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**INITIAL ORDER**

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This matter came to be heard on February 5, 2009, before Thomas G. Stovall, Administrative Judge, sitting for the Deputy Commissioner of the Tennessee Division of Mental Retardation Services (“Division”), in Knoxville, Tennessee. Assistant General Counsel Fredrick Zimmermann represented the Division. The Respondent, Jimmy Fox, was not present, nor was he represented at the hearing. Counsel for the State had not been contacted by Respondent nor by anyone on his behalf. Notice of the hearing was mailed by certified and regular mail on December 23, 2008, and a copy of that letter, along with the return receipt signed by Mr. Fox was made a part of the record.<sup>1</sup>

Based on the non-appearance of the Respondent after proper notice of the hearing, the Division moved for **DEFAULT**, which was **GRANTED**.

The subject of this hearing was the Respondent’s appeal of the Division’s notice of intent to place the Respondent’s name on the registry of persons who have abused, neglected or exploited a vulnerable person (Abuse Registry).

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

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<sup>1</sup> Counsel for the State placed in the record a newspaper article dated January 30, 2009 reporting on the arrest by federal authorities of Respondent and numerous other persons on criminal charges relating to drug trafficking. Whether Respondent is incarcerated or not (which is unknown), the State contended that was not legal justification for non-appearance absent any contact by Respondent or someone acting on his behalf after proper notice of the hearing.

## **FINDINGS OF FACT**

1. The Respondent was employed as a team leader on September 18, 2007 with Washington County Community Residential Services, Johnson City, Tennessee. The agency is now known as CORE Services of Northeast Tennessee. Under contract with the Division, the agency provided care and staffing for L. W. at his home and in the community. L. W. was mentally retarded, had a conservator and was himself incapable of managing money or making financial decisions.

2. In September, 2007, Cynthia Frosley, Financial Coordinator of the agency, noticed some apparent errors in certain accounting records relating to funds of the service recipient. She then reviewed records covering January through August of 2007. Her findings are summarized in documents made a part of the record and reflect that \$389.46 of funds belonging to the service recipient were missing and unaccounted for. The agency reimbursed L. W. in that amount.

3. As team leader for the period of time noted, it was Respondent's responsibility as team leader to manage the financial affairs of the service recipient, account for all funds and expenditures and to keep and turn in receipts, bills and other financial records to the agency on a timely basis. A copy of the agency's personal funds policy relating to service recipients' funds was made a part of the record.

4. Kayla Owens testified as to an incident she observed in which she called to Respondent's attention some missing funds from L. W.'s monthly allowance. Respondent told her that he was in a hurry and would "fix it", but did not do so. She testified that he put \$20 of the service recipient's funds in his own pocket. After Respondent's employment terminated, Ms. Owens became team leader and testified as to the steps she took and the procedures in place at the agency to ensure that funds of L. W. and other service recipients were properly accounted for.

5. After the investigation by DMRS commenced, Respondent refused to cooperate and was not interviewed.

## 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 has carried its burden of proof by a preponderance of the evidence to show that the Respondent Jimmy Fox neglected and misappropriated money from a vulnerable individual, and therefore his name should be placed on the Abuse Registry pursuant to T.C.A. §§68-11-1001 *et seq.*
7. The evidence offered at the hearing demonstrated that Respondent had primary responsibility for the funds belonging to L. W. and expenditures from those funds for L. W.’s

living expenses. As part of his duties, Respondent was required to properly account for those funds and to maintain adequate records. He did not do so. The evidence strongly suggests that Respondent pocketed some or all of the unaccounted for monies for which the agency had to reimburse the service recipient. Whether the missing funds were misappropriated by Respondent or were missing through neglect by Respondent, or a combination of both, the result is the same, and Respondent's name should be placed on the Abuse Registry.

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

This Initial Order entered and effective this 9th day of February, 2009.

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Thomas G. Stovall  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 9th day of February, 2009.

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Thomas G. Stovall, Director  
Administrative Procedures Division