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5-18-2006

# Before the Commissioner of the Department of Health DAISY SNEED, RESPONDENT

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**STATE OF TENNESSEE DEPARTMENT OF HEALTH**

**IN THE MATTER OF:** ) **Before the Commissioner of the**  
 ) **Department of Health**  
 )  
**DAISY SNEED,** ) **DOCKET NO. 17.38-089987J**  
 )  
**RESPONDENT.** )

**INITIAL ORDER**

This contested case came on to be heard on May 18, 2006 and October 30, 2006 in Murfreesboro, Tennessee, before Administrative Judge Joyce Grimes Safley, assigned by the Secretary of State, and sitting for the Commissioner of the Department of Health. Ms. Raney Irwin, Assistant Counsel for the Tennessee Department of Health, represented the Department of Health or the State. The Respondent, Daisy Sneed, was present. At the first portion of the hearing (May 18, 2006), Ms. Sneed represented herself *pro se*. At the second portion of the hearing, on October 30, 2006, Ms. Sneed was represented by Ms. Racquel Peebles of the Rutherford County Bar.

The subject of this hearing was to determine whether or not the Respondent in this action had violated State laws and regulations which prohibit neglect or abuse of a vulnerable person, as defined in T.C.A. §68-11-1003, such that Respondent's name should be placed on the State's "Abuse Registry".

The State does not assert that Respondent intentionally abused the client/resident at issue. Rather, the State alleges that Respondent was negligent in her care of the client/resident. Respondent argues that she did

not abuse or neglect the resident/patient in her care, and asserts that the charges against her should be dismissed.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that while the State has shown that Respondent could have taken better care of the resident/client under her care, the State has NOT shown, by a preponderance of the evidence, that Respondent's conduct or actions have risen to the level of either abuse or neglect which would subject Respondent's name and information to inclusion on the "Abuse Registry".

Accordingly, the State has failed to meet its burden of proof in showing that Respondent has committed an offense against a vulnerable person. The charges against Respondent shall be **DISMISSED**.

This decision is based upon the following findings of fact and conclusions of law.

#### **FINDINGS OF FACT**

1. Respondent, Daisy Sneed, was employed as a Program Assistant at Stone's River Center from March 4, 1996 until her employment was terminated on April 18, 2005.

2. At all relevant times, "L.S." was a female resident of Stone's River Center. "L.S." is a "vulnerable person" as defined by T.C.A. §68-11-1004.

3. "L.S." was mentally disabled with the mental capacity of a one to two year old child. "L.S." had little or no communication skills. "L.S." also had a history of seizures, and had balance problems.

4. “L.S.” also had a long-standing and well-known problem with constipation. Because of her difficulties with elimination and constipation, “L.S.” had a “toileting plan” for bowel movements which required “L.S.” to be taken to the toilet every three waking hours, immediately prior to her going to bed, and once during the night. Despite the “toileting plan”, “L.S.” was incontinent at times, and wore an adult diaper.

5. Respondent Sneed testified that she was very familiar with “L.S.” and her care. Respondent further testified that she had taken care of “L.S.” for eight years prior to the alleged incident at issue in this matter.

6. Respondent emphatically testified that she did not fail to meet the needs of “L.S.”, either with regard to safety or “L.S.’s” well-being. Respondent denied the charges that she had left “L.S.” for “hours” on the commode, and testified that she allowed “L.S.” to “use the bathroom as I always have.” Respondent’s testimony is deemed credible.

7. On April 7, 2005, Respondent was working in her job as a “program assistant” at Stones River Center<sup>1</sup> in Murfreesboro, Tennessee. She was assigned to care for three residents/clients, including “L.S.”.

8. Respondent’s duties were to interact with the residents/clients, to assist them with eating, toileting, hygiene, and certain learning programs.

9. On the morning of April 7, 2005, at around 10:45 a.m., Respondent took “L.S.” to the bathroom to toilet and to “clean up” prior to

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<sup>1</sup> It should be noted that Stones River Center has two facilities. The facilities are for persons with mental and physical disabilities. One is a “group home” at which the residents live and spend the night. The other facility is a “day center”. The Stones River “day center” is the facility at which Respondent worked.

lunch: she placed "L.S." on the commode for a period of time. "L.S." did not have a bowel movement. Respondent changed "L.S.'s" diaper, washed up "L.S.", groomed her hair, and got her ready for lunch.

10. After she finished with "L.S.'s" pre-lunch "hygiene", Respondent placed "L.S." in a chair. Respondent also attended to the other residents assigned to her care.

11. Respondent then took "L.S." and her other resident/patients into the lunchroom between 11:30 a.m. or 12 noon. "L.S." fed herself lunch, with Respondent's assistance.

12. Respondent left the lunchroom on April 7, 2005 with "L.S." and her other assigned residents/patients at around 12:30 p.m. to 12.45 p.m.

13. Next, Respondent took her residents/patients to the bathroom for hygiene (brushing teeth, bathing them, ironing clothes, applying lotion to their skin. etc.. During this time, Respondent's residents/patients sat in chairs in the "public area" of the bathroom until the toilets/commodes (in stalls) became available.

14. It took Respondent "awhile" to toilet her assigned residents/patients other than "L.S." For this reason, Respondent usually left "L.S." to the last for toileting. Respondent testified that she believed she placed "L.S." on the toilet at "maybe 1:30" p.m.

15. Respondent further testified that (prior to the incident which forms the basis of this action), Respondent had asked her supervisor, Judy Lynch, if it was "okay" to leave "L.S." on the toilet for a while because it took "L.S." a

“long time” to use the toilet/commode. According to Respondent, supervisor Judy Lynch told Respondent that “it was okay that I let her use the bathroom as long as I check on her [“L.S.”] which I always kept a check on her back and forth.” Respondent’s testimony is deemed credible.

16. Respondent also testified, in a credible fashion, that “[L.S.] had a problem with constipation...and it takes her a long time to use it [the toilet]. So I allow that chance to use the bathroom. But LS do keep the red marks on her no matter how long she sits. She can sit only a few minutes because she is fragile. She’s very thin and she gets those red marks on her if you just let her sit a little while.”

17. On April 7, 2005, while “L.S.” was being toileted after lunch, Respondent was called in to help a fellow staff member, Heather Estock . One of Heather Estock’s assigned residents/patients, “M” had bowel movement on him and Ms. Estock asked Respondent to help clean “M” up. Ms. Estock asked another staff member, Dortha, to take “L.S.” and keep her until she and Respondent could get “M” cleaned up.

18. When Respondent went back in to get “L.S.” out of the bathroom, “L.S.” still had not urinated or had a bowel movement.

19. Respondent testified that while “L.S.” was in the bathroom, Respondent checked on her every 15 minutes. Respondent checked to see if “L.S.” had used the toilet, and would take her off the toilet for a period of time and let others use the toilet. During the periods of time “L.S.” was taken off the toilet, she would be placed in a regular chair in the “public part” of the

restroom.<sup>2</sup> Respondent further testified that when she “checked on “L.S.”, she means that “checking on” is “releasing her from the toilet, seeing if she has used the bathroom.”

20. Heather testified on the State’s behalf. She testified that she was a “personal instructor” in room 2 and room 6 at Stone’s River Center for a year. She presently works with the mentally challenged at another facility. Ms. Estock testified that a “personal instructor” is “kind of over the other PA [Personal Assistant] that’s in the room...and you’re kind of supervising over them.”

21. According to Ms. Estock , April 7, 2005 was a “really busy” day. Included in the other tasks and care which Ms. Estock and Respondent were required to do during that day, one of the case workers, Raymond Martin, came by that afternoon to inservice Ms. Estock and Respondent on a PEAU book.

22. After the inservice, Ms. Estock’s client had diarrhea and soiled himself. Ms. Estock then went to the supervisor’s office and asked if she and Respondent could get anyone to come and help them. The supervisor sent Dorotha Wilson in to watch Respondent’s and Ms. Estock ’s room. Respondent went into the restroom with Ms. Estock to help her shower “M”, the client who had feces on him.

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<sup>2</sup> Respondent prepared a written statement for the State investigator who investigated the “incident”. She testified that she didn’t think to put some things in the “written statement”, and further testified that she was not sure of some of the times she placed in the written statement. However, Respondent maintained that the investigator got her “off track”, and wouldn’t let her sit and think about how it really happened. Respondent testified that she “probably left a whole lot of stuff out” of her statement.

22. Ms. Estock testified that she didn't "know if she [respondent] checked on her ["L.S.]"

23. When Ms. Estock was questioned regarding why *she* didn't remove "L.S." from the toilet if she believed that "L.S." had been on the toilet too long, Ms. Estock replied that Respondent was "real picky about [her] clients" and "didn't want anyone to touch them."

24. After her shift, Ms. Estock went to supervisor Judy Lynch's office to discuss the whole day being "hectic".

25. Dorotha Wilson, currently assistant site manager at the Stone's River Group home, also testified on behalf of the state.

26. Ms. Estock Wilson testified that she had known Respondent Sneed for fourteen years, and had worked with her for nine years at Stones River Center. She also has a personal relationship with Respondent (Wilson's boyfriend is Respondent's son.)

27. Her recollection is that L.S. came out of the bathroom at around 2:30 p.m. or 2:45 p.m., however her statement says 3:35 p.m. or 3:40 p.m.

28. Laura Alexander, assistant manager at Stones River Center on April 7, 2005, was also familiar with "L.S." She was asked to examine "L.S.'s" buttocks after "L.S." got to the group home<sup>3</sup>. She examined "L.S." about 4:30pm or 5pm. She admitted that "L.S." normally has red marks on her buttocks after toileting, because LS has to sit on the toilet for a long period of

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<sup>3</sup> "L.S." lived at the Stones River Group Home, and spent evenings and nights there.

time before her bowels will move, and when “L.S.” gets up, she has a ring around her buttocks.

29. Michelle Immure is currently the support coordinator at Stone’s River Center. She was employed at SRC on April 7, 2005 in the same position. She was in her supervisor’s (Judy Lynch’s) office when Ms. Estock told both of them about the alleged “incident” at the same time.<sup>4</sup>

30. Lisa Izzi, administrator at Stone’s River Center testified at the hearing. Ms. Izzi stated that it was reported to her that “LS had been left in the bathroom all day”, and when she asked for specifics, she was told that Respondent had taken L.S. in to the bathroom right after lunch, and left her there on the commode until approximately 3:30pm.<sup>5</sup>

31. The nurse who examined “L.S.” on the afternoon of April 7, 2005 noted in her statement that there was “no swelling or broken skin”, there were “red marks” on her buttocks which were 2-3 inches in width, and 4 inches in length. “L.S.” did not display any signs of discomfort during the examination. The nurse’s notes for 4/7/05 state: “Semi-circular red marks noted to each buttock – shape resembles that from toilet – Ø [no] treatment required.”

32. Judy Lynch, Day Program Director at Stones River Center, testified that she was familiar with Respondent because she supervised her

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<sup>4</sup> It is noted that neither Ms. Alexander, Ms. Izzi, or Ms. Lynch possessed personal knowledge or personally observed the events which occurred on April 7, 2005. None of the three examined “L.S.” Rather, it appears that they relied almost entirely on Ms. Estock’s version of the events. This testimony was allowed for the purpose of “notice”. This testimony was not considered for the truth of the matter asserted.

<sup>5</sup> It is again noted that Ms. Izzi had no personal knowledge or personal observation of the events which occurred on April 7, 2005. This testimony was allowed for the purpose of “notice”. This testimony was not considered for the truth of the matter asserted.

when Respondent worked at Stone's River. Ms. Lynch was not certain of times, and had no personal observation or knowledge of the incident which occurred on April 7, 2005, other than the fact that Heather had come to Ms. Lynch's office at around 3:15 pm to ask for additional staff coverage so that she and Respondent could go and "clean up" a resident assigned to Ms. Estock .

32. Heather Estock told Ms. Lynch that "L.S." was placed on the toilet at 11:40 a.m., and was left there until after 3:15.<sup>6</sup>

33. Ms. Lynch gave conflicting testimony regarding "transport times". She first testified that it "usually" occurred between 3:15 and 3:30pm, she later testified that transport "usually" took place between 3:45 and 4:00pm.

34. No evidence was introduced that a toileting plan limiting "L.S." to 30 minutes at a time on the commode was included in "L.S.'s" ISP (Individual Service Plan.)

35. Deborah Drake, the Nutrition Services Director at Stones River Center, testified that on the day of April 7, 2005 , Respondent did not leave the lunchroom with her assigned residents until five or ten minutes after noon.

36. Ms. Drake had previously worked as a "PA" caring for "L.S." She was familiar with "L.S.", and testified that "L.S." was a "little person" who would get "red marks" on her buttocks even if she did not sit for a long time on the commode. Ms. Drake further testified that it was "routine" when she worked with "L.S." for "L.S.'s" caregivers to let her sit for long periods of time on

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<sup>6</sup> It is noted that either Ms. Estock was confused about times, or Ms. Lynch was confused about times from this statement, because it conflicts with testimony given by Ms. Estock earlier, and it does not account for "L.S." having pre-lunch hygiene or lunch.

the commode due to her difficulty in having bowel movements. Ms. Drake also testified, that “L.S.’s” ISP (individual service plan) did not have a maximum time frame listed for “L.S.” to sit on the commode.

37. Respondent testified, credibly, that she was never instructed by Ms. Lynch or any other administrators/managers at Stones River regarding a time limit that “L.S.” was to be left on the commode. Respondent also testified that “L.S.’s” Individual Service Plan did not address the length of time “L.S.” could remain on the commode. Respondent testified, again credibly, that she had specifically asked her supervisor about leaving “L.S.” on the commode for long periods of time due to “L.S.’s” problems, and her supervisor advised that there was no time limit as long as Respondent “kept checking on her [L.S.]”

### **CONCLUSIONS OF LAW**

1. T.C.A. §68-11-1001 requires the State to establish and maintain an “Abuse Registry” of persons who have been determined to have abused, neglected, or misappropriated the property of vulnerable individuals.

2. T.C.A. §68-11-1001 states:

**Establishment and maintenance of registry---Confidentiality---**

**Access to records.** ----(a) The department of health shall establish and maintain a registry containing the names of any persons who have been determined to have abused, neglected, or misappropriated the property of vulnerable individuals.

(b) The names and information contained in this registry shall be available for public inspection.

(c) The department may discharge its responsibilities under this part directly, or through interagency agreement; provided, that authorized access to the records by means of a single centralized agency shall be assured.

3. T.C.A. §68-11-1004 sets forth the prerequisites for the State to include a person's name on the "abuse registry" and gives the definition of several relevant terms, in addition to setting forth the notice requirements to the alleged perpetrator.

4. T.C.A. §68-11-1004 states, in pertinent part:

**Prerequisites to including name on registry---Notice to alleged perpetrator --Removal of name from registry.---**

(a) As used in this section, unless the context requires otherwise:

(1) "Criminal disposition" means the disposition of criminal charges constituting an offense against a vulnerable person, as that term is defined by this subsection (a), either by conviction, or by pre-trial diversion authorized by any court pursuant to title 40..., or by an order deferring further proceedings and placing an individual on probation by post-trial diversion issued pursuant to title 40, chapter 35.

(2) "*Offense against a vulnerable person*" means any act that constitutes abuse, neglect, or misappropriation of the property of a vulnerable person, or any crime the elements of which constitute abuse, neglect, or misappropriation of the property of a vulnerable person; and

(3) "*Vulnerable person*" means 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.

(b)(1) Any state government agency that finds that an individual has committed abuse, neglect, or misappropriation of the property of a vulnerable person shall notify the department of health concerning such individual in accordance with subdivision (b)(2). The department of health shall include the name of an individual on a registry when it receives notification from an agency of Tennessee state government that the individual has been found by that agency, pursuant to that agency's procedures and definitions to have committed abuse, neglect, or misappropriation of the property of a vulnerable person.

(2) Notification shall consist of a copy of an emergency, initial, or final administrative order, a judicial order, or other evidence indicating that the agency has afforded the individual an opportunity for an administrative due process hearing pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, or equivalent judicial or administrative procedures[....]. (Emphasis added.)

5. Once an administrative or judicial order has been issued which makes a finding of abuse, neglect, or misappropriation by Respondent, following an administrative “due process” hearing pursuant to the Administrative Procedures Act, the Respondent shall be notified of the Respondent’s inclusion on the registry. After the Respondent’s name has been placed on the Abuse Registry, the Respondent will not be entitled or given the opportunity to contest or dispute either the prior hearing conclusions, or the content or terms of any criminal disposition, or attempt to refute the factual findings upon which such are based. However, the individual placed on the “Abuse Registry” may make a challenge of the accuracy of the report or the hearing conclusions within thirty (30) days from the notice of inclusion in the abuse registry. See T.C.A. §68-11-1004 (e).

6. If it is determined that the allegations of abuse or neglect are substantiated, the name of the Respondent shall be placed on the “Abuse Registry”.

7. The State has charged Respondent Sneed with “neglect” of a “vulnerable person” in her care.

8. The “Registry of Persons who Have Abused, Neglected, or Misappropriated the Property of Vulnerable Individuals”, also known as the

“Abuse Registry Act”, T.C.A. §. §68-11-1001, *et seq.*, does not define “neglect”.

9. When a statute or regulation does not define a term, courts look to other portions of the code which provide a definition or guidance regarding definition of a term. Nor is the term **“neglect”** defined in Tennessee’s criminal code.

10. Accordingly, in considering the definition of **“neglect”** in other cases, the Tennessee Supreme Court has looked to definitions of the term **“neglect”** contained in other parts of the Tennessee Code. See [State v. Adams, 24 S.W .3d 289, 295-96 \(Tenn.2000\)](#).

11. In defining “neglect”, the Court in [State v. Dykes, 2002WL 1974147 \(Tenn. Crim. Ct. App. 2002\)](#) looked to the “welfare” section of the Tennessee Code at the “Tennessee Adult Protection Act” which defines “neglect” as “the deprivation of services by the caretaker which are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services which are necessary to maintain that person's health or welfare.” *quoting* [T.C.A. §71-6-102\(1\)](#).<sup>7</sup>

12. In this matter, it is determined that Respondent’s supervisors were aware that it took “L.S.” a prolonged amount of time to toilet, due to her problems with constipation and elimination. Indeed, “L.S.’s” bowel movement difficulties were common knowledge within Stones River Center, and were addressed by the “toileting plan” contained in her ISP.

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<sup>7</sup> T.C.A §71-6-102 (1) defines “abuse or neglect” as “the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person’s health and welfare.”

13. Respondent's supervisors were also aware that "L.S." was customarily left for long periods of time on the commode, and in fact, instructed Respondent that it was "okay" to leave "L.S." on the commode as long as "L.S." was checked frequently.

14. There was nothing in "L.S.'s " ISP which placed a time limit on the amount of time that L.S. sat on the commode. Rather, the ISP specified that "L.S." was to be taken to the toilet **at least** every three hours. (emphasis added).

15. Ms. Estock testified that she was "kind of" Respondent's supervisor. If Respondent's conduct was endangering "L.S." or if Ms. Estock was concerned with injury to "L.S.", it cannot be explained why Ms. Estock did not either remove "L.S." from the commode and assist L.S. back to her room, or at least notify a supervisor at that time that she (Estock) suspected that "L.S." was being "neglected". It does not make sense that Ms. Estock would allegedly let hours elapse and profess to be concerned about "L.S." being left on the commode, yet do nothing about it. Ms. Estock's testimony is not deemed credible. It is determined that, for whatever reasons, Ms. Estock's "reporting" Respondent to Stones River management at the end of the day on April 7, 2005 was due to Ms. Estock being upset over "staffing", or some type of personal animosity of Ms. Estock toward Respondent, not Estock's professed "concern" for "L.S." It is clear that Ms. Estock's main concern was "staffing" and her "workload", not Respondent's treatment of "L.S."

16. Most of the State's witnesses' testimony was based on statements made to them by Ms. Estock, rather than their own personal knowledge. The nurse who actually examined "L.S." on the afternoon of April 7, 2005, noted "no swelling or broken skin", " 'red marks' on her buttocks" with "L.S." not displaying any signs of discomfort during the examination. No treatment was required.

17. It is judicially noticed that caring for physically and mentally disabled residents such as "L.S." is not an easy task. Respondent relied upon her instructions from Asst. Administrator Judy Lynch that it was "okay" to leave L.S. on the toilet for prolonged periods of time, provided that Respondent checked upon her and stood her up or "released" her.

18. No "injuries" occurred which required nursing or medical treatment. There was testimony that other staff members had seen "red marks" on "L.S.'s buttocks after her being placed on the commode for only short times.

19. The evidence in this matter preponderates in favor of the Respondent. The preponderance of the evidence supports that Respondent did not commit acts or omissions which rose to the level of "neglect" of "L.S." Respondent does not profess to have special training or education in the area of caring for mentally and physically handicapped individuals. From all indications, Respondent tried to do a good job of caring for the residents in her care. Even Ms. Estock testified that Respondent was "picky" about the care given to Respondent's assigned residents.

20. Could Respondent have perhaps used better judgment, or been just a little smarter about the events which transpired on April 7, 2005? Undoubtedly. However, the standard in this matter is not whether Respondent gave "L.S." the very best possible care. The standard is whether or not Respondent "neglected" "L.S." within the meaning of the Tennessee Abuse Registry statutes.

21. For all the above reasons, it is determined that the State has NOT shown, by a preponderance of the evidence, that Respondent's conduct, actions, or omissions rose to the level of either abuse or neglect which would subject Respondent to inclusion on the "Abuse Registry".

Accordingly, the State has failed to meet its burden of proof in showing that Respondent has committed an offense against a vulnerable person. The charges against Respondent shall be **DISMISSED**.

It is so ordered.

This order entered and effective on this \_\_\_\_\_ day of April, 2007.

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Joyce Grimes Safley  
Administrative Judge

