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Georgia Fitzpatrick

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BEFORE THE DEPUTY COMMISSIONER
TENNESSEE DIVISION OF MENTAL RETARDATION SERVICES

IN THE MATTER OF:

Georgia Fitzpatrick

DOCKET NO: 09.10-102955J
ABUSE REGISTRY

INITIAL ORDER

This contested administrative matter was heard on July 2, 2009, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division. Fredrick Zimmermann, Assistant General Counsel for the Tennessee Division of Mental Retardation Services, represented the State. The Respondent, Georgia Fitzpatrick, was present and represented herself.

The issue to be decided in this matter is whether the Respondent’s name should be placed on the Registry of persons who have abused, neglected or misappropriated the property of vulnerable individuals (“Abuse Registry”) as prescribed by Tennessee Code Annotated, §68-11-1001 et seq. After consideration of the entire record in this matter, it is determined that the Respondent's name should be placed on the Abuse Registry.

This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In July 2008, the Respondent was employed as a direct care staff person with Cumberland Community Options, in Nashville, Tennessee. Cumberland Community Options is an agency which conducts business with the State of Tennessee, by providing services for the mentally retarded.
2. The Respondent was charged with the care and responsibility for L. M., a vulnerable person. L. M. is severely mentally retarded and has Bi-polar Disorder. She has exhibited behaviors that include physical aggression, property destruction, stripping, and self-injurious behavior. L. M. also has a hearing problem.

3. On July 17, 2008, the Respondent transported L. M. to a doctor’s appointment. While waiting with L. M. in the reception area, the Respondent repeatedly yelled at L. M. to “shut up,” or “stop,” and to “sit down.” Once outside the office in the parking lot, the Respondent continued to intimidate L. M., speaking to her in a loud voice, telling her to, “get in the damn car.”

4. During this time, apparently because L. M. resisted getting into the vehicle, the Respondent pinned L. M. against the wall of the building, brought her hand up and struck L. M. two or three times in the face. At least four (4) persons, including two (2) valet attendants and two (2) individuals who were also visiting the doctor’s office, observed the Respondent verbally and physically abuse L. M.

5. Two of the witnesses spoke to the Respondent and advised her that she could not hit the service recipient. The Respondent responded by saying, “You didn’t see what you just thought you saw.” The valet attendants had seen the Respondent on previous occasions when she was yelling at L. M.

6. The Respondent testified that she did not strike L.M. and was only attempting to keep her from harming herself and a bystander. She insisted that she had raised her hand to remove L. M.’s hands from the service recipient’s own face, so the witnesses had been mistaken about what they thought they saw. And she had spoken loudly to L. M. because L. M. is hard of hearing.
CONCLUSIONS OF LAW

1. T.C.A. §68-11-1001(a), provides that, “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.”

2. “Abuse” is defined as “the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with the resulting physical harm, pain, or mental anguish.” T.C.A. § 33-2-402(1).

3. “Vulnerable Person” is defined as “anyone 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 . . . and who was, at the time of the commission of an alleged offense . . . in the care of either a state agency or an entity that is licensed or regulated by a state agency.” T.C.A. § 68-11-1004(3).

4. On July, 17, 2008, the Respondent was charged with the care and responsibility of L. M. The Respondent repeatedly yelled at L. M., physically pinned her against a wall, struck her several times, and intimidated her. The Respondent had also verbally abused L. M. on previous occasions. L. M. is severely mentally retarded and, therefore, meets the definition of a vulnerable person.

5. While the Respondent offered a different version of what occurred on the day in question, four (4) independent persons observed the physical and verbal assault and two (2) of them confronted the Respondent about her actions. These witnesses had nothing to gain by giving false testimony. Furthermore, even if they mistook the physical abuse, there is nothing to indicate that they were mistaken about the intimidation and verbal abuse.
6. It is concluded that the State has carried its burden to proving, by a preponderance of the evidence, that the Respondent abused L. M. The facts of this case constitute statutory abuse of a vulnerable person.

7. Therefore, it is ORDERED that the name of Georgia Fitzpatrick shall be placed on the Abuse Registry as prescribed by T.C.A. §68-11-1004.

Entered and effective this 6th day of October, 2009.

_________________________________
Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 6th day of October, 2009.

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Thomas H. Stovall, Director
Administrative Procedures Division