

Minnesota Department of **Human Services**

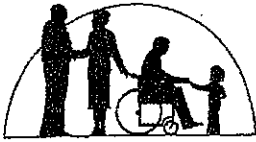
DECISION OF
STATE AGENCY
ON APPEAL

In the Appeal of: E [REDACTED] B [REDACTED]
For: Maltreatment of a Minor, Disqualification from Direct Contact with
Persons Receiving Services in Licensed and Other Programs, and
Set Aside
Agency: Hennepin County and Minnesota Department of Health
Docket: [REDACTED]

On August 27, 2013, Human Services Judge K [REDACTED] R. M [REDACTED] held an evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people appeared at the hearing:

E [REDACTED] B [REDACTED], Appellant;	Center Police Department;
Ryan Garry, Appellant's Attorney	Officer E [REDACTED] H [REDACTED],
D [REDACTED] B [REDACTED], Assistant Hennepin County Attorney;	Brooklyn Center Police Department;
D [REDACTED] S [REDACTED], Assistant Attorney General;	C [REDACTED] L [REDACTED] M [REDACTED], Witness;
T [REDACTED] M [REDACTED], Child Protection Investigator, Hennepin County;	J [REDACTED] B [REDACTED], Witness (minor);
D [REDACTED] K [REDACTED], Appeals, Minnesota Department of Health;	Elizabeth Duel, Witness (via Telephone);
Officer J [REDACTED] S [REDACTED], Brooklyn	J [REDACTED] H [REDACTED], R [REDACTED] L [REDACTED], Z [REDACTED] W [REDACTED]; Human Service Judges, Observers;



Minnesota Department of **Human Services**

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

The issues raised in this appeal are:

1. Whether the county agency correctly determined that appellant maltreated a child by physical abuse.
1. Whether the Minnesota Department of Health properly disqualified the appellant from positions licensed by the Department of Health (MDH).
2. Whether MDH correctly refuse to set aside the appellant's disqualification because he presents a risk of harm to people served in licensed and other programs.

FINDINGS OF FACT

1. *Procedural History.*

a. On December 12, 2012, Hennepin County ("Agency") sent E [REDACTED] B [REDACTED] ("Appellant") written notice of maltreatment of a minor determination against the appellant. *Exhibit 13*. On December 19, 2012, the appellant requested reconsideration of the Agency's maltreatment determination. *Exhibit 16*. On December 20, 2012, the Agency sent the Appellant notice upholding the original maltreatment determination. *Exhibit 17*. On January 4, 2013, the appellant appealed this action. *Exhibit 4*.

b. On March 26, 2013, the Minnesota Department of Health (MDH), sent written notice to the appellant disqualifying him from positions that have direct contact with persons receiving services in licensed and other programs licensed by MDH. *Exhibit MDH 3*. On March 29, 2013, the appellant requested reconsideration of MDH's disqualification decision and requested a set aside. *Exhibit MDH 4*. On May 15, 2013,

DHS sent the appellant notice upholding the original disqualification decision and notice to not set aside the disqualification. *Exhibit MDH 5*. On May 29, 2013, the appellant appealed this action. *Exhibit MDH 6*. There were continuances granted for both the appellant and the agencies from February 2013 until August 2013.

c. On August 27, 2013, Human Services Judge K [REDACTED] R. M [REDACTED] held an evidentiary hearing at Minnesota Department of Human Services Lafayette offices in St. Paul, MN. On August 27, 2013, the record was closed consisting of thirty-eight exhibits.

2. **Minor child.** The minor child, J [REDACTED] B [REDACTED] (DOB: [REDACTED]), was 9 years old at the time of the incident. *Exhibit 1*. She has a brother, E [REDACTED] B [REDACTED] (age 11 months). *Id.* The minor and her brother live with the appellant and their mother. *Id.*

3. **Responsible Person.** The minor lives with the appellant, her father, and her mother and her brother. *Exhibits 2 & 6*.

4. **Injury.**

a. On November 30, 2013, J [REDACTED] was seen in the emergency department at North Memorial Medical Center. *Exhibit 3*. J [REDACTED] had an acute fracture of her right thumb. *Id.* J [REDACTED] reported to the nurse that the appellant had thrown a belt at her, kicked her, flipped the mattress she was lying on cause her to fall to the floor, and that he choked her on her throat with his foot. *Id.* The doctor noted that the minor's neck was not tender and no pain with passive movement of her larynx and that the minor had no knee pain and she has been able to walk without pain or difficulty. *Id.* The doctor also noted that there was some bruising on her thumb but there were no other signs of external bruising on the rest of her body. *Id.*

b. Officer's that responded to the 911 call did not observe any markings or injury on J [REDACTED] besides the swelling on her thumb. *Exhibit 8*.

5. **Incident.**

a. On November 30, 2012, J [REDACTED] came home from school and met her father let her in the apartment building. *Exhibits 5 and 6*.

b. J [REDACTED] told Officer S [REDACTED] that her father (appellant) kicked her under the knee and she fell and hit her head. He then told her to go to her room and take her clothes off and lie down on the bed. *Exhibit 5*. J [REDACTED] also stated that her father (appellant) flipped the mattress she was laying on her bed in her room and she fell on the floor, she got up and went to the window and opened it and yelled for help. *Id.* Her father then closed the window. She then states that her father (appellant) choked her by putting his foot on her throat and she could not breathe. *Exhibit 5 & 6*. J [REDACTED] also stated that her father (the appellant) threw a belt with a belt buckle at her and the buckle hit her thumb. *Exhibit 5*. J [REDACTED] stated that her ten month old brother was sitting and watching this. *Id.* J [REDACTED] then ran out of the house. *Id.* J [REDACTED] told Officer R [REDACTED] that her father (appellant) was going to whip her with a belt and that he had put his foot on her throat. *Exhibit 8*.

c. The property manager found J [REDACTED] running outside without any clothes on. *Testimony of C. M [REDACTED]*. J [REDACTED] told the property manager that she ran out of the

apartment naked because her father (appellant) was trying to kill her, he was going to pour pepper in her face, that he stepped on her throat and tried to choke her, he threw a belt at her, that he flipped the mattress she was lying on causing her to fall to the floor, and that he whipped her with a belt. *Testimony of C. M. [REDACTED] and Exhibit 5.*

d. On December 3, 2012, J. [REDACTED] spoke with a social worker from Hennepin County and her mother was present for part of the interview. *Exhibit 6.* At first J. [REDACTED] stated to the Social Worker, that on November 30, 2012, she had gotten in trouble at school and was suspended. *Id.* J. [REDACTED] stated that when she got home her father (appellant) told her to take a shower and that he was going to discipline her. *Id.* J. [REDACTED] thought her father (appellant) was going to whoop her so when she got out of the shower she went out of the house. *Id.* J. [REDACTED] stated that when she ran out of the house she ran down the stairs fast and fell and she hit her thumb on the metal part of the stairs. *Id.* After her mother left the room, J. [REDACTED] and the Social Worker told J. [REDACTED] they were going to review her her previous statement line by line. *Id.* J. [REDACTED] then confirmed her previous statement with one correction. *Id.*

e. At the hearing J. [REDACTED] stated she had been suspended from school and that her father (appellant) was upset. *Testimony of J. B. [REDACTED]* The appellant told J. [REDACTED] to go take a shower and that he was going to take her TV out of her room. *Id.* J. [REDACTED] ran out of the house because she was afraid that she would be sent to Africa. *Id.* When she ran out of the house she fell on the stairs, she was running too fast. *Id.* J. [REDACTED] was very afraid of being sent to Africa. *Id.*

5. *Argument.* On November 30, 2013, the appellant received a phone call from the J. [REDACTED]'s school because she had been suspended for bullying. *Exhibit 5 and Testimony of Appellant.* When J. [REDACTED] arrived home the appellant told her to go upstairs and take her clothes off and take a bath. *Id.* The appellant told her she was grounded and that he was taking her TV out of her room. *Id.* J. [REDACTED] started screaming and opened the window, which the appellant closed. *Id.* The appellant told J. [REDACTED] that he should send her to Africa with her grandfather when he returned next month. *Id.* J. [REDACTED] then ran out of the apartment. *Id.* The appellant put warm clothes on the baby and then went out to look for J. [REDACTED]. *Id.* During this interaction in the apartment the appellant was holding his ten month old son. *Id.*

CONCLUSIONS OF LAW

1. *Jurisdiction.* This appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minn. Stat. § 256.045, subd. 3.

2. *Burden.* In maltreatment appeals, the judge is required to determine maltreatment has occurred if there is a preponderance of evidence to support the agency's final disposition. *Minn. Stat. § 256.045, subd. 3b.* The preponderance of the evidence standard simply means that it is more likely to be true than not be true that the evidence

supports the agency's final disposition. *Minn. Stat. § 256.0451, subd. 22.* If the evidence is in conflict on an issue which must be resolved, the findings of fact must state the reasoning used in resolving the conflict. *Id.* The judge's recommended order must be based on all relevant evidence. *Minn. Stat. § 256.045, subd. 5.*

3. ***Maltreatment of a Minor.***

a. Under Minn. Stat. § 626.556, agencies are required to investigate allegations of child maltreatment, including physical abuse, and make determinations that maltreatment occurred if supported by the evidence.

b. Minn. Stat. § 626.556, subd. 2(g) describes physical abuse as follows: "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- 1) throwing, kicking, burning, biting, or cutting a child;
- 2) striking a child with a closed fist;
- 3) shaking a child under age three;
- 4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- 5) unreasonable interference with a child's breathing;
- 6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- 7) striking a child under age one on the face or head;
- 8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
- 9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
- 10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

c.

4. ***Responsible Person.*** A person responsible for the child's care is an individual functioning within the family unit and having responsibilities for the care of

the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching. *Minn. Stat. § 626.556, subd. 2(e)*

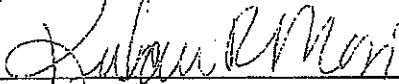
5. *Conclusion.*

a. The minor (J●) is a 9 year old girl living with the appellant, her mother and brother. The appellant is the minor's father and responsible person. On the day of the incident, J● had been suspended at school for bullying. When she arrived home her father was upset with her because she had gotten in trouble at school. J● gives conflicting information as to what happened after she arrived home. At one point she is found running outside without any clothes on and the police were called. Police officer observed bruising on J●'s right thumb but did not observe any other injuries or markings. When J● was examined by doctors at the hospital she is found to have a fractured right thumb that has bruising on it. The doctors did not find any other external injuries on J●'s body, including the neck or knee. J● reported to officers and a witness that her father (appellant) had stepped on her throat and that he flipped a mattress that she was laying on over causing her to fall to the floor. She is inconsistent in reports as whether her father (appellant) was going to whip her or he actually whipped her, if he was going to throw pepper at her, and if he was going to kill her. The appellant did threaten to send J● to Africa with her grandfather because of her behavior. J● later gives conflicting information to the Social Worker, she at first denies that her father threw anything at her and tried to step on her throat and that she fell running down the stairs and hit her hand on the railing. The Social Worker then tells J● that they are going to through her early report line by line, at this point J● confirms her early report of her father (appellant) throwing a belt and him trying to choke her.


b. J● did sustain an injury to her thumb, although it is unclear how this injury occurred. J● has given different versions of the events on November 30, 2013 and is inconsistent. The appellant has denied causing the injury to J●. There were no other injuries that were visible on J●. Doctors noted that they did not see any external injuries and that she had no pain or tenderness to her neck. Although, there is an injury to the minor the county agency has not met the burden of showing that the appellant caused this injury. Therefore, I conclude that the appellant did not maltreat of minor by physical abuse.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT, according to the findings of fact and conclusions of law herein, the Commissioner REVERSE the agency's determination that Appellant is responsible for maltreatment of a minor by physical abuse.



K. R. M.
Human Services Judge

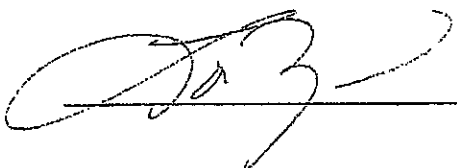


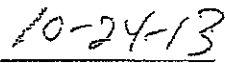
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ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:





Date

- cc: E. B., Appellant
- Ryan Garry, Attorney
- D. S., Asst. Attorney General
- D. B., Asst. Hennepin County Attorney
- D. K., Appeals, Minnesota Department of Health

Right of Appeal to District Court and/or Reconsideration

An appellant or county agency who disagrees with this decision may:

Start an appeal in the district court. This is a separate legal proceeding, and you must start this within 30 days of the date of the appeal decision by serving a notice of appeal upon

the other party and the Commissioner. The law that describes this process is Minn. Stat. § 256.045, subd. 7.

or

Ask the appeals office to reconsider this decision. You must put this request in writing, and state the reason(s) you believe the decision is incorrect. Send the request within 30 days of the date of the decision to:

Appeals Office
Department of Human Services
P.O. Box 64941
St. Paul, MN 55164-0941

Also, please send a copy of this request to the other party. The appeals office will deny or consider this request, at which point you can still appeal to the district court.