



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

Sharita Fanroy

DECISION

ML-09-0261

PRELIMINARY RECITALS

Pursuant to a petition filed September 14, 2009, under Wis. Stat. § 48.981(3)(c)5m, to review a decision by the Wisconsin Department of Children and Families' Bureau of Milwaukee Child Welfare, to substantiate an allegation of child maltreatment, a hearing was held on December 16, 2009, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner maltreated a child as defined in §48.981, Wis. Stats.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Sharita Fanroy
1949 N. 7th Street
Milwaukee, WI 53205

Represented by:

-n/a-

Respondent:

Department of Children and Families
By: Mary Kennedy
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive, Suite 220
Milwaukee WI 53212

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She has a minor daughter, AF (DOB 06/07/1993). She filed this appeal to contest a substantiation of a finding that Petitioner had maltreated AF.
2. Petitioner was sent a letter dated August 13, 2009 that informed her that the Department of Children and Families' Bureau of Milwaukee Child Welfare (BMCW) had substantiated a finding of maltreatment of a child because Petitioner had struck AF with a cord.

3. In March 2009 the BMCW received a child protective services referral concerning AF. An initial assessment worker interviewed AF at her school and learned that AF had been struck by her mother, the Petitioner here, with an extension cord after AF failed to return home from a party on time. A physical examination of AF was performed at the Child Protection Center. The exam found multiple bruises consistent with being struck by a cord.
4. Petitioner acknowledges that she struck her daughter. She was not criminally charged.

DISCUSSION

Prior to October 5, 1998, a person who was found to have abused or neglected a child had no appeal right from the substantiation conclusion. However, with the passage of the Child Abuse Prevention and Treatment Act (CAPTA), state agencies are now required to provide an appeal process to people who have been found to have abused or neglected children. *42 U.S.C. §5106a*. When a person in Milwaukee County is alleged to have abused or neglected a child, *Wis. Stat. § 48.981(3)(c)4* requires the Department's Bureau of Milwaukee Child Welfare to conduct an investigation of the allegation to determine if abuse or neglect occurred or is likely to occur. The result of the investigation is a conclusion that the allegation is "substantiated" or "unsubstantiated".

There are related consequences for a "caregiver" under Wisconsin law, when that caregiver has been found to have abused or neglected a child under CAPTA. *See, Wis. Adm. Code DHS §12.03(5) for definition of caregiver*. Generally, such caregivers are persons licensed by the Department or its agents to care for children in foster homes, day care operations, and in care facilities. However, the list of entities employing caregivers is lengthy, and includes nursing facilities or home health agencies that utilize certified providers like nurse aides. *Also see, Wis. Adm. Code DHS §12.04; also see, Wis. Stat. §48.685(4m)(b), regarding child care facilities*.

The BMCW has the burden of proving that the caregiver maltreated a child. The standard of proof is preponderance of the evidence. The agency has the burden of going forward to establish the facts surrounding an incident and that those facts constitute neglect. A Petitioner must then rebut the agency's case with testimony and documents persuasive enough to overcome the agency's information and testimony.

Though the August 13, 2009 letter uses the terminology 'maltreatment' the Substantiation Review Panel did conclude that Petitioner had physically abused a child.

"Abuse" is not defined within Wis. Stats. §48.981; however, it is defined in the general definition section of Wis. Stats. Chapter 48:

(1) "Abuse", other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

...

§ 48.02(1), Stats.

Thus what has to be established here is that Petitioner injured AF by other than accidental means. The preponderance of the evidence does indicate that the abuse occurred. That evidence is not disputed.

Petitioner was cooperative and candid throughout the investigation of this incident and at the hearing. Her testimony was that her daughter had disappeared for several hours and was at a party she was not supposed to be at. She admits that she struck her daughter. While she was trying to demand respect for her rules which are intended to safeguard her children she realizes that it was not a proper means of discipline.

In the end the undisputed evidence does demonstrate that AF was physically injured by Petitioner by other than accidental means. Thus the child maltreatment substantiation determination must be sustained.

Petitioner has been informed of the rehabilitation review process but for her benefit a copy of the Department of Health Services – brochure is attached to Petitioner’s copy of this decision.

CONCLUSIONS OF LAW

That the Department of Children and Families correctly determined that the allegation of maltreatment of a minor child by Petitioner (i.e., her daughter AF) was substantiated.

Now therefore, it is ORDERED

That this appeal be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. You may petition for an administrative rehearing by submitting a specific written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. This request must be received by the Division within 20 days of the date of this Order. The process for requesting a rehearing petition is contained in Wisconsin Statutes § 227.49.

APPEAL TO CIRCUIT COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of a rehearing, if you ask for one). For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin, 53708-8916. The process for appeals to the circuit court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2010.

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

Distribution list DCF – OLC
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