



State of New Jersey
DEPARTMENT OF HEALTH
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN., BSN, MA
Commissioner

)	
)	
SYLVIA PEARSON,)	FINAL AGENCY DECISION
)	
Petitioner)	
)	
v.)	
)	
NEW JERSEY DEPARTMENT)	OAL DKT. No. HLT 05510-20
OF HEALTH,)	
)	AGENCY DKT. No.: 19-12724
Respondent)	

Petitioner, Sylvia Pearson, a certified nurse aide (CNA), contests the determination by the Respondent, Department of Health (Department), that she physically abused a resident who was under her care at the Spring Hills Cherry Hill assisted living facility in Cherry Hill, New Jersey. The Department lodged the abuse charge¹ against Petitioner after concluding that on or about October 29, 2019, Petitioner struck the resident. Because of these findings, the Department notified Petitioner it intended to revoke her nurse aide certification and enter a finding of abuse against her on the New Jersey Nurse Aide Registry.

¹ The Department's letter dated February 13, 2020, only charged the Petitioner with abuse. However, in its post-hearing brief, the Department asserted Petitioner committed abuse and neglect of the resident. As the Initial Decision addressed both abuse and neglect, the Commissioner will review the merits of both charges for the sake of completeness.

Petitioner appealed this matter, which was transmitted to the Office of Administrative Law (OAL) and assigned to the Honorable Kim C. Belin, A.L.J. (Judge Belin or ALJ). Judge Belin held a plenary hearing on December 17, 2020. During the hearing, the ALJ admitted documents into evidence and heard testimony from Petitioner on her behalf as well as two witnesses on behalf of the Department. After hearing the matter, Judge Belin left the record open for post-hearing submissions and subsequently closed the record on March 16, 2021.

On March 17, 2021, Judge Belin issued her Initial Decision, which affirmed the Department's charge of abuse against Petitioner. Judge Belin found, based on Petitioner's own admission and on eyewitness testimony, the Petitioner struck the resident on the date in question after the resident's grass skirt brushed against Petitioner's face. Accordingly, the ALJ concluded the Department had established by a preponderance of credible evidence that Petitioner abused the resident as defined by 42 C.F.R. 483. As such, Judge Belin affirmed the Department's abuse charge against Petitioner.

The ALJ also addressed the Department's contention that Petitioner committed neglect. Judge Belin noted that the Department had failed to present any evidence to demonstrate Petitioner neglected the resident as defined by 42 C.F.R. 483. Accordingly, the Department's charge of neglect was rejected.

Neither party filed exceptions.

As the Commissioner of the Department of Health, I have considered the record for this matter and Judge Belin's Initial Decision, and having made an independent evaluation of the record, I accept and adopt the Findings of Fact and Conclusions of Law that are contained in the Initial Decision relating to the finding that Petitioner abused a resident and incorporate the same herein by reference. Accordingly, the Initial Decision is affirmed.

Pursuant to 42 C.F.R. 483.156(c)(1)(iv), a finding of abuse shall be placed next to Petitioner's name on the New Jersey Nurse Aide Registry.

Parties have the right to appeal this Final Decision within 45 days to the New Jersey Superior Court, Appellate Division, Richard J. Hughes Justice Complex, P.O. Box 006, Trenton, New Jersey 08625-0006.

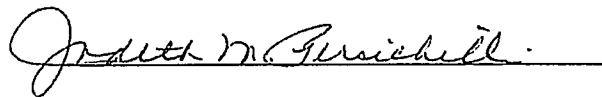
THEREFORE, it is on this 23 day of April, 2021²

ORDERED:

The Initial Decision of the Administrative Law Judge is hereby **ADOPTED**; and

FURTHER ORDERED:

That any action required by this decision shall be promptly implemented by appropriate Department staff.



Judith M. Persichilli, RN., BSN, MA
Commissioner

² Pursuant to Executive Order No. 127, which was issued by Governor Murphy on April 14, 2020, when the deadline for a State agency to adopt, reject or modify an initial decision falls within the time period of the State's Public Health Emergency, the deadline is extended for the length of the emergency plus an additional 90 days. This final agency decision was due to be issued during the Public Health Emergency. As such, the deadline for the issuance of this decision was extended under the Executive Order and is deemed timely.