

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

HS,¹

Petitioner

v.

Docket No. DPPC-25-0261

Disabled Persons Protection Commission,

Respondent

Appearance for Petitioner:

HS, *Pro Se*

Appearances for Respondent:

Kristyn D. Kelly, Esq.

Maya Bornstein, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner appeals a decision by the Disabled Persons Protection Commission (“DPPC”) that he should be placed on “a registry of care providers against whom [DPPC] has made a substantiated finding of registrable abuse.” M.G.L. c. 19C, § 15(b). The DPPC has met its burden of proving by a preponderance of the evidence that the Petitioner committed “registerable abuse” within the meaning of G.L. c. 19C, § 15. The DPPC may place him on the registry.

¹ A pseudonym. I do not use his name because of the Confidentiality Order entered in this case and the general requirements of confidentiality in M.G.L. c. 19C, § 15. Because of the order, the statute, and the applicable regulations, pseudonyms will be used for the names of the alleged victim and the witnesses as well.

DECISION

The Petitioner, HS, appeals a determination by DPPC that he should be placed on “a registry of care providers against whom [DPPC] has made a substantiated finding of registrable abuse.” M.G.L. c. 19C, § 15(b). I held a hearing on October 30, 2025, via the WebEx conferencing platform. I admitted Exhibits A-K into evidence. I admit *sua sponte* two additional exhibits that are relevant to the procedural history of this appeal, the DPPC’s March 21, 2025 Petition Decision (Exhibit L) and HS’s April 9, 2025 notice of appeal (Exhibit M).

In addition to HS, the following witnesses testified:

- AL: a witness to the incident;
- FJ: a witness to the incident;
- PS: the house manager of the residence where the victim resides; and
- DV: a senior investigator with the Department of Developmental Services (“DDS”).

On December 25, 2025, the DPPC filed a post-hearing brief, at which point the administrative record was closed. HS did not submit a post-hearing brief.

FINDINGS OF FACT

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

A. Background Facts

1. The victim is a man in his late forties who receives services from the Department of Developmental Services (“DDS”). The victim resides at a group residence for adults with disabilities located in Massachusetts (“the residence”). The residence is operated by Northeast Regional Services (“NRS”). (Ex. A; Ex. B.)

2. The victim is diagnosed with autism and has developmental and intellectual disabilities in the moderate range. The victim has limited communication skills.
(Ex. B.)
3. The victim has lived at the residence since January of 2022. (Ex. B.)
4. The victim is the subject of a behavior support plan (“BSP”). A BSP is prepared by an individual’s clinician and contains information about the individual, their needs, and the strategies staff should use when responding to challenging behavior. (Ex. B; PS Testimony.)
5. The victim sometimes exhibits challenging behaviors, including hitting, kicking, and slapping. (Ex. B.)
6. The victim is fixated on beverages, such as coffee or soda. The mere mention of coffee or soda may increase the victim’s agitation if he cannot immediately access them. The victim may attempt to grab beverages that he sees. (Ex. B.)
7. NRS staff, including HS, are trained on an individual’s BPS before working with the individual. (PS Testimony; DV Testimony.)
8. NRS staff are also trained in Protective Approaches to Behavioral Challenges (“PABC”). This training teaches staff how to safely respond to behavior. PABC focuses on the prevention and de-escalation of challenging behaviors. (AL Testimony; FJ Testimony; PS Testimony; DV Testimony.)
9. HS began working for the DDS as a Developmental Services Worker I in March 2019. Prior to that time, he had worked as a certified nursing assistant. (Ex. J.)

10. At the time of the events at issue in this appeal, HS had been a care provider at the residence for approximately four months. (Ex. J; PS Testimony.)
11. HS had completed PABC training and was trained on the victim's BSP. (HS Testimony; PS Testimony.)
12. HS's performance reviews were generally positive and indicate that he provided good care. (Exhibit J.)

B. The Events of September 10 and Their Aftermath

13. On September 10, 2023, at approximately 10:00 A.M., HS and another staff member, PK, transported the victim and two other residents to a soccer practice at Bishop Fenwick High School ("Bishop Fenwick") in Peabody, Massachusetts. (Ex. A; HS Testimony.)
14. During the drive to practice, the victim began asking for a soda. HS told the victim he would get a soda if he behaved. (Ex. A; Ex. I; HS Testimony.)
15. Upon arriving at Bishop Fenwick, HS dropped off PK and the two other residents at the field. HS remained in the van with the victim, as he planned to take the victim to McDonald's for a soda. (Ex. A; Ex. I; HS Testimony.)
16. During this time, two NRS workers from another group residential home, AL and FJ, were also transporting residents to the soccer practice at Bishop Fenwick. (Ex. A; AL Testimony; FJ Testimony.)
17. AL and FJ parked their van one parking spot away from HS's van. AL and FJ recognized the van as an NRS van because of the license plate. There were no

cars parked between the two vans. As such, AL's and FJ's view of the van was not obstructed by another vehicle. (Ex. A; AL Testimony; FJ Testimony.)

18. AL was sitting in the driver's seat. FJ was sitting in the front passenger's seat.

(AL Testimony; FJ Testimony).

19. AL and FJ saw HS sitting in the driver's seat of the van and the victim sitting in

the backseat. AL and FJ did not know HS or the victim, but based on where HS and the victim were seated, they correctly surmised that HS was an NRS staff member and that the victim was a resident of an NRS program. (AL Testimony;

FJ Testimony.)

20. HS was facing forward and talking on his phone. (Ex. A; AL Testimony; FJ

Testimony.) Around this time, the victim had become increasingly agitated about his desire for a soda. (Ex. A; HS Testimony.)

21. AL observed HS talking on his cell phone and then saw the victim move toward

the front seat of the van and hit HS on the back of his head. (Ex. A, Ex. K; Ex. I; AL Testimony.)

22. AL exclaimed "Oh, my God" or something along those lines, which caused FJ to

turn and look in the direction of HS's van. At that point, both AL and FJ saw HS turn around in his seat and strike the victim. (Ex. A, K; AL Testimony; FJ

Testimony.) HS had his phone in one hand and struck the victim in an aggressive manner with the other. (FJ Testimony.)

23. AL and FJ could not see exactly where HS struck the victim. Based on the trajectory of his arms, however, they believed he hit the victim somewhere on the upper half of his body. (Ex. A; AL Testimony; FJ Testimony.)
24. Striking the victim was not an appropriate response to the victim's aggression. A proper response, utilizing PABC techniques, would have been for HS to get out of the van so as to avoid any further aggression by the victim and open a door so that HS could verbally deescalate the situation. If he needed to block a strike by the victim, HS should have applied downward pressure on the victim's hands or forearms. (AL Testimony; PS Testimony; DV Testimony.)
25. After HS struck him, the victim returned to the rear of the van. HS continued talking on his cell phone. (AL Testimony; FJ Testimony; Exhibit K.)
26. HS's action caused the victim physical pain. (Ex. A; Exhibit D; Exhibit F; Exhibit H; PS Testimony.)²
27. AL exited her van and approached the HS's van. She looked inside the window to check on the victim. She thought the victim seemed fine. (Ex. A; AL Testimony.)
28. AL then called the NRS on-call residential director to report the incident. (Ex. A; AL Testimony; FJ Testimony.)
29. AL and FJ found the incident upsetting. It made them feel uncomfortable to witness behavior they considered inappropriate. (AL Testimony; FJ Testimony).

² This finding will be discussed in the next section.

30. Shortly after the incident, HS drove the victim to McDonald's to get him a soda.

(HS Testimony; Exhibit I.)

31. Shortly after the incident, PK returned to the van with the other residents. HS did not mention the incident to his co-worker. In fact, when PK asked him how the victim behaved during practice, HS stated the victim was "good." When PK later filed a statement about the day's events, he did not state that anything appeared to be wrong or the matter with the victim. (Ex. A; Ex. K; DV Testimony.)

32. The residential director whom AL had called contacted the nurse on duty at the residence, as well as the residence's house manager, PS. (Ex. A; PS Testimony.)

33. The residential director instructed senior staff at the residence to send HS home. FJ was "floated" to the residence to cover the remainder of HS's shift. (Ex. A; FJ Testimony.)

34. After HS, PK, and the three residents returned to the residence, HS wrote his account of what happened in the victim's progress notes. HS stated that the victim became agitated because he wanted a soda and that the victim slapped HS. HS further reported that, despite his efforts to redirect the victim verbally, the victim tried to slap him again, but HS deflected the attempted slap. HS stated that the victim then calmed down, they went to get the victim a soda, and then returned to Bishop Fenwick. (Exhibit H.)

35. Later that day, the victim was seen by a nurse. The progress note outlining his examination states the following:

Nursing was called in to examine and check on [the victim] post been hit by staff (allegedly) ... per staff pt is at his baseline[.] Seemed restless and -- per staff he [illegible] has a swollen left lower eye, Ø redness, [illegible] after examination patient seemed not to be in pain. Advise staff to put an ice pack on the eye as tolerated and PRN Tylenol. Continue to monitor pt eye and notify any changes such as redness and drainage to Nursing.

(Exhibit H.)

36. The following day, staff took the victim to urgent care because they believed he had an injury to his face and right hand. (Ex. D; Ex. H.)

37. The note from urgent care states that the reason for the visit was “R HAND REDNESS/SWELLING 2)?FACIAL INJURY.” The victim was diagnosed with “Contusion of right hand, initial encounter.” (There was no diagnosis related to the victim’s face or eye.) The section for instructions recites the following:

X-rays performed of the hand show no evidence of fracture[.] Apply ice 4 times daily. [T]ake Tylenol up to 3 times daily for pain[.] We would have no way of being able to determine if [the victim] had an injury to his face yesterday. [I]f you would want a full screening for that type of injury he would need to have a CT scan of his facial bones. We do not have this testing here and you would need to go to a hospital emergency room for that.

(Ex. F.)

38. A progress note relating to the visit that was written by residence staff states that the doctor “said he didn’t notice [any] problem with his face and throat.”

(Ex. H.)³

39. On September 11, 2023, HS submitted a written statement regarding the incident. He stated that the victim unbuckled his seatbelt and slapped him on

³ This is the only mention in the record of a possible injury to the victim’s throat.

the back of his head. He stated that he deflected and blocked another slap from the victim and attempted to redirect the victim verbally and by waving his right hand. (Ex. I.)

40. On September 12, 2023, which was the first time PS had seen the victim since the incident, PS saw that the victim's left eye was injured – in the form of bruising, swelling, or discoloration. (PS Testimony).⁴

C. DPPC Investigation and Proceedings

41. On September 12, 2023, the DPPC opened DPPC Case No. I-4239, which concerns the allegations at issue in this matter. (Ex. A.)

42. The investigation of DPPC Case No. I-4239 was referred to the DDS. The allegations were investigated by DV, a DDS investigator. (Ex. A.)

43. DV interviewed various witnesses, including HS, who stated that he used his right hand to deflect the victim's hit and then physically and verbally redirected him.⁵ He explained that once the victim had calmed down, he drove the victim to McDonald's for his soda. (Ex. A.)

⁴ PS testified that he saw bruising. I find that PM saw something wrong with the victim's eye, but necessarily that he saw bruising, specifically. By the time of the hearing, over two years had passed since the incident, and PS's memory may have been influenced by, among other things, a mistaken belief (to which he testified) that urgent care had diagnosed the victim with bruises to his face.

⁵ When he was interviewed by DV, HS initially said, "I didn't touch the victim." (Ex. A; DV Testimony.) Upon further questioning, HS stated that he used his right hand to deflect and redirect the victim, which was consistent with what he had previously conveyed in his written statement. At the hearing, HS explained that when he stated he "didn't touch [the victim]," he meant he did not aggressively touch the victim. (Ex. A; HS Testimony.) I credit that explanation for his earlier remark.

44. DV attempted to interview the victim. However, because of the victim's limited communication skills, DV was unable to gather any information from the victim related to the incident. (Ex. A; DV Testimony.)

45. The DPPC determined, as a result of DV's investigation, that HS engaged in "registrable abuse" of the victim. (Ex. A.)

46. On November 19, 2024, the DPPC mailed HS a Notice of Right to Respond, which contained a copy of the Investigation Report. (Ex. L.)

47. On December 23, 2024, HS filed a petition to review that determination. (Ex. L.)

48. On March 21, 2025, the DPPC issued its Petition Decision, affirming its determination that HS had engaged in registerable abuse. (Ex. L.)

49. On April 9, 2025, HS filed a timely appeal of the DPPC's Petition Decision pursuant to M.G.L. c. 19C, § 15(c). (Ex. M.)

CONCLUSION AND ORDER

The DPPC contends that HS's name should be placed on "a registry of care providers against whom [DPPC] has made a substantiated finding of registrable abuse." M.G.L. c. 19C, § 15(b). The DPPC bears the burden in this appeal to "establish[] registrable abuse by the care provider, based on a preponderance of the evidence." M.G.L. c. 19C, § 15(c).

"Registrable abuse" is defined as

an act or omission of a care provider that results in serious physical or emotional injury or constitutes abuse per se of a person with an intellectual or developmental disability; provided, however, that "registrable abuse" shall not include instances in which the commission, upon weighing the conduct of the care provider and its outcome, determines that the incident was isolated and unlikely to reoccur and that the care provider is fit to provide services or supports to persons

with intellectual or developmental disabilities.

M.G.L. c. 19C, § 15(a).

There is no dispute that the victim is a “person with an intellectual or developmental disability” and that HS was a “care provider” for the victim. Although the DPPC contends that HS’s actions resulted in bruising to the victim’s eye, it does not argue that this bruising constitutes or indicates a “serious physical injury” for purposes of grounding an abuse finding. Nor does it argue that the victim suffered a “serious ... emotional injury.” I therefore do not consider either of these as a ground for placing HS on the registry. Accordingly, this appeal turns on whether HS’s conduct “constitute[d] abuse per se” and, if it was, whether “the incident was isolated and unlikely to reoccur and [HS] is fit to provide services or supports to persons with intellectual or developmental disabilities.”

A. Abuse Per Se

Abuse per se includes “the intentional, wanton or reckless application of a physical force in a manner that inflicts physical pain or Serious Emotional Injury.” 118 CMR 2.02(d).

1. Willful, Wanton, or Reckless Application of a Physical Force

The “willful, wanton, or reckless” standard requires intentional conduct that is undertaken with indifference to or disregard of the probable harmful consequences of

that conduct. *Commonwealth v. Welansky*, 316 Mass. 383, 397-98 (1944) (citations omitted); *Manning v. Nobile*, 411 Mass. 382, 387-88 (1991) (citations omitted).⁶

Here, by striking the victim, HS intentionally applied physical force and, in doing so, either disregarded an unreasonably high risk that he would cause the victim physical pain or in fact intended to cause physical pain.

I do not credit HS's claim that all he did was block or deflect the victim's effort to strike him and that he engaged in proper PABC techniques. His characterization is not consistent with the accounts of two disinterested witnesses, AL and FJ, who saw him strike the victim. Even if the conduct witnessed by AL and FJ could somehow be characterized as an effort to block or deflect a blow from the victim, the record makes it clear that HS's efforts were not controlled or measured, but aggressive and forceful.

Nor were HS's actions consistent with his PABC training. Striking a resident is not an appropriate response to his or her aggression. (AL Testimony; PS Testimony; DV Testimony.) To the extent HS had concerns for his safety (or the victim's safety, for that matter), he could have simply exited the van and engaged in verbal de-escalation efforts.

⁶ Sometimes, the individual terms in the phrase "willful, wanton, or reckless conduct" are parsed and distinguished from one another. *Welensky*, 316 Mass. at 397-98. Sometimes the terms are considered interchangeable. *Manning*, 411 Mass. at 387 n. 8. And at other times, the terms are analyzed together as a collective. *Id.* at 387; *Scanlon v. Dep't of Army*, 277 F.3d 598, 599 (2002) (interpreting Massachusetts law). The differences in approach are not material to this appeal.

2. *Physical Pain or Serious Emotional Injury*

To constitute abuse per se, the “willful, wanton, or reckless” application of a physical force must result in either “physical pain or Serious Emotional Injury.” 118 CMR 2.02(d). The DPPC does not contend that the victim suffered a “Serious Emotional Injury,” and there is no evidence that he did. Accordingly, I will focus on whether the victim suffered “physical pain.”

When a person, as a result of his or her disability, is unable to articulate that he or she suffered physical pain, its existence may be determined under a “reasonable person standard,” which asks whether a “given the same set of circumstances, a reasonable person would have experienced physical pain.” 118 CMR 2.02.

The victim was not able to express his reaction to having been struck. Nevertheless, based on the “reasonable person standard,” I conclude that the victim did suffer physical pain. HS’s striking of the victim was a reprisal for the victim striking him, an effort to forcibly repel him, or both. Neither is consistent, generally speaking, with innocuous, non-painful contact. FL characterized HS’s action as “aggressive,” and it apparently sufficed to cause the victim – who, moments earlier, had been sufficiently agitated to move to the front of the van and aggress against HS – to immediately return to the rear of the van. Under these circumstances, I conclude that HS struck the victim with sufficient force to cause the victim physical pain.

Moreover, I have found that HS’s actions resulted in some swelling, discoloration, or bruising on the victim’s eye, further indicating pain. I acknowledge that

not all of the evidence fully supports this conclusion.⁷ First, the progress note recounting the September 10 assessment by the nurse describes the swelling of the victim's left eye as "per staff," rather than as a conclusion reached by the nurse himself or herself. If the nurse had seen it, arguably he or she would have said so. In any case, it would seem that the attribution "per staff" would have been a gratuitous remark if the nurse had seen it. Second, the report from the September 11 urgent care visit does not diagnose any issues with the victim's eye. Third, the progress note by residence staff describing the urgent care visit remarks that the doctor did not see any "problem" with the victim's face.

All that said, when viewed in context, I do not believe that the progress notes or the urgent care report, neither of which are comprehensive or detailed documents, are persuasive evidence that the victim was uninjured. With respect to the account of the nurse's September 10 examination, the nurse advised staff to apply an icepack to the eye, which suggests that he or she had seen at least something that called for further care and attention. Turning to the urgent care report, urgent care staff may have omitted a diagnosis of the victim's eye because they did not think it required medical intervention, which is not the same as concluding that there was nothing wrong whatsoever with it.

⁷ The evidence that the victim suffered an injury to his hand (which includes a diagnosis from urgent care) is stronger than the evidence that he suffered an injury to his face. The DPPC does not argue that the hand injury suggests that the victim suffered physical pain as a result of his altercation with HS. Accordingly, I will not consider the relevance of HS's hand injury.

Finally, as for the progress note from the residence describing the urgent care visit, it is not apparent whether its author was purporting to convey a verbatim (or substantially verbatim) statement by the doctor or whether it was meant to express the “upshot” of the doctor’s assessment. Either way, it is not clear whether the note was intended to convey an assessment that the victim had no traces of an injury to his face or instead that there was nothing about its condition warranting medical intervention.

On balance, I conclude that it is more probable than not that the victim’s encounter with HS left some sort of visible trace. Residence staff clearly thought that there was something about the victim’s eye that warranted further investigation. It is unlikely that staff would reach that conclusion if there was nothing whatsoever to see. And I have concluded that PM saw something wrong with the victim’s eye (perhaps bruising, as PS had testified, or perhaps some other visible trace). That HS’s strike left some sort of trace on the victim’s eye further suggests that the victim suffered some sort of physical pain.

The pain may have been fleeting, and perhaps not great. When AL viewed the victim after the incident, she thought he seemed fine. And in the statement submitted by HS’s colleague, he makes no mention of the victim being in pain or distress when he returned to the van. But there is no requirement that the pain be of any particular duration or minimum intensity. The physical pain that may support a finding of abuse per se under the regulation need not be “serious” (unlike emotional injuries, which must be “serious” to support abuse per se). 118 CMR 2.02(d).

For the reasons stated above, because HS physical force in an intentional, wanton, or reckless manner resulting in physical pain, the DPPC has established that he engaged in abuse *per se*.

B. “Unlikely to Reoccur”

HS may avoid placement on the registry by providing “information that demonstrates, based upon the totality of the circumstances, the incident was isolated and unlikely to reoccur, and that [he] is fit to provide services or supports to persons with intellectual or developmental disabilities.” 18 CMR 14.02(3). The factors that may be considered include:

the nature and extent of the ... abuse *per se* sustained by [the victim];” and “relevant details about [HS], such as whether [HS] received training relevant to the incident at issue, [HS’s] employment history in working with individuals with disabilities; prior instances of similar conduct by [HS], regardless of whether said conduct constituted abuse or abuse *per se*; any statements or communication regarding [HS’s] work history and fitness to provide services and supports to persons with disabilities; and whether [his] conduct could reasonably be addressed through training, education, rehabilitation, or other corrective employment action and [his] willingness to engage in said training, education, or other corrective employment action.

118 CMR 14.02(3).

Here, the employment records in evidence reflect generally positive performance reviews and no indication of any prior issues or problems. That is evidence that would tend to suggest that this was an isolated incident. Unfortunately, however, HS does not acknowledge that his response to the victim hitting him was inappropriate or counterproductive. Accordingly, HS does not offer any insight on why his training failed him in this particular instance or identify what he could do – by way of training or otherwise – to ensure that this never happens again. It is therefore difficult to conclude

that HS would respond appropriately if a future resident in his care aggressed against him.

In sum, the record does not establish that the episode that occurred on September 10 was isolated and unlikely to reoccur or that HS is fit to provide services to individuals with intellectual disabilities.

For the foregoing reasons, the DPPC has established by a preponderance of the evidence that HS committed registrable abuse. The “unlikely to reoccur” exception does not apply. The DPPC may place HS on the Registry.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: May 29, 2026