COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

I.S.,
Petitioner, Docket No.: DPPC-25-0615

v.

Disabled Persons Protection Commission,
Respondent.

Appearances:

For Petitioner: I.S., pro se
For Respondent: Maya Bornstein, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner, I.S., slapped a resident in the face with an open hand. Although the resident attacked him first, his conduct was, at a minimum, reckless. It inflicted physical pain. And the circumstances demonstrate this is likely to reoccur. I.S. therefore committed registrable abuse.

INTRODUCTION

The Petitioner, I.S., timely appealed the Disabled Persons Protection Commission's ("DPPC") decision that he committed registrable abuse. G.L. c. 19C, § 15; 118 Code of Mass. Regs., § 2.02. DPPC alleges that I.S. committed abuse *per se* when he slapped a resident after the resident first hit him. I held a virtual hearing on March 26, 2026. DPPC presented three witnesses: Leah Hooley, an investigator from the Department of Developmental Services

("DDS"), and two shift supervisors who were present on the day of the incident, C.A. and E.B. The Petitioner testified on his own behalf. I admitted Exhibits A-K into evidence. The parties submitted closing briefs on April 30, 2026, at which point I closed the administrative record.

FINDINGS OF FACT

1. I.S. was an employee of DDS. Prior to the incident at issue in this appeal, he had worked as a staff member at various residential placements with DDS for four years. At the time of the incident, he had been working as a caretaker at a specific residence in Hopkinton for only a few months. (I.S.)
2. This residence had five clients living there, including P.D. (Ex. A; general testimony[1].)
3. P.D. is a DDS client. He carries many diagnoses that require constant supervision and care. He can get easily agitated by many things, including when someone is in his personal space. (Ex. H; general testimony.)
4. When agitated, P.D. often responds physically. (Ex. H; general testimony.)
5. I.S. had received general training on working with DDS clients, including positive behavior supports, safety-care, and supporting people with autism spectrum disorder. (Ex. I; general testimony.)
6. I.S. was supposed to have received specific training regarding the behavioral needs of the clients at the residence. Every client has a behavioral service plan (BSP) that the staff is expected to be familiar with. The BSP explains some of the expected problematic

[1] There are some facts to which various witnessed testified and which are not in dispute. I will cite to the record of these facts as "general testimony."

behaviors and gives ways to respond appropriately to each specific client. (Ex. H; general testimony.)

7. However, I.S. was never specifically trained about any individual client. Rather, E.B. explained that, at the residence, there was a tablet that had each individual client's information on it. Staff were expected to read it to learn about the clients. (E.B.)

8. That said, I.S. had enough training that he knew, if physically attacked by a resident, he had to deescalate the situation including by walking away or giving the resident space. He agreed that violence is never an appropriate response. (I.S.)

9. The incident at issue took place in November 2024. There is video footage that I was able to review, and I base my description of the events on it. (Ex. K.)

10. I.S. was mopping the floor. P.D. walked out of his room, down the hallway, and towards I.S. (Ex. K.)

11. I.S. stepped in front of him. I.S. tried telling P.D. that the floor was wet and he should wait to walk through. (I.S.)

12. That instantly angered P.D. He forcefully pushed I.S. with two hands, balled up his fists, and then hit I.S. with both fists in his chest. As soon as he did that, I.S. raised his open hand as if to slap P.D., but he did not. Instead, he put his hand down, smiled, and continued mopping. (Ex. K.)

13. P.D. seemed as if he was going to keep walking. Yet, as he was passing by I.S., he hit I.S. in the face. Almost instantaneously, I.S. slapped P.D. across P.D's face. P.D. grimaced for a second or two, then stopped, and began walking past I.S. again. But as he was walking

away, P.D. hit I.S. in the back of the head with a closed fist. That time, I.S. did not hit him back. He turned around and resumed mopping. (Ex. K.)

14. The two other staff on duty that night did not really see the interaction, though they heard the scuffle and C.A. heard slapping. (C.A.; E.B.)

15. P.D. was not injured. The contact did not leave a mark or any lacerations. He did not require any medical attention. By all accounts, he was fine after the incident. (Exs. A-C; C.A.; E.B.)

16. C.A. immediately spoke to I.S. He told her that it was an accident and he did not do it intentionally. She said there were cameras and she would have to report it. He did not object. He indicated she should feel free to, since it was just an accident. (C.A.; I.S.)

17. Ms. Hooley interviewed P.D. within days of the incident. P.D. is limited in his communication skills. Nevertheless, Ms. Hooley asked him open-ended questions so as not to suggest an answer. She recalls asking him something along the lines of "what happened a few days ago." P.D. touched his cheek and said, "it hurt." (Ex. B; Hooley).

18. Ms. Hooley also interviewed I.S. He said that what happened was an accident. He explained that, while P.D. was hitting him, he was trying to defend himself and had his hand up in the air. As he was turning around, he accidentally struck P.D. (Ex. C.)

19. In his testimony, he continued to say any contact was unintentional. He explained what happened was more of a reflex or impulse. (I.S.)

20. I.S. had seen the video and it was played again at the hearing. Nevertheless, I.S. would not agree that he slapped P.D. (I.S.)

21. In all his time working at DDS, I.S. had never been hit by a client. Nor had he seen another staff member get hit. (I.S.)

22. At the hearing, when asked about what he might do differently next time, I.S. said he would not respond with violence and would give the person space. (I.S.)

DISCUSSION

Care providers may not abuse a person with a disability.[2] There is no dispute that the Petitioner was a care provider and P.D. is a person with a disability. Thus, the issue is whether I.S. abused P.D.

There are two types of abuse: abuse and abuse *per se*. 118 Code of Mass. Regs., § 2.02. As relevant in this case, 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 as determined by an evaluation of the totality of the circumstances." *Id.*

An act of abuse or abuse *per se* is considered "registrable abuse," which presumptively requires the perpetrator to be placed on an abuser registry. G.L. c. 19C, § 15(a).

> [However,] "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.

G.L. c. 19C, § 15(a); 118 Code of Mass. Regs., § 2.02.

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[2] A care provider is "[a] Caretaker who is employed by . . . the Department or an Employer to provide services or supports to a Person with an Intellectual [or Developmental] Disability." 118 Code of Mass. Regs., § 2.02. A caretaker is "any individual responsible for the health and welfare of a Person with a Disability by providing for or directly providing assistance in meeting a Daily Living Need, which cannot otherwise be performed by the Person with a Disability without assistance, regardless of the location at which such assistance occurs." *Id.*

DPPC bears the burden of proof by a preponderance of the evidence that I.S. committed registrable abuse. *J.L. c. DPPC*, DPPC-22-0415, 2023 WL 7402532 (Div. Admin. Law App. Nov. 1, 2023); *S.S. v. DPPC*, DPPC-22-0537, 2023 WL 7213154 (Div. Admin. Law App. Oct. 26, 2023).

1. I.S. committed an intentional and/or reckless application of physical force.

I.S. has put forth a few theories as to why he hit P.D. Prior to the hearing, his explanation was that it was an "accident." By accident, he meant that, after P.D. hit him, he made contact with P.D. when he turned around, but only inadvertently. The video contradicts this explanation. P.D. very clearly hit I.S. He did so with an open hand across P.D.'s face. He hit him after almost doing so the first time P.D. pushed him. So, what I.S. did was not an accident in the way he described it.

In his testimony, I.S. changed his explanation to say that what he did was a reflexive act. That certainly better describes what he did. But it only gets I.S. so far. I take what he means by reflexive is that he had no intention of hitting P.D. or hurting him. But he did. Regardless, however P.D. describes what he did, it seems to have been an intentional act and, even if not, certainly a reckless one.

There are a few reasons the act appears to have been intentional. I.S. first raised his hand to possibly hit P.D. when P.D. pushed him in the chest. He did not hit him then, showing the ability to exercise self-control. But when P.D. hit him again, I.S. hit him back. The sequence demonstrates that I.S. did not respond in kind when he thought P.D. was going to walk away, but did respond with violence when P.D. kept attacking. He may have hit I.S. to hurt him and

cause him to stop attacking. That seems intentional.[3]

Even if not intentional, what I.S. did was certainly reckless. Reckless does not mean the person intended to cause harm; but it does mean the person intended to do the act that ultimately caused the harm. *Commonwealth v. Life Care Ctrs. of Am*., *Inc.*, 456 Mass. 826, 832 (2010) ("reckless conduct does not require that the actor intend the specific result of his or her conduct, but only that he or she intended to do the reckless act."); *Commonwealth v. Sandler*, 419 Mass. 334, 335 (1995). Here, I.S. very clearly intended to swing his open hand towards P.D. That was reckless because it was clear that if he made contact, he was very likely to hurt P.D. *E.A. v. DPPC*, DPPC-24-0520, 2025 WL 2577046 (Div. Admin. Law App. Aug. 28, 2025) (swinging metal water bottle at resident's head was reckless). It was especially reckless since he knew violence was never an appropriate response. Rather, he needed to deescalate the situation.

2. I.S.'s conduct caused P.D. physical pain.

Like P.D., many DDS clients have difficulty expressing what happened. The regulations explain how to evaluate an incident in those circumstances:

> [W]hen a person as a result of his or her disability is unable to express or demonstrate a Serious Emotional Injury or a reaction to physical pain, the investigator may use the reasonable person standard solely for the purposes of evaluating whether the intentional, wanton or reckless application of a physical force inflicted physical pain or Serious Emotional Injury. Using the reasonable person standard, the investigator determines whether, by a preponderance of the evidence, given the same set of factual circumstances, a reasonable person would have experienced physical pain or Serious Emotional Injury.

118 Code of Mass. Regs., § 2.02.

[3] It is of no moment that I.S. responded almost immediately because someone can still form the intent to commit an act within seconds. *Cf. Commonwealth v. Chipman*, 418 Mass. 262, 269 (1994).

To be sure, not all physical contact may cause physical pain. "Physical contact with another person's head area may be vicious, playful, or incidental. The result of such contact may be severe pain, fleeting discomfort, or even pleasant sensations." *S.S. v. DPPC*, DPPC-24-0274, 2025 WL 415160 (Div. Admin. Law App. Jan. 31, 2025). Here, however, there is evidence that this incident caused P.D. more than just discomfort.

P.D. is verbally limited, but he was able to communicate something about the incident. When asked an open question, he touched his cheek and said, "it hurt." I do allow for the fact that P.D. might express things differently than a "reasonable person"—for example, it could be that he has no words to describe how he felt other than "hurt," even if what he felt was just annoyance or something less. But I also take into account what I saw in the video: after being hit, P.D. instantly grimaced and looked like he was in pain (even if he quickly moved on from what happened). Given the force of I.S.'s slap, and the fact that he cleanly contacted P.D. with an open hand, even a reasonable person would feel physical pain in that instant.

I do not want to overstate the pain that P.D. felt. To the extent there is a spectrum that measures physical pain sufficient to warrant a finding under this regulation, what P.D. experienced is within it. But any amount of physical pain is still physical pain, and I find I.S.'s actions inflicted physical pain on P.D.

3. The conduct is likely to reoccur.

As noted, I find that I.S. did intend to hit P.D., even though I credit I.S. that he did not mean to hurt him; also, he did not actually inflict a lot of physical pain. Nevertheless, I cannot say on this record that the incident is unlikely to reoccur. 118 Code of Mass. Regs., § 2.02. That I.S. did not intend to hurt P.D. and appears to feel bad about what he did is some evidence in

his favor. And given that I.S. has worked for DDS for four years without something like this happening, it was likely isolated. On the other hand, I.S. says he has never been hit before, nor seen another staff member get hit, so this was his first opportunity to show how he reacts to being confronted with a violent act; as noted, he did not react well.

Yet, even if this was an isolated event, I cannot get past I.S.'s inability to acknowledge this was more than an accident. *E.A. v. DPPC*, *supra*. His instinct in this incident was to respond with violence. It is hard for someone to learn from their mistakes if they cannot admit they made a mistake, and I.S. continues to insist that what he did was a "reflex." He was unable to explain why he reacted this way despite his training or why he would react differently next time beyond just saying he will. To be sure, I.S. reacted the way many people would when hit by another person. But the purpose of I.S.'s training was to put him on alert that he cannot react that way to a situation he is almost certain to confront. DDS caretakers must be able to suppress the ordinary human instinct to respond to violence with violence. They must have a higher tolerance for physical confrontation and capacity to deescalate, given the populations they serve. This is a part of their general training.

I.S. was aware of this and even agreed he should not have reacted with violence. When P.D. first pushed him, he raised his hand and almost hit P.D., but then retracted his arm. That showed I.S. had the ability to restrain himself. But it also shows his willingness to react with violence. The fact he then hit P.D. after P.D. hit him proves his ability to restrain himself was limited. Caretakers are likely to confront physical contact by residents regularly, and sometimes more violently than in this case. I.S. did not respond well to his first incident with physical contact and DPPC has convinced me he would not respond any better the next time.

CONCLUSION AND ORDER

DPPC has proven by a preponderance of the evidence that I.S. committed registrable abuse and DPPC may place him on the abuse registry.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: May 13, 2026 *Eric Tennen*

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Eric Tennen
Administrative Magistrate