

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

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Neville H.,<sup>1</sup>

Appellant,

v.

Docket No. DPPC-23-0132

Disabled Persons Protection Commission,

Date: October \_\_\_\_, 2024

Respondent.

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**Appearances:**

Appellant: Neville H., *pro se*  
Respondent: Andrew Levrault, Esq.

**Administrative Magistrate:**

John G. Wheatley

**SUMMARY OF DECISION**

The Disabled Persons Protection Commission (DPPC) established by a preponderance of the evidence that the appellant committed abuse per se by striking a disabled client with a croquet mallet on September 28, 2022, and by hitting him on the head with his cell phone the following day. Although neither of these instances caused any significant injury, he struck the client with enough force to inflict physical pain, which is sufficient to constitute abuse per se under the DPPC's regulations. See 118 Code Mass. Regs. § 2.02. The appellant's conduct meets the criteria for "registrable abuse" under G. L. c. 19C, § 15(a), and his name must therefore be placed on the "registry of care providers against whom the commission has made a substantiated finding of registrable abuse" under G. L. c. 19C, § 15(b).

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<sup>1</sup> A pseudonym.

**DECISION**

The appellant, Neville H.,<sup>2</sup> appeals a decision by the DPPC that he committed registrable abuse and that his name must therefore be placed on the DPPC's "abuser registry." The DPPC's finding of registrable abuse was based on its determination that Neville committed "abuse per se" of a disabled person in his care through the "intentional application of a physical force" that inflicted pain. See 118 Code Mass. Regs. § 2.02 (defining abuse per se). On appeal, Neville disputes the DPPC's finding that he struck a disabled person in his care.

I held an evidentiary hearing in this matter on June 27, 2023, at the Division of Administrative Law Appeals (DALA) in Malden. The DPPC called two witnesses to testify: (1) a former coworker of Neville's; and (2) an investigator from the Department of Developmental Services who investigated the

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<sup>2</sup> An impound order was issued in this case requiring "the names or personally identifying information of the appellant, alleged victim, persons who have disabilities, witnesses (both in the investigation of the Disabled Person Protection Commission and the hearing before DALA), and persons who reported the alleged abuse to the Disabled Persons Protection Commission (DPPC)" to be kept confidential. Accordingly, I refer to all such individuals in this decision using a pseudonym or a generic term in place of their names. See *T.C. v. J.L.*, 67 Mass. App. Ct. 1111 (Oct. 24, 2006) (using fictitious initials as pseudonym in case subject to impoundment order, noting that a party may be identifiable by using the party's real initials [memorandum and order pursuant to former Appeals Court Rule 1:28]).

allegations of abuse against Neville.<sup>3</sup> Neville testified on his own behalf. I admitted exhibits A-M into evidence. DPPC filed a closing brief on September 1, 2023, after which the hearing record closed.<sup>4</sup>

**FINDINGS OF FACT**

1. In May 2018, the appellant, Neville H., was hired as a day program specialist at a facility that provided support services to adults with developmental disabilities. As a day program specialist, Neville was responsible for coordinating the daily activities and programs provided to those individuals. (Exhibits H, I.)
2. Annual evaluations of Neville's work performance identify his "specific responsibilities" as follows:

"[T]reatment procedures, providing health and well-being of individuals, providing favorable living/therapeutic environment, community integration, promotion of a good public image, maintaining contacts with parents/guardians/service coordinators, preserving the rights of each individual, and maintaining open lines of communication with co-workers, administration, stakeholder and support service personnel."

(Exhibit I.)

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<sup>3</sup> I refer to these witnesses generically as trainee/coworker and investigator, respectively, in accordance with the impound order that issued in this case (see footnote 2).

<sup>4</sup> I left the record open through September 1, 2023, to afford the parties an opportunity to file closing briefs. The appellant elected not to file a brief.

3. Neville's annual evaluations consistently rated his performance as meeting or exceeding his employer's expectations in all categories. (Exhibit I.)
4. The day program specialists were assigned to separate classrooms where they each provided instruction and support services to around 6-7 individuals with disabilities. (Trainee<sup>5</sup> Testimony.)
5. Among the individuals who attended Neville's classroom was Alan V.<sup>6</sup> Alan has been diagnosed with autism and pervasive developmental disorder. He is considered "non-verbal," that is, incapable of speaking clearly and instead using sound effects and non-verbal gestures to communicate (e.g., pointing, nodding/shaking his head, etc.). In addition, Alan uses an application on his cell phone to speak phrases for him. (Exhibits C, D; Trainee Testimony.)
6. Neville developed an amiable relationship with Alan during the four years that he attended Neville's classroom. Alan is a strong man, and he would often volunteer to help Neville with any heavy lifting, such as rearranging chairs or carrying

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<sup>5</sup> The first hearing witness was a new employee who attended Neville's classroom as part of her training. I refer to this witness generically as "trainee."

<sup>6</sup> A pseudonym.

lunch trays into the classroom. Neville referred to Alan as his "big helper." (Neville Testimony.)

7. In September 2022, a newly hired day program specialist was assigned to the various classrooms to observe and learn from the existing day program after she completed her initial week of on-board training. (Trainee Testimony.)
8. On September 28, 2022, the trainee was assigned to Neville's classroom for observation. While Neville was speaking with the trainee, Alan interrupted their discussion by using his cell phone to say "shut up" repeatedly to them. Neville instructed Alan to stop interrupting and asked him if he wanted to "play croquet." (Trainee Testimony.)
9. When Alan again used his phone to say, "shut up," Neville directed Alan to hold a medicine ball (weighing approximately 5-15 pounds<sup>7</sup>) above his head. (Trainee Testimony.)
10. Any time Alan attempted to lower the medicine ball, Neville swung a croquet mallet toward Alan's right knee and either struck him in his leg above the kneecap or feigned an effort to do so. With each swing of the mallet, Alan responded by throwing his right leg backwards, either to avoid being hit or in response to the mallet hitting him. Neville hit Alan above

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<sup>7</sup> The evidence placed the weight of the medicine ball in the range of five to fifteen pounds. The precise weight of the medicine ball within that range is immaterial to this decision.

his right knee twice with the mallet before he ended this "game." (Trainee Testimony; Exhibit C.)

11. The following day, Alan again used his cell phone to say, "shut up," when Neville was in a discussion with the trainee. Neville asked Alan to stop, but he ignored Neville's request and again used his phone to say, "shut up." Neville took Alan's cell phone from him, hit Alan on his head with it, and kept the phone for the remainder of the day. Alan responded by immediately grabbing and rubbing his head in the area where Neville hit him with his cell phone. (Trainee Testimony.)

12. The trainee witnessed both incidents described above. No other staff members were present. The trainee observed Alan display signs of discomfort or pain on each occasion. When Neville struck Alan with the croquet mallet, the trainee described the level of force he used as "definitely enough to inflict pain." When Neville hit Alan with his phone, the trainee could hear the phone hitting Alan's head from six feet away and saw him respond by grabbing his head like he was in pain and rubbing it hard. (Trainee Testimony.)

13. The trainee was reluctant to report the incidents because she was a new staff member and she considered Neville to be one of the best staff members at the facility. After the second incident on September 29, 2022, however, the trainee notified the program director. The program director instructed the

trainee to report the matter to the DPPC, which she did.

(Trainee Testimony.)

14. The facility placed Neville on administrative leave on September 30, and later terminated his employment effective December 6, 2022. (Exhibit J.)

15. A nurse inspected Alan's knees and head for signs of injury. The nurse did not observe any scrapes, cuts, or bruising on his knees, and she did not find any bumps, cuts, or scrapes on his head. No signs of injury are noted in the nurse's report. (Exhibit G.)

16. During an investigative interview with Alan on October 4, 2022, the investigator asked Alan how Neville responds when he does something wrong in the classroom or has difficult behavior. Alan demonstrated by holding something in his hands, lifting it above his head, and then pounding his hand on his right knee two times. Alan was shown pictures of different objects at the center, from which he identified the croquet mallet and medicine ball as the objects used. Alan also confirmed that Neville hit him in the head with his cell phone and indicated that it hurt by shaking and rubbing his head.<sup>8</sup> (Investigator Test.; Exhibit C.)

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<sup>8</sup> The investigator observed a small bruise on the inside of Alan's right knee. I do not attribute this bruise to the subject incident.

17. On December 20, 2022, the investigator issued a report concluding that the evidence was sufficient to find that Neville committed abuse per se through the application of physical force that caused Alan to suffer pain. (Exhibit C.)
18. On December 27, 2022, the DPPC notified Neville that his name would be placed on the DPPC abuser registry as a result of its investigation. (Exhibit K.)
19. On January 3, 2023, Neville filed a timely petition objecting to the DPPC's finding of registrable abuse. (Exhibit L.)
20. On February 16, 2023, the DPPC issued a decision affirming the substantiated finding of registrable abuse. (Exhibit M.)
21. On February 24, 2023, Neville filed a timely appeal with the Division of Administrative Law Appeals (DALA), denying that he ever struck Alan. (DALA Appeal Form.)

#### DISCUSSION

The DPPC determined that Neville committed abuse per se and his name must therefore be placed on the "registry of care providers against whom the commission has made a substantiated finding of registrable abuse," pursuant to G. L. c. 19C, § 15(b). The DPPC bears the burden in this appeal to prove "registrable abuse by the care provider, based on a preponderance of the evidence." G. L. c. 19C, § 15(c).

"Registrable abuse" is defined as:

"[A]n 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."

G. L. c. 19C, § 15(a).

There is no dispute that Alan is a "person with an intellectual or developmental disability," namely autism and pervasive developmental disorder, and that Neville was a "care provider" for Alan. The issue in dispute is the DPPC's determination that Neville's conduct amounted to "abuse per se" of Alan and constituted "registrable abuse" under G. L. c. 19C, § 15(a).

*1. Nevill's conduct constituted abuse per se.*

"Abuse per se" includes "the intentional . . . application of a physical force in a manner that inflicts physical pain . . . as determined by an evaluation of the totality of the circumstances." 118 Code Mass. Regs. § 2.02.

Although Neville may not have intended any harm, I conclude that he struck Alan hard enough to inflict pain, both when he hit Alan above his knee with the croquet mallet and when he hit him on the head with his cell phone. In both instances, the

trainee observed Alan show signs of physical pain, by throwing his leg backward after being struck above the knee with the mallet and by rubbing his head after being hit with the phone. Alan also indicated to the investigator that he experienced pain when Neville hit him on the head with his phone, by shaking and rubbing his head. Neville intentionally hit Alan with both the croquet mallet and the phone, and his conduct therefore constituted "abuse per se" of a person with a disability, under 118 Code Mass. Regs. § 2.02.

*2. Neville committed registrable abuse.*

"Registrable abuse" includes conduct that "constitutes abuse per se of a person with an intellectual or developmental disability," with one exception. Registrable abuse does 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). Relevant factors include, but are not limited to, the following:

"1. the nature and extent of the serious physical injury, serious emotional injury, or abuse per se sustained by the person with an intellectual disability or person with a developmental disability; and

2. relevant details about the care provider, such as whether the care provider received training relevant to the

incident at issue; the care provider's employment history in working with individuals with disabilities; prior instances of similar conduct by the care provider, regardless of whether said conduct constituted abuse or abuse per se; any statements or communication regarding the care provider's work history and fitness to provide services and supports to persons with disabilities; and whether the care provider's conduct could reasonably be addressed through training, education, rehabilitation, or other corrective employment action and the care provider's willingness to engage in said training, education, or other corrective employment action."

118 Code Mass. Regs. § 14.02(3)(b).

The evidence does not establish that the incident was isolated and unlikely to reoccur. This case involved two separate instances occurring on separate days. Neville asking Alan if he wanted to "play croquet" prior to the first incident, and Alan's demonstration during his interview with the investigator, suggest that there were prior instances in which Neville used the croquet mallet for punishment. Although his past employee performance reviews were favorable, I conclude from the record that these incidents were not isolated or unlikely to reoccur.

**CONCLUSION AND ORDER**

The DPPC established by a preponderance of the evidence that the appellant committed registrable abuse. The DPPC may therefore place the appellant's name on the registry of care providers established under G. L. c. 19C, § 15(b).

Division of Administrative Law Appeals

*/s/ John G. Wheatley*

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John G. Wheatley  
Administrative Magistrate