

NO. 312551

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

Pavel Aleksentsev,

Appellant,

v.

Department of Social and Health Services,

Respondent.

BRIEF OF RESPONDENT

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I. COUNTER STATEMENT OF THE FACTS

On March 19, 2009 Adult Protective Services (APS) received a referral alleging mental and sexual abuse of vulnerable adult. Hearing Record (HR) 146. The victim was Connie.¹ HR 9. Connie has multiple sclerosis, needs a wheel chair to ambulate, and receives COPES (in home care) assistance through Medicaid. Administrative Hearing Verbatim Report of Proceedings (RP) 46.

This referral was assigned for investigation to Curt Crusch. Mr. Crusch is an Adult Protective Services investigator. RP 67. The referent stated Pavel, (Mr. Aleksentsev) the caregiver and alleged perpetrator, “accuses [alleged victim] (Connie) and hollers at her.”; he sees women as “bitches and has called this before; had video on his phone of child using “vulgar and racist words” and when told by [alleged victim] to keep this to himself he did not listen and kept playing the video; Pavel brought another male to the house and told the [alleged victim] (Connie) the man was a “male escort” and said the [alleged victim] was ‘lonely and has needs.” HR 143. During the course of the investigation Connie reported Mr. Aleksentsev refused to take her home after an outing. He had to be told 3 times to take her home. HR 149.

As part of his investigation Mr. Crusch received information from Connie’s mother Peggy Biggs. Ms. Biggs confirmed Mr. Aleksentsev used words like “bitch” to describe women. HR 161. Connie confirmed he used

¹ The victim is identified only as Connie in the record and will be so identified herein.

this language and she found it offensive. RP 50. Both women confirmed this language stopped when Mr. Aleksentsev was told it was offensive. HR 161, RP 50. However, Ms. Biggs noted the highly offensive audio/video was played *after* Mr. Aleksentsev was advised to stop. HR 161. Mr. Crusch also interviewed Cathy Allen and obtained a copy of the offensive video/audio message. RP 80.

On March 26 2009 Mr. Crusch interviewed Connie. During that interview Connie confirmed Mr. Aleksentsev played an audio/video on his phone that contained nasty, offensive language after being asked 3 times to stop. RP 73. Connie confirmed this was played in front of her. RP 47, HR 162-163. The audio stated:

CHILD: You're a damn ho, (inaudible) fat ass bitch. Because I don't like you (inaudible) fucking bitch –fucking bitch asshole. Bitch. Because you're a bitch. Shit. Something's fucked up. Shit. That's why I'm gonna kill your ass with your fat ass, bitch. Shit. That's how you call – that's why you (inaudible) your baby's daddy (inaudible) and I'm gonna make, you bitch. And I'm gonna shoot your head off, bitch. Shit. (inaudible) fucked up. HR 180.

Also during this interview Connie reported an incident where, following an eye doctor appointment Connie wanted to return home and she had to argue with Mr. Aleksentsev about this, telling him at least 3 times she wanted to return home. RP 73-74.

At the administrative hearing Connie described Mr. Aleksentsev's behavior as "emotional abuse." RP 51. Connie testified the behavior of Mr. Aleksentsev was stressful and that she was afraid that stress would negatively affect her multiple sclerosis. RP 49, 62. Connie reported to Mr. Crusch, "I

shouldn't have to tell him (Mr. Aleksentsev) 3 times to take me home. He is supposed to be there to help me, not make things worse for me. I am just worn out after being around him sometimes." HR 149. Connie testified "...I was feeling mentally and physically exhausted. And maybe I—I am more vulnerable with MS and stress." RP 63.

Mr. Crusch interviewed Mr. Aleksentsev on March 31, 2009. RP 74. Mr. Aleksentsev was advised he could bring someone to the meeting, but he arrived alone. RP 75. Mr. Aleksentsev did not request an interpreter. RP 75. Mr. Aleksentsev was advised he was being interviewed because of a report from the community alleging mental abuse. Mr. Aleksentsev was read the definitions of a vulnerable adult, abuse, and mental abuse. HR 150. Mr. Aleksentsev stated he didn't understand this definition due to a language barrier. Despite reporting this language barrier Mr. Aleksentsev did not request an interpreter. HR 150. When the definitions were re-explained Mr. Aleksentsev agreed he understood. RP 75. At no time did it appear to Mr. Crusch that there was a language barrier. RP 75.

Mr. Aleksentsev met with Ms. Pakou Lee, Connie's case manager, in the past and at no time during these meetings did Mr. Aleksentsev request an interpreter. RP 33, 37. At no time during these meetings did it appear to Ms. Lee that Mr. Aleksentsev could not understand her. RP 37. Mr. Aleksentsev also had met with Ms. Lee's supervisor and appeared to comprehend their conversations. Mr. Aleksentsev "had questions and asked questions". RP 367. Neither Connie nor Mr. Aleksentsev ever

reported to anyone there was a language barrier between them and Connie believed they communicated extremely well. RP 55.

During the interview Mr. Aleksentsev was asked about the offensive video/audio and he stated he did play it however, it was accidental. RP 76. Mr. Aleksentsev also admitted using the word "bitch" but said that was also accidental. RP 77.

Based upon his investigation Mr. Crusch, with input from additional APS investigators and supervisors, determined that the allegation of mental abuse perpetrated by Mr. Aleksentsev should be founded. HR 155.

On June 24, 2009 a letter was issued to Mr. Pavel Aleksentsev informing him DSHS/Adult Protective Services (APS) substantiated a finding of mental abuse against him. The letter described the basis for the APS determination as follows:

You (Mr. Aleksentsev) were spoken to about not using the word "bitch" in the [alleged victim's] presence. At a later date you played a cell phone message for the [alleged victim] and that had vulgar terminology such as "big ass bitch" and "that's fucked up". The [alleged victim] asked you not to play it and you played it anyhow. She asked you to stop again and you continued to play it. The alleged victim asked you a third time to stop it, but you ignored her third request. HR 138-140.

The Appellant received this notice by certified mail on June 26, 2009. Mr. Aleksentsev timely requested an administrative hearing on July

2, 2009. HR 168. The initial decision upheld the substantiated finding of mental abuse. HR 100. Mr. Aleksentsev requested review by the Board of Appeals on April 12, 2012. HR 91. On July 15, 2010 the Board of Appeals remanded the case for a new hearing because an audio recording or transcript of the initial hearing could not be located. HR 81.

A new hearing was set for February 15, 2011. The second initial hearing again upheld the APS finding of mental abuse. HR 43. The Board of Appeals issued its decision affirming the Administrative Law Judge on May 4, 2012. HR 1. Mr. Aleksentsev timely requested judicial review of the administrative decisions. The Superior Court issued its decision upholding the founded finding of mental abuse on October 8, 2012. Mr. Aleksentsev appeals from this decision.

II. ARGUMENT

A. **Substantial Evidence Supports the Founded Finding of Mental Abuse Perpetrated by Mr. Aleksentsev. A Finding of Mental Abuse Does Not Require Expert Testimony.**

1. **Standard of Review**

When an appellate court reviews an administrative decision or action the procedures and standards for review are governed by the Administrative Procedures Act (APA). RCW 34.05.510, 570. *Kraft v. Department of Social and Health Services*, 145 Wn. App. 708, 187 P.2d 708 (2008). The burden of establishing the invalidity of the agency action is on the appellant and relief may be granted “only if [the court]

determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.” RCW 34.05.570(1)(a)(d).

Review of findings of fact is confined to whether they are supported by substantial evidence. RCW 34.05.570(3)(e). “We will sustain findings of fact if substantial evidence supports them, i.e. evidence sufficient to persuade a fair-minded person the finding is true.” *Goldsmith v. Department of Social and Health Services*, 169 Wn. App. 573, 280 P.3d 1173 (2012), citing *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrg’s Bd.*, 136 Wn.2d 38, 959 P.2d 1091(1988). The statute does direct the court, however, to make its assessment of “substantiality” on the basis of the “whole record” - i.e., to ask the question simply of whether there are sufficient facts in the record from which a reasonable person could make the same finding as the agency. The court may not “engage in re-weighing evidence of credibility and demeanor.” *Franklin County v. Sellers*, 97 Wn.2d 317, 330, 646 P.2d 113 (1982), *cert. denied*, 495 U.S. 1106 (1983). “We do not weigh witness credibility or substitute our judgment for the agency’s findings of fact.” *Goldsmith* at 584, citing *Brown v. Dep’t of Soc. & Health Servs.*, 145 Wn. App. 177, 182, 185 P.3d 1210 (2008).

The Department must prove vulnerable adult abuse by a preponderance of the evidence. This standard means it is more likely that not the alleged abuse occurred. WAC 388-02-0485, RCW 74.34.020(2); *Kraft*, 145 Wn. App. 708.

2. Substantial Evidence Supports the Trial Court's Decision to Uphold the Founded Finding of Mental Abuse.

RCW 74.34.020(2) defines abuse as the ...”willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.” Abuse can include sexual abuse, mental abuse, physical abuse and exploitation of a vulnerable adult. RCW 74.34.020(2). RCW 74.34.020(2)(c) defines mental abuse as “the willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling or swearing.” The agency need not prove actual injury to prove mental abuse has occurred. RCW 74.34.020(2) & RCW 74.34.020(2)(c). So, the agency must prove the victim was a vulnerable adult; that there was a willful action or inaction by the perpetrator; and a result such as coercion, harassment, inappropriate isolation, or verbal assault that includes ridiculing, intimidating, yelling or swearing.

Substantial evidence supports a finding of mental abuse perpetrated by Mr. Aleksentsev. There is no dispute Connie, the alleged victim (AV), is a vulnerable adult. HR 9, 70. Connie has multiple sclerosis, needs a wheel chair to ambulate, and receives COPES assistance through Medicaid. RP 46.

On March 19, 2009 APS received a referral alleging mental and sexual abuse of vulnerable adult. HR 146. This referral was assigned for

investigation to Curt Crusch. The referent stated Pavel, (Mr. Aleksentsev) the caregiver and alleged perpetrator, “accuses AV (Connie) and hollers at her.”; he sees women as “bitches and has called AV this before; had video on his phone of child using “vulgar and racist words” and when told by AV to keep this to himself he did not listen and kept playing the video. The referral also alleged sexual abuse that was not substantiated. HR 138, 143. During the course of the investigation Connie reported Mr. Aleksentsev refused to take her home after an outing. He had to be told 3 times to take her home. HR 149.

During her testimony at the administrative hearing Connie stated the first few months Mr. Aleksentsev was her care provider they did well together. RP 46. But, the last month she noticed a “different type of attitude, offensive.” RP 49. Connie stated Mr. Aleksentsev called women “bitches” and this was confirmed by Connie’s mother, Peggy who also lives in the home. RP 50, HR 155, 161. Connie noted she did not like Mr. Aleksentsev talking that way and told him to cease. Mr. Aleksentsev did stop. RP 50. However, after Mr. Aleksentsev said he would stop using vulgar language he played an audio/video on his phone that contained more vulgar language. HR 161, 180. Connie confirmed this video was played in front of her. Connie repeatedly asked Mr. Aleksentsev to stop playing the video as it was offensive to her. RP 48. Mr. Aleksentsev did not stop, but instead played it 3 or 4 times. RP 48. Mr. Aleksentsev then sent it to another caregiver who also found it highly offensive. RP 48. HR 154, 157-159.

Connie also reported Mr. Aleksentsev refused to take her home after a visit to an eye doctor. Connie testified she was tired had not eaten and wanted to go home. RP 48. Mr. Aleksentsev was “real insistent” about stopping at two places, but Connie just wanted to go home. RP 48. Connie had to ask Mr. Aleksentsev 2 or 3 times before he would take her home. HR 149. Connie said, “But I had to actually almost have a fit, uh, to get to go home.” RP 48. Mr. Aleksentsev admitted taking Connie to Arby’s and Lowe’s. Transcript 99. Connie stated she asked to remain in the van but Mr. Aleksentsev , “...got me out and did what he wanted.” HR 113. Emphasis added. Connie stated Mr. Aleksentsev’s behavior as “unacceptable and offensive.” RP 62.

Mr. Aleksentsev had several explanations for this behavior. In the investigative interview with Mr. Crusch, Mr. Aleksentsev stated about the audio/video on the phone he “accidentally played it when I was trying to delete it.” HR 150. When asked how it was sent to another provider when he had deleted it, Mr. Aleksentsev said he thought he was deleting it but accidentally sent it. HR 150. But, later in his testimony at the administrative hearing when called by the Department Mr. Aleksentsev stated “[A]nd I have never played it in front of Connie or in the presence of Connie or in front of Connie’s face. I have had similar messages—messages with a similar voice perhaps before.” RP 23. Mr. Aleksentsev testified again when he was called by his attorney. Mr. Aleksentsev again stated, “...in front of her face I’ve never played it.” Mr. Aleksentsev also stated he did not use the word “bitch” and but contradicted himself when he stated he

may have used it accidentally. Transcript 27, 28, 97, HR 151. Regarding refusing to return Connie home after a doctor appointment, Mr. Aleksentsev stated Connie did not say anything about returning home and after arriving at Lowe's agreed that since they were there they might as well go in. RP 99.

Mr. Aleksentsev's testimony is in direct conflict with Connie's. Because of inconsistencies between Mr. Aleksentsev's statements to Mr. Crusch and his testimony, and Mr. Aleksentsev's evasive testimony at the administrative hearing the ALJ found him to be "not credible in any material respect." HR 40. The review judge supported this finding. HR 12-13. Evidence of credibility should not be evaluated on appeal. "Furthermore, most of the alleged irregularities cited by Ms. Kraft challenge the weight or credibility of the evidence-considerations within the exclusive province of the trier of fact. We do not evaluate witness credibility or re-weigh the evidence." *Kraft*, 145 Wn. App. at 717. The findings of credibility should not be disturbed on appeal.

Mr. Aleksentsev tries to argue "... a mental abuse claim is similar to a tortious claim for outrage or intentional infliction of emotional distress." Brief of Appellant, p. 16. However, this is not the law.

In *Goldsmith v. Dep't of Soc. & Health Services* 169 Wn. App. 573, 280 P.3d 1173 (2012), Mr. Thomas Goldsmith III appealed a founded finding of mental abuse. Mr. Goldsmith III had, "heated discussions about finances in person and by phone that deteriorated into yelling" with his father. *Goldsmith*, 169 Wn. App. at 576. These discussions so upset the

father and he would cry, not take his medications, and become noncompliant. *Id.* The Department issued a substantiated finding of mental abuse based upon the behavior of Mr. Goldsmith III and the Administrative Law Judge concluded the behavior of Mr. Goldsmith III rose to the level of mental abuse. *Goldsmith*, 169 Wn. App. at 579.

Mr. Goldsmith appealed and argued the Department failed to prove he acted willfully or inflicted injury. *Id.* at 580. The appellate court disagreed and said, “A reasonable person would know that lengthy and repeated yelling matches with a 98- year old person in declining health would result in mental abuse that could cause harm or injury.” *Id.* at 585.

Connie described Mr. Aleksentsev’s behavior as “emotional abuse.” RP 51. Connie testified the behavior of Mr. Aleksentsev was stressful and that she was afraid that stress would negatively affect her multiple sclerosis. RP 49, 62. Connie reported to Mr. Crusch, “I shouldn’t have to tell him (Mr. Aleksentsev) 3 times to take me home. He is supposed to be there to help me, not make things worse for me. I am just worn out after being around him sometimes.” HR 149. Connie testified “...I was feeling mentally and physically exhausted. And maybe I—I am more vulnerable with MS and stress.” RP 63.

Clearly, the behavior of Mr. Aleksentsev meets the definition of mental abuse. Mr. Aleksentsev repeatedly disregarded requests made by Connie to stop the use of vulgar and racist language around her and disregarded her desires to return home after an exhausting visit to the eye doctor. It was totally within Mr. Aleksentsev’s power to stop his behavior

after being asked once, but instead had to be asked 2 and 3 times to cease.

Clearly his behavior was willful.

The repeated use of vulgar language and swearing meets the definition of verbal abuse per RCW 74.34.020(2)(c)—“Mental abuse means...verbal assault that includes ridiculing, intimidating, yelling or swearing.” Additionally refusing to return Connie home after repeated requests, refusing to allow her to remain in the van and taking her somewhere against her wishes also meets the definition of mental abuse in that this behavior was coercive and harassment.²

3. Expert Testimony Is Not Required To Find Mental Abuse.

Appellant argues a finding of abuse requires expert testimony. “Contrary to Goldsmith’s argument, the Department was not required to prove injury by expert medical testimony.” *Goldsmith*, 169 Wn. App. at 585. The court went on to state administrative hearings are subject to relaxed rules of evidence and evidence is admissible if it is of the kind on which “reasonably prudent persons are accustomed to relying on in conduction their affairs.” *Id.* at 585.

In *Goldsmith* and *Kraft* the court relied upon the testimony of caregivers about the effects of the behavior of the alleged perpetrator on the victim. The court in *Goldsmith* found this evidence sufficient to prove

² The Review Judge used the definition of “harassment” from Black’s Law Dictionary, “words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms or causes substantial emotional distress that person and serves no legitimate purpose.” HR 25. Appellant did not assign error to the use of this definition.

mental abuse. “this testimony was more than sufficient to prove willful action that inflicted injury...”. *Goldsmith*, 169 Wn. App. at 586.

In the administrative hearing Connie’s case manager Pakou Lee testified that Connie felt harassed by Mr. Aleksentsev. RP 35. Ms. Lee also testified Connie informed Mr. Aleksentsev that she was upset by his behavior but then he would disregard this and continue with the behavior. RP 36. Connie herself described Mr. Aleksentsev’s behavior as “emotional abuse”. RP 51. She testified she was feeling mentally and physically exhausted and she was afraid the stress would negatively affect her multiple sclerosis. RP 62-63. Mr. Aleksentsev behaved in such a way that Connie could not predict his behavior and could not rely on him to follow her directions. She testified “I should not have to tell him 3 times to take me home. He is supposed to help me out, not make things worse for me. I am just worn out after being around him sometimes.” HR 149. This is more than sufficient evidence to prove mental abuse.

B. Appellant Was Not Prohibited From Cross Examination Of The Adult Protective Services Investigator And So Was Not Denied Due Process.

Mr. Aleksentsev’s attorney in the administrative hearing, Dusty Deissner, was given every opportunity to cross examine all the witnesses including the Adult Protective Services investigator. RP 83-86. The colloquy in question went as follows: Deissner: “When you, uh, went to see Connie at a later date, uh, you had some pretty significant criticisms of one of her earlier caregivers as well; didn’t you?” RP 85. Department’s attorney made a relevance objection. The court sustained the relevance

objection, but did not deny Mr. Deissner further cross examination. Mr. Deissner stopped his cross examination because he was done, not because of any ruling by the ALJ. RP 86. After the ALJ sustained a relevance objection Mr. Deissner stated, "Well, actually, that's all I have." RP 85. At no time did the ALJ tell Mr. Deissner the cross examination had to stop or what avenues of cross examination Mr. Deissner could or could not pursue. The ALJ did state "I'm not gonna to put the APS investigator on trial here.", but did not go further by limiting cross-examination or putting a limiting instruction on appellant's attorney. Mr. Deissner could have continued to cross examine Mr. Crusch but chose not to do so.

Appellant alleges in his brief there was substantial evidence *in the first hearing* Mr. Crusch "had a bone to pick with Mr. Aleksentsev", and argues the ALJ precluded questioning into possible bias. Brief of Appellant p. 31. However the evidence Mr. Aleksentsev relies on in the record regarding bias is the written closing statement submitted by Mr. Aleksentsev's first attorney. This written closing was based upon evidence submitted in the first hearing, where the recording of the hearing was lost. Evidence elicited in that first hearing is not before this court.

Additionally closing statements are not evidence they are arguments. Closings are the attorney's interpretation of the evidence presented at the trial. The closing statement was not made under the penalty of perjury and has no indicia of reliability. The recording of the first hearing was lost so no transcript exists. There is no competent

evidence of any bias by Mr. Crusch and this may be why Mr. Deissner chose not to pursue further cross examination of Mr. Crusch.

Even if the ALJ erred, it is harmless. There is sufficient evidence in the record to support the Findings of Fact and Conclusions of Law. Even without the testimony of Mr. Crusch there is still substantial evidence to support the finding of mental abuse based on the testimony of Connie, Ms. Lee and Mr. Aleksentsev. See above arguments.

C. The Department Did Not Refuse The Services Of An Interpreter To Mr. Aleksentsev And So He Was Not Denied An Accommodation And Was Not Subject To Discrimination.

On March 31, 2009 Mr. Aleksentsev was interviewed by the APS investigator, Mr. Curt Crusch. HR 150 RP 75. Mr. Aleksentsev arrived alone, but had been advised he could bring someone with him. RP 75. Mr. Aleksentsev was told he was being interviewed because of a report from the community alleging mental abuse. HR 150. Mr. Aleksentsev was read the definition of a vulnerable adult, abuse and mental abuse. RP 75, HR 150. Mr. Aleksentsev told Mr. Crusch he did not understand the definitions due to having a language barrier. RP 75, HR 150. Despite reporting this "language barrier" Mr. Aleksentsev did not request an interpreter. HR 150, RP 75. Mr. Crusch restated the meanings and gave examples. Mr. Aleksentsev then reported he understood the meanings. HR 150, RP 75. At no time after this interview and until the administrative hearing did Mr. Aleksentsev request another interview with an interpreter or complain to the Department he did not understand the interview process

due to a lack of an interpreter. Mr. Aleksentsev even had an attorney contact the Department on April 1, 2009 and the attorney did not object to the interview process because of the lack of an interpreter. HR 151.

Mr. Aleksentsev understood the questions posed by Mr. Crusch as he had explanations for each allegation. HR 150-151. Mr. Crusch testified "...at no time did I (sic) appear as there was a language barrier where we couldn't communicate. And it had never been stated to me that he needed an interpreter while working with Connie and talking with her and her mother or Pakou." RP 75. While discussing the vulgar cell phone incident in the initial interview, Mr. Aleksentsev did not express any confusion regarding which message Mr. Crusch was inquiring about. RP 76.

Ms. Pakou Lee, Connie's case manager for Aging and Long Term Care of Washington, testified she met with Mr. Aleksentsev a few times at the Department prior to the allegation of mental abuse. RP 36-37. Mr. Aleksentsev did not request an interpreter during any of those meetings. HR 37. It did not appear to Ms. Lee that Mr. Aleksentsev had trouble understanding what was being communicated to him. RP 37. Mr. Aleksentsev also met with Ms. Lee's supervisor and appeared to understand the supervisor as well. Mr. Aleksentsev "had questions and asked questions." RP 37. Neither Connie nor Mr. Aleksentsev ever reported to Ms. Lee there was a language barrier between them. RP 37. Connie stated in her testimony when asked if she could communicate clearly with Pavel (Mr. Aleksentsev) she thought they could communicate extremely well. RP 55.

Although Mr. Aleksentsev testified in the administrative hearing he requested an interpreter at the interview with Mr. Crusch, the ALJ and Review judge found otherwise. RP 17, HR 7. This finding is supported by substantial evidence. Mr. Crusch did not refuse to provide an interpreter. Rather, Mr. Aleksentsev simply did not request one and Mr. Crusch had no reason to believe at the time of the interview Mr. Aleksentsev needed one. Mr. Aleksentsev argues because he had an interpreter at the administrative hearing then it was obvious he needed one for the interview. Brief of Appellant p. 32. It was Mr. Aleksentsev who requested the interpreter in his request for a hearing. HR 168. Additionally, Mr. Crusch is not psychic and could not foresee Mr. Aleksentsev's future request and use of an interpreter. Mr. Aleksentsev also argues, "[I]t is obvious to anyone who talks to Mr. Aleksentsev that he needed an interpreter to discuss the issues before the court." The evidence shows it was not obvious to Ms. Lee, her supervisor, Connie or Mr. Crusch. RP 36-37, 55, 75.

Mr. Aleksentsev's testimony that he requested an interpreter, not once but many times, before the interview with Mr. Crusch is in direct conflict with the testimony of Mr. Crusch. The Administrative Law Judge found Mr. Aleksentsev to be "not credible in any material way." Findings of credibility should not be disturbed on appeal. Mr. Aleksentsev was not denied an interpreter, he did not request one. Further, The Department had no reason to believe Mr. Aleksentsev required an interpreter during the interview that occurred on March 31, 2009. Mr. Aleksentsev was not

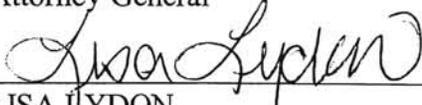
denied an accommodation due to a language barrier and was not discriminated against in any way.

III. CONCLUSION

Substantial evidence supports the Department's finding of mental abuse perpetrated by Mr. Aleksentsev. Mr. Aleksentsev demonstrated willful, continued use of vulgar and offensive language even when told to not to continue to use such language in front of Connie. Worse, Mr. Aleksentsev refused to transport Connie home as requested and instead took her on errands despite being told by Connie she was tired and did not want to run errands. Mr. Aleksentsev's behavior was willful and harmful to Connie. Mr. Aleksentsev was not denied accommodation, was not discriminated against, and was not denied the ability to cross examine all witnesses. The Department requests the substantiated finding of mental abuse be affirmed.

Respectfully Submitted this 5 day of June, 2013.

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