


OFFICE OF THE WASHINGTON COUNTY ATTORNEY
PETER J. ORPUT COUNTY ATTORNEY

November 15, 2022

 Honorable Laura A Pietan
 Judge of District Court
 14949 62nd Street North
 Stillwater, MN 55082

 RE: Stephen Carl Allwine vs. Minnesota Commissioner of Human Services and Washington County
 Community Services
 County Attorney File No. CV-2022-1686
 Court File No. 82-CV-22-4952

Dear Judge Pietan:

Mr. Allwine has filed for judicial review, pursuant to Minnesota Statute §256.045, subd. 7, of a Decision of State Agency on Appeal issued by the Department of Human Services dated August 4, 2022. A copy of the Decision is attached to this letter.

As detailed in Minnesota Statute §256.045, subd. 8, the reviewing District Court may consider the matter either in or out of chambers and shall take no new or additional evidence unless it determines that such evidence is necessary for a more equitable disposition of the appeal. An appeal to District Court is not an opportunity to re-litigate the Fair Hearing, but a review of the Fair Hearing record to determine if the Decision is supported by the evidence presented at the Fair Hearing.

The Decision of State Agency on Appeal followed the filing of a Motion for Summary Disposition, as all issues were precluded from re-litigation by collateral estoppel due to Mr. Allwine's criminal conviction for Murder in the First Degree. Upon receipt of the DHS record, the County respectfully requests the Court issue a Scheduling Order directing Mr. Allwine to submit his legal brief in support of his request for review within 30 days, and allowing the County 30 days to respond to Mr. Allwine's brief.

 Very truly yours,
 KEVIN MAGNUSON, COUNTY ATTORNEY
 WASHINGTON COUNTY, MINNESOTA

 /s/ Kari A. Lindstrom
 Kari A. Lindstrom
 Assistant County Attorney

KAL/kmd

 cc: Stephen Carl Allwine, OID #256147
 Attorney General's Office, on behalf of the Commissioner of Human Services

AUG-08 '22 09:44



Appellant: Stephen Allwine
For: Maltreatment of a Minor
Agency: Washington County
Docket: 193659

**DECISION OF
STATE AGENCY
ON APPEAL**

On March 17, 2022, Human Services Judge Thomas Haluska held a prehearing conference under Minn. Stat. § 256.045, subd. 3.¹ At the hearing, with the consent of both parties, the court issued a scheduling order concerning the submittal of summary disposition motions in this matter, with final briefs submitted no later than June 17, 2022.

The following persons appeared for the hearing:

Stephen Allwine, Appellant;

Kari Lindstrom, Assistant Washington County Attorney, Agency's Attorney.

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

¹ The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 260E.33, subdivision 3; and 245C.27, subdivision 1.

STATEMENT OF ISSUES

The issues raised in this appeal is whether there are material issues of fact that would warrant an evidentiary hearing on whether the Agency's determination that the Appellant committed maltreatment by egregious harm of his minor child J.A., where Appellant murdered his wife, the adopted mother of J.A., in the family home by shooting her in the head with a gun and then deliberately bringing J.A. into the family home where J.A. saw his mother lying on the floor with a pool of blood around her head?

Recommended Decision:

AFFIRM the Agency's maltreatment determination.

PROCEDURAL HISTORY.

1. On February 24, 2017, Washington County Community Services ("Agency") sent Stephen Allwine ("Appellant") a written notice of action informing Appellant that the Agency made a finding of maltreatment of J.A. by egregious harm. *Agency Appendices, Page 40.*
2. On March 8, 2017, Appellant timely sought reconsideration of the Agency's Maltreatment finding. *Agency Appendices Page 41.*²
3. On April 18, 2017, the Agency upheld its determination maltreatment by inflicting egregious harm on his minor child. *Agency Appendices Page 45.*
4. On May 15, 2017, the appellant filed an appeal regarding the Agency's determination that the Appellant maltreated his minor child.
5. On, September 4, 2018, the Appeals Division was informed that the appellant was involved in a pending district court case, resulting in an order, dated September 21, 2018, suspending and continuing the administrative appeal indefinitely until the action pending before the district court has been completed.

² The Agency has not challenged jurisdiction.

6. On April 21, 2021, the Minnesota Supreme Court issue a decision upholding the Appellant's murder conviction of his wife. State v. Allwine, 963 N.W.2d 178, 182 (Minn. 2021), cert. denied, 142 S. Ct. 819 (2022).³

7. On March 17, 2022 a prehearing conference was held establishing a Scheduling Order for the Agency's and the Appellant's Cross Summary Disposition motions, with final briefs submitted no later than June 17, 2022.

FINDINGS OF FACT

1. Appellant is the adopted father of J.A. (DOB 10/24/2007), a minor child under the age of 16 and was the adopted father of J.A on November 13, 2016. *Agency Appendices Page 5.*

2. On November 13, 2016, Appellant murdered his wife, the adopted mother of J.A., in the family home by shooting her in the head with a gun. State v. Allwine, 963 N.W.2d 178, 182 (Minn. 2021), cert. denied, 142 S. Ct. 819 (2022).

3. On November 13, 2016, Appellant deliberately brought J.A. into the family home where "J.A. saw his mother lying on the floor with a pool of blood around her head." State v. Allwine, 963 N.W.2d 178, 182 (Minn. 2021), cert. denied, 142 S. Ct. 819 (2022).

ARGUMENTS OF THE PARTIES

1. The Agency argues the facts underlying the maltreatment determination have been litigated by the District Court and the murder conviction was affirmed by the Minnesota Supreme Court and Appellant is therefore barred from re-litigating those findings in this forum under the doctrine of collateral estoppel. *Agency's Motion for Summary Disposition.*

2. Appellant essentially argues that he did not kill his wife and that the determination of the court in his murder conviction should not apply to this action and that his action of exposing his son to the murder scene was therefore accidental. *Appellant's Responsive Argument Regarding Summary Disposition.*

³ Appellant had requested review of his conviction by the Supreme Court of the United States. Appellant's petition for a writ of certiorari was denied.

APPLICABLE LAW

1. **Jurisdiction.** The Commissioner of Human Services has jurisdiction over appeals involving matters listed in Minnesota Statutes, section 256.045, subdivision 3(a).
2. **Request for Reconsideration.** The subject of a maltreatment finding may request reconsideration, provided the request is made in writing to the investigating agency within 15 calendar days after receipt of the notice of the final determination. *Minn. Stat. § 260E.33, subd. 2(a).*
3. **Request for Fair Hearing.** If the maltreatment finding is upheld, or the investigating agency fails to act upon the request for reconsideration, the subject of the maltreatment finding may file a request for a fair hearing. *Minn. Stat. § 260E.33, subd. 2(b).* Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or within 90 days of such written notice if the person shows good cause why the request was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(i).* In a maltreatment hearing, the "state human services judge shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under section 626.557 and chapter 260E." *Minn. Stat. § 256.045, subd. 3b(a).*
4. **Required Investigation.** *Minn. Stat. § 260E.06* requires the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings and an investigation when the report alleges substantial child endangerment. The county local welfare agency is the agency responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, legally unlicensed child care, juvenile correctional facilities located in the local welfare agency's county, and reports involving children served by an unlicensed personal care provider organization. *Minn. Stat. § 260E.14.* After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed. *Minn. Stat. § 260E.24, subd. 3 (a).*
5. **Maltreatment.** *Minn. Stat. § 260E.03, subd. 12* defines "maltreatment" as any of the following acts or omissions: (1) egregious harm; (2) neglect; (3) physical abuse; (4) sexual abuse; (5) substantial child endangerment; (6) threatened injury; (7) mental injury; or (8)

maltreatment of a child in a facility.

6. **Substantial child endangerment.** In relevant part, Minn. Stat. § 260E.03, subd. 22 defines "substantial child endangerment" to mean "that a person responsible for a child's care, by act or omission, commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm under subdivision 5."

7. **Threatened injury.** In relevant part, Minn. Stat. § 260E.03, subd. 23, in part, defines "threatened injury" to mean "a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury . . . [that] includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in subdivision 17, who has: (1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm under subdivision 5. . . ."

8. **Egregious Harm.** In relevant part, "[e]gregious harm" means the . . . neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." *Minn. Stat. § 260E.03, subd. 5; Minn. Stat. § 260C.007, subd. 14.*

9. **A Person Responsible For the Child's Care.** In relevant part, a "person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent. . . ." *Minn. Stat. § 260E.03, subd. 17.*

10. **Burden of Persuasion.** The burden of persuasion is governed by specific state or federal law and regulations that apply to the subject of the hearing. If there is no specific law, then the participant in the hearing who asserts the truth of a claim is under the burden to persuade the appeals referee that the claim is true. *Minn. Stat. § 256.0451, subd. 17.* The state human services judge shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition. *Minn. Stat. § 256.045, subd. 3b (a).* In this case, the agency carries the burden of proof and must show by a preponderance of the evidence that the appellant committed maltreatment of a minor.

11. **Summary Disposition.** Summary disposition is the administrative equivalent of summary judgment. *In re Gillette Children's Specialty Healthcare, 883 N.W.2d 778, 785 (Minn. 2016).* Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. *Id.*

12. **Collateral Estoppel.** Collateral estoppel precludes identical parties or those in privity with them from re-litigating identical issues in a subsequent, distinct proceeding. *State v. Lemmer*, 736 N.W.2d 650, 659 (Minn. 2007), citing *Willems v. Comm'r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn.1983) (quoting *Victory Highway Village, Inc. v. Weaver*, 480 F.Supp. 71, 74 (D.Minn.1979)). Courts may apply collateral estoppel when:

- (1) the issue was identical to one in a prior adjudication;
- (2) there was a final judgement on the merits;
- (3) the estopped party was a party or in privity with a party to the prior adjudication; and
- (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Id.

CONCLUSIONS OF LAW AND ANALYSIS

1. **Jurisdiction and Procedure.**

a. **Subject Matter Jurisdiction.** The Human Services Judge has jurisdiction to hear this appeal and to issue a recommended decision to the Commissioner of Human Services, pursuant to Minn. Stat. §§ 256.045, subd. 3(a)(9), and 260E.33, subd. 2.

2. **Burden of Persuasion; Standard of Proof.** The Agency, as the party that determined maltreatment, bears the burden to persuade the Human Services Judge that there is a preponderance of the evidence to conclude that Appellant committed an act that constitutes maltreatment. *Minn. Stat. §§ 256.0451, subd. 17 and 22; 256.045, subd. 3b(a)*. The Agency has met its burden here.

3. **J.A. Was a Minor Under the Age of 16.** J.A. was born October 24, 2007. On November 13, 2016, Appellant murdered his wife, the adopted mother of J.A., in the family home with by shooting her in the head with a gun and deliberately brought J.A. into the family home where "J.A. saw his mother lying on the floor with a pool of blood around her head." *State v. Allwine*, 963 N.W.2d 178, 182 (Minn. 2021), *cert. denied*, 142 S. Ct. 819 (2022). Thus at the time of Appellant's acts of maltreatment, J.A. was a minor under the age of 16.

4. **Appellant was a Person Responsible for J.A.'s Care.** As noted, a "person responsible for the child's care" includes "an individual functioning within the family unit and having responsibilities for the care of the child such as a parent . . ." *Minn. Stat. § 260E.03, subd. 17*. Thus, Appellant was a Person Responsible for J.A.'s care because Appellant was the father of J.A. on November 13, 2016 when Appellant murdered his wife,

5. **Maltreatment of a Minor.** First, I find no merit to Appellant's argument that

summary dispositions or summary judgment motions are not appropriate or are not available for administrative hearings regarding maltreatment findings. As noted there is substantial case law that supports the use of collateral estoppel in administrative hearings and they have historically been used by the Commissioner of Human Services in these types of proceedings.

Appellant also argues that the District Court erred in finding that the Appellant murdered his wife, the adopted mother of J.A., in the family home by shooting her in the head with a gun and deliberately brought J.A. into the family home where "J.A. saw his mother lying on the floor with a pool of blood around her head." Appellant argues that he should have the opportunity to relitigate the issues and facts determined by the district court. I disagree. The issue of whether Appellant murdered his wife and deliberately exposed his young son to the murder scene was already litigated in district court and affirmed on appeal. Appellant cannot relitigate that issue here. . *State v. Lemmer*, 736 N.W.2d 650, 659 (Minn. 2007), citing *Willems v. Comm'r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn.1983) (quoting *Victory Highway Village, Inc. v. Weaver*, 480 F.Supp. 71, 74 (D.Minn.1979)). Further, Appellant was a party to the trial where he was found of guilty of Premeditated First Degree Murder and was represented by an Attorney, giving Appellant "a full and fair opportunity to be heard on the adjudicated issue," which resulted in a final judgment on the merits.

Because the doctrine of collateral estoppel does apply, the Agency is entitled to summary disposition. On January 31, 2018, a jury returned a verdict of guilty of Premeditated First Degree Murder finding that Appellant murdered his wife, the adopted mother of J.A., in the family home by shooting her in the head with a gun. As a result, on February 2, 2018, Appellant was committed to the Commissioner of Corrections for Life without Parole. As part of the murder Appellant deliberately exposed his son to the murder scene. Those acts meet the definition of maltreatment through egregious harm of a minor child, including substantial child endangerment and threatened injury, because, by murdering his wife, Appellant deprived his son of his mother's parental care. By murdering his wife, the Appellant deprived his son of the parental care of the Appellant. By murdering his wife and deliberately exposing his son to the murder scene, the Appellant demonstrated his own "grossly inadequate ability to provide minimally adequate parental care." See, *Minn. Stat. § 260C.007, subd. 14*.

Thus, based on the above, I take judicial notice of the Minnesota Supreme Court decision upholding the Appellant's murder conviction of his wife as well as the findings contained therein. *State v. Allwine*, 963 N.W.2d 178, 182 (Minn. 2021), cert. denied, 142 S. Ct. 819 (2022). Because those findings support a determination that Appellant maltreated his minor child by inflicting egregious harm on his minor child, this court is precluded from re-litigating the issue. As a result, the Agency's determination of maltreatment should be affirmed.

RECOMMENDED ORDER

Based on all of the evidence, I recommend that the Commissioner of Human Services:

- **AFFIRM** the Agency's determination that the Appellant maltreated his child by inflicting egregious harm on his minor child.

/s/ Thomas Haluska

3 August 2022

Thomas Haluska
Human Services Judge

Date

ORDER

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

Anna I. Cortez

Anna I. Cortez
Co-Chief Human Services Judge

August 4, 2022

Date

cc: Stephen Allwine, Appellant;
Kari Lindstrom, Assistant Washington County Attorney

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FURTHER APPEAL RIGHTS

This decision is final unless you take further action.

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action. If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 24.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 7.⁴

⁴ County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 Code of Federal Regulations, section 273.15(q)(2), and Minnesota Statutes, section 256J.40. A prepaid health plan may not appeal this order under Minnesota Statutes, section 256.045, subdivision 7.