

IN THE INTERMEDIATE OF APPEALS OF WEST VIRGINIA

DOCKET NO. 26-ICA-93

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**TYLER FERNANDES,
Appellant Below, Petitioner,**

vs.

**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES,
Respondent Below, Respondent.**

Civil Action No. 25-BOR-2872
West Virginia Department of Human Services
Office of Inspector General Board of Review
David A. Bishop, State Hearing Examiner
1900 Kanawha Boulevard East
Building 6, Room 817B
Charleston, West Virginia 25305

**RESPONSE BRIEF ON BEHALF OF WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES**

Petitioner

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ASSIGNMENTS OF ERROR

1. The Board of Review did not err as a matter of law when it upheld a substantiation of physical abuse finding under W. Va Code § 49-1-201 based on deficiencies in de-escalation and room-entry procedure and reliable evidence that Petitioner knowingly or intentionally inflicted injury outside of lawful control or self-defense.
2. The Board of Review did not improperly substitute speculation for evidence in finding intent based on pre-incident conduct and therefore uphold the substantiation of physical abuse against the Petitioner.
3. The Board of Review's decision is not arbitrary and capricious.
4. The Board of Review did not misapply the statutory definition of "abuse" under W. Va. Code § 49-1-201 when it upheld the decision of the Respondent to substantiate an abuse finding against the Petitioner.

STATEMENT OF THE CASE

This appeal stems from a final decision of the Department of Human Services¹ Office of Inspector General Board of Review dated January 30, 2026, wherein the Board of Review upheld the substantiation of abuse finding against the Petitioner. An administrative hearing was held on December 8, 2025, in accordance with provisions found in W. Va Code § 29A-5-1 *et seq.* and W. Va. Code R. § 69-1-1 *et seq.* D.R. 66-76.

After review of the record, including testimony, exhibits, and stipulations into evidence at the administrative hearing, the Board issued its Decision on January 30, 2025, concluding that Petitioner "knowingly and intentionally inflicted physical injury" upon a Gene Spadaro Juvenile Center resident as demonstrated by Petitioner profanely instigating C.B.,² failing to contact a staff professional, not requesting officer assistance prior to entry, and failing to act with immediacy. D.R. 66-76.

¹ As of January 1, 2024, the agency formerly known as the Department of Health and Human Resources is now three separate agencies—Department of Health Facilities, Department of Health, and Department of Human Services. For purposes of abuse and neglect appeals, the Department of Health and Human Resources, or DHHR, shall mean the Department of Human Services.

² As this case involves minors, initials or descriptive terms are used to identify individuals in accordance with Rule of Appellate Procedure 40(e)(1).

At the hearing on December 8, 2025, Matthew Cutright, IIU Supervisor, testified and entered the following exhibits on behalf of the Department. D.R. 67, 68.

- D-1: Notice of Findings Letter
- D-2: Investigation of Alleged Abuse or Neglect in Child Care Agency 503741
- D-3: IIU Short Report 503741
- D-4: WVJDS Confidential Report: CR-04342
- D-5: WVDJS Incident Detail Reports 140569
- D-6: WVJDS Incident Detail Reports 140408
- D-7: Statement of F.B.
- D-8: Photos (11)
- D-9: Photos (11)

After a full and fair hearing, including a review of exhibits and testimony, the Board of Review made several findings of fact.

On January 23, 2025, the Respondent IIU division received a child abuse allegation involving Petitioner and seventeen-year-old Gene Spadaro Juvenile Center resident C.B. (D.R. 68). At the conclusion of the investigation, maltreatment was substantiated against the Appellant. The finding made was physical abuse. D.R. 68-89.

On January 22, 2025, the Appellant was working at the Gene Spadaro Juvenile Center as a correctional officer. Due to lying to Officer Harris, C.B. was sent from the day room to Unit A, where he resided. C.B. refused to go to his room when instructed by the Appellant. The Appellant put C.B. on a cooldown period and placed C.B. in his room. D.R. 68.

The Appellant reported to the responding IIU Worker and DOC Investigator, Trina McKinney, that when in his room, C.B. asked to speak with various staff members, including the sergeant on duty and the facility therapist. H.N., a 17-year-old Gene Spadaro Juvenile Center Resident, reported that when C.B. was in his room he asked the Appellant, through the door, to speak with the officer on duty and the therapist. D.R. 68, 89-90.

S.G., a seventeen-year-old Gene Spadaro Juvenile Center resident, was in Unit A at the time of the events. S.G. reported that while C.B. was in his room he asked the Appellant to contact the officer in charge. D.R. 68. B.L., a fifteen-year-old Gene Spadaro Juvenile Center resident, was in Unit A at the time of the events. B.L. reported that C.B. was yelling, screaming, and asking to speak with the officer on duty. D.R. 68. J.P., a sixteen-year-old Gene Spadaro Juvenile Center resident, returned to Unit A during the events. J.P. reported that C.B. and the Appellant were arguing and C.B. wanted to speak to the officer on duty. D.R. 68. Contrary to his previous statement, the Appellant testified at the hearing that C.B. did not ask to speak with any facility personnel during the event. D.R. 68.

H.N. reported that C.B. began calling the Appellant names. S.G. reported that C.B. began kicking the door and told the Appellant, “You won’t come in here without assistance because you’re a pussy.” D.R. 69. J.P. reported that C.B. began kicking the door and told the Appellant, “You won’t step in here without assistance.” D.R. 69. C.B. reported that he kicked the door and was yelling, and the Appellant said profane things to him. D.R. 69. C.B. reported that he taunted the Appellant saying the Appellant would not say those things to his face. He called the Appellant names. D.R. 69.

The Appellant instructed Unit A residents to go to their respective rooms. The Appellant, unhurried, walked around Unit A assisting the residents to their rooms. Getting the five Unit A residents into their rooms took approximately a minute and a half. D.R. 69, Video.

Once all Unit A residents were in their room, the Appellant opened C.B.’s door and went into his room. The Appellant did not request assistance from other facility officers before going into C.B.’s room. The Appellant reported to the responding IIU Investigator that he did not call for backup before entering the room because he wanted to de-escalate the situation without further

incident. The Appellant was in C.B.'s room approximately nine seconds before the fighting began. D.R. 69, Video.

S.G. reported that when the Appellant went into C.B.'s room, C.B. said, "What's up? What's up?" C.B. reported that the Appellant said, "Who's not going to say things to your face now?" D.R. 12-20. C.B. punched the Appellant twice, including on his left eye causing an injury. D.R. 12-20. Because C.B. was engaged in active aggression, WVDOC policy allowed the Appellant to engage in empty hand control responses, including straight punches, counter strikes, and front thrust kicks. The Appellant tackled C.B. D.R. 12-20. C.B. continued to fight the Appellant D.R. 12-20. C.B. and the Appellant traded punches. D.R. 12-20. The Appellant punched C.B. in the nose during the incident resulting in a nosebleed. D.R. 12-20, 50-60, 69.

H.N. reported that during the event, the Appellant said, "Who is a bitch now?" D.R. 12-20. S.G. reported that the Appellant said, "What's up now pussy?" D.R. 12-20. B.L. reported that the Appellant said, "Who is the pussy now?" D.R. 12-20. When questioned about what he said during the event, the Appellant testified, "I didn't say nothing."

During the fight, the Appellant radioed for assistance. Eight officers responded to C.B.'s room to assist the Appellant. D.R. 26-34; 65, Video, 69. From the time the fighting began to the time the first assisting officers arrived at C.B.'s room, approximately 34 seconds elapsed. (Video D.R. 65).

C.B. had a black eye, several abrasions, and a hematoma from the entire event. D.R. 12-20, 50-60. C.B. was assessed by facility Health Services Administrator and Nurse La'Shawn Davis. C.B. presented with bleeding, pain, and injuries. D.R. 61-64.

D.H., a sixteen-year-old Gene Spadaro Juvenile Center resident, was in Unit A at the time of the events. D.H. corroborated much of the information regarding the incident. D.H. reported

that the Appellant's response to C.B, was unusual. In other similar situations, officers would talk to the resident through the door and wait to enter after other officers arrived for assistance. D.R. 12-20. Gene Spadaro Juvenile Center Superintendent Ricky Scarbro, Jr. testified that he encourages officers to have assistance when engaging de-escalation attempts requiring room entry.

It is from this final order of the Board of Review that the Petitioner now appeals.

SUMMARY OF ARGUMENT

The Board of Review's decision should be upheld. The Board of Review made its decision after a full and fair hearing, allowing both parties to enter evidence, testify, and question witnesses. The Board of Review's administrative findings were not in violation of constitutional or statutory provisions, did not exceed its authority or jurisdiction, was made upon lawful procedures, was not affected by error of law, was not clearly wrong nor arbitrary or capricious, nor characterized by abuse of discretion.

STATEMENT REGARDING ORAL ARGUMENT

The evidence does not support Petitioner's arguments, and Petitioner fails to identify any prejudicial error. Consequently, oral argument is not necessary, and a memorandum decision affirming the ruling below is appropriate. *See* Rev. R. App. P. 21.

STANDARD OF REVIEW

For contested administrative cases under W. Va. Code § 29A-5-4(g), the Court shall:

reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority or jurisdiction of the agency; (3) Made upon unlawful procedures; (4) Affected by other error of law; (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

W. Va. Code § 29A-5-4(g).

The Court reviews questions of law *de novo*. *Muscatell v. Cline*, 196 W. Va. 588, 595 474 S.E.2d 518, 525 (1996). And, the Court accords deference to the findings of fact by the administrative officer unless the Court “believes the findings to be clearly wrong.” *Id.*

ARGUMENT

I. The Board of Review did not err as a matter of law when it upheld a substantiation of physical abuse under W. Va Code § 49-1-201 based on deficiencies in de-escalation and room entry procedure and reliable evidence that Petitioner knowingly and intentionally inflicted injury outside of lawful control or self-defense.

W. Va. Code § 49-1-201 defines an abused child as “a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

Respondent, DoHS, after a full and fair hearing, proved by a preponderance of the evidence that Petitioner, a Gene Spadaro Juvenile Correctional Center Officer, knowingly and intentionally inflicted physical injury on a juvenile resident.

Petitioner argues that he was de-escalating and subduing C.B. and not instigating a fight. The evidence presented disproves Petitioner’s assertions as the Petitioner verbally and profanely instigated C.B., failed to contact staff professionals, did not request officer assistance prior to entry, and did not act with immediacy. D.R. 12-20, 65, 67-75, 89-92.

During the fighting, Petitioner made a combination of the following statements, “Who’s not going to say things to your face now?”, “Who is a bitch now?”, “What’s up now pussy?”, and “Who is the pussy now?” These statements are a clear showing that Petitioner was not attempting to de-escalate C.B. D.R. 12-20, 65, 67-75, 89-92.

Prior to the fighting, C.B. asked to speak with the officer in charge and the facility therapist. Petitioner's failure to contact the requested personnel, who could assist in de-escalating C.B.'s behaviors, supports a conclusion that Petitioner's intentions were not the de-escalation of C.B. D.R. 12-20, 65, 67-75, 89-92.

Petitioner did not request officer assistance before going into C.B.'s room, despite being encouraged to do so by the facility Superintendent and normal procedure. C.B. was defiant, angry, hitting, kicking, and cursing Petitioner. Once Petitioner entered the room it was less than ten seconds before they were physically fighting. A failure to contact assisting officers to enter the room of C.B. indicates intent by Petitioner to instigate aggressive behaviors from C.B. D.R. 12-20, 65, 67-75, 89-92.

Petitioner unhurriedly took a minute and a half to place the other residents in their rooms before going to C.B.'s room. Petitioner's failure to act with immediacy or to request assistance indicates that his intention was not stopping C.B.'s alleged self-injurious behaviors. D.R. 12-20, 65, 67-75, 89-92.

As the trier of fact, it is up to the hearing examiner to determine the credibility of witnesses. On appellate review, "a court is not to substitute its judgment for that of the hearing examiner." *Martin v. Randolph Cnty. Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995). *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001). The hearing examiner as judge is the trier of fact and the best person to determine the credibility of witnesses.

Grievance rulings involve a combination of both deferential and plenary review. Since a reviewing court is obligated to give deference to factual findings rendered by an administrative law judge, a circuit court is not permitted to substitute its judgment for that of the hearing examiner with regard to factual determinations. Credibility determinations made by an administrative law

judge are similarly entitled to deference. Plenary review is conducted as to the conclusions of law and application of law to the facts, which are reviewed de novo. Syl. Pt. 1 *Cahill v. Mercer Cnty. Bd. of Educ.*, 208 W. Va. 177, 539 S.E.2d 437 (2000). For these reasons, the determination of the Board of Review to uphold the findings against the Petitioner should be affirmed. D.R. 12-20, 65, 67-75, 89-92.

II. The Board of Review did not improperly substitute speculation for evidence in finding intent based on pre-incident conduct and therefore uphold the substantiation of physical abuse against the Petitioner.

The Board of Review made its findings and decision based on a full and fair hearing wherein both parties presented all evidence and testimony to support their respective arguments. Petitioner's decision to go into C.B.'s room unassisted was contrary to standard facility procedure. Officers were encouraged by the Superintendent to have assistance when engaging in room entry de-escalation attempts. Notably, C.B. sustained injuries to his face and upper torso including abrasions, a bloody nose, and hematomas, as a result of the altercation with Petitioner. Facility resident D.H. indicated that during other similar events, officers talked to the resident through the door and entered only after other officers arrived. D.R. 12-20, 65, 67-75, 89-92.

Petitioner did not act with immediacy before going into C.B.'s room. Petitioner took a minute and a half to place the other residents in their rooms before going to C.B.'s room. He moved unhurriedly. Based on the response time of the officers who came to assist, at just over 30 seconds when radioed, C.B. would have been stopped from self-harming behavior sooner if Petitioner had requested assistance at the start. Petitioner's failure to act with immediacy or to request assistance indicates that his primary intent was not to stop C.B.'s alleged self-injurious behaviors. D.R. 12-20, 65, 67-75, 89-92.

There is no reliable corroborating evidence presented that C.B. was hitting his head on the door as alleged by Petitioner. The other juveniles indicated that C.B. was kicking and hitting the

door. C.B. did not indicate he was hitting his head against the door. The video provided does not show self-injurious behaviors. Petitioner is the only source of the self-injury assertions. D.R. 12-20, 65, 67-75, 89-92.

The actions and statements of Petitioner indicate an intent to harm, not an intent to de-escalate. The event and injuries sustained by C.B. would not have occurred but for the Petitioner's instigating actions. Based on the evidence before it, the Board of Review reasonably concluded that Petitioner committed physical abuse. D.R. 12-20, 65, 67-75, 89-92.

III. The Board of Review's decision is not arbitrary and capricious.

Here, the Board of Review's decision was neither arbitrary nor capricious. Under W. Va Code § 29A-5-4, the Court will not substitute its own judgement for that of the agency. A Court must review whether the agency considered the relevant factors and whether there was a "clear error of judgement" to determine if the state action was arbitrary or capricious.

The case of *Dale v. Oakland*, 234 W. Va. 106, 76 SE 2d 434 (2014) (citing *In re Queen*, 196 W. Va. 442, 473 SE 2d 483(1996), gives us guidance on the standards of "clearly wrong" and "arbitrary and capricious." "The clearly wrong" and arbitrary and capricious standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In re Queen* 196 W. Va. 442, 473 S.E.2d 483(1996).

The Supreme Court of Appeals of West Virginia has stated "a court is not to substitute its judgment for that of the hearing examiner." *Martin v. Randolph Cnty. Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995). *Adkins v. W. Va. Dep't of Educ.* 210 W. Va. 105, 556 S.E.2d 72 (2001). The hearing examiner as judge is the trier of fact and the best person to determine the credibility of witnesses. A reviewing Court "may reverse the Commission's decision as clearly wrong or arbitrary or capricious" only when the Commission misapplied the law, "entirely failed

to consider an important aspect of the problem, offered an explanation that ran counter to the evidence before the Commission, or offered one that is so implausible that it could not be ascribed to a difference in view or the product of Commission expertise.” *In re Queen*, 196 W. Va. 442, 446, 473 S.E.2d 483, 487 (1996).

In the case at hand, the hearing officer held a full and fair hearing with both parties presenting evidence and testimony. The hearing officer considered all of the evidence, properly weighed the evidence before it, and in no way acted in an arbitrary and capricious manner, nor improperly ignored evidence. The hearing officer provided sound reasoning for his findings in his decision. For these reasons, the determination of the Board of Review to uphold the findings against Petitioner should be affirmed.

IV. The Board of Review did not misapply the statutory definition of “abuse” under W. Va. Code § 49-1-201 when it upheld the decision of the Respondent to substantiate an abuse finding against the Petitioner.

The Board of Review did not misapply the definition of abuse under W. Va. Code § 49-1-201, which defines “[a]bused child” relevantly as “[a] child whose health or welfare is being harmed or threatened by: A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home.” After reviewing and evaluating the evidence in this matter, the Respondent is found to have correctly substantiated maltreatment against Petitioner for abuse from the infliction of physical injuries to C.B. including injuries to his face and upper torso including abrasions, a bloody nose, and hematomas. The preponderance of evidence presented supports the finding that the Petitioner intended to inflict injury to C.B., as demonstrated by Petitioner profanely instigating C.B., failing to contact staff professionals, not requesting officer assistance prior to entry, and failing to act with immediacy.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Honorable Court to uphold the decision of the Board of Review.

Respectfully Submitted,

WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES,
Respondent,

By Counsel,

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CERTIFICATE OF SERVICE

I, Angela M. Alexander, Assistant Attorney General and counsel for the West Virginia Department of Human Services, do hereby certify that on the 29th day of May, 2026, I electronically filed a true copy of the foregoing *Response Brief on Behalf of West Virginia Department of Human Services* with the Court, thereby serving all parties of record via File & ServeXpress.

/s/ Angela M. Alexander
Angela M. Alexander
Assistant Attorney General