



STATE OF DELAWARE
Child Death, Near Death and Stillbirth Commission
900 King Street
Wilmington, DE19801-3341

CAPTA¹ REPORT

In the Matter of
Alvin Smith
Minor Child²

9-03-2012-00012

December 5, 2014

¹ The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

² To protect the confidentiality of the family, case workers, and other child protection professionals, pseudonyms have been assigned.

Background and Acknowledgements

The Child Death, Near Death and Stillbirth Commission (“CDNDSC”) was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child’s death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

The case information presented below is based upon documents reviewed and presented from the treating hospitals, the Department of Services for Children, Youth and Their Families, the Office of the Child Advocate, Family Court, Delaware State Police, and the Department of Justice.

Case Synopsis

The two-year-old male child who is the subject of this review, Alvin Smith, was born in February 2009 to Joanne Edwards and Daniel Smith, at 40 weeks gestation weighing 6 pounds, 13 ounces. Both mother and infant drug screens were negative. Infant was discharged on day two of life. In March 2009, the infant was prescribed opium due to concerns of Neonatal Abstinence Syndrome (NAS) as the infant presented multiple times with complaints of irritability and fussiness. There was some concern of the infant going through the medication quickly, and the withdrawal symptoms continuing. The family had a long history of alcohol and substance abuse.

In July 2011, a referral was made to the Division of Family Services’ (DFS) Child Abuse and Neglect Report Line alleging that two-year-old Alvin had taken his paternal grandmother’s medication. Alvin was admitted to the children’s hospital for observation. His urine drug screen was positive for benzodiazepines (diazepam). The paternal grandmother admitted that the medications were not secured in the original medication bottle and stored out of the children’s reach. It should be noted that the children were in the temporary guardianship of the paternal grandparents, Kathy and Douglas McDonald, due to the mother and father’s lack of stable housing and employment, domestic violence, and substance abuse issues.

It was also noteworthy that this was the second incident regarding the children gaining unsupervised access to Kathy’s medication. The first incident occurred just seven days prior with one of the six-year-old twin siblings being admitted to the local hospital for ingestion of medication. Her urine drug screen was negative, although she was adamant that she swallowed two pills. Kathy was instructed to secure the medication in the original prescription bottle, and store the bottle out of the children’s reach.

As a result of this second incident, DFS filed for custody of all three children and they were placed in foster care. Kathy McDonald was substantiated for severe physical neglect of Alvin, and lack of supervision for the twin siblings; the case was transferred to treatment. Criminally, Kathy was charged with misdemeanor Endangering the Welfare of a Child; however, the charge was dismissed with prejudice.

Family History: Mother, Father and Paternal Grandparents

DFS history dates back to 2006 with the parents, but history will be presented since Alvin's birth.

In March 2009, two referrals were received by the DFS Report Line regarding separate incidents, alleging physical neglect of the children by their mother, Joanne Edwards. Following the second referral, the DFS caseworker arranged for the children to remain with Kathy and Douglas until Joanne obtained an alcohol or drug (AOD) evaluation and a psychological evaluation.

In April 2009, a subsequent referral was made to the DFS Report Line alleging a domestic violence (DV) incident in the presence of the two older twins. The father, Daniel Smith, was incarcerated as a result and a No Contact Order (NCO) was issued between Joanne and Daniel. Joanne's paramour was also involved as he attempted to assist her during the struggle. It was unclear if the children had been placed back into the mother's care or if this incident occurred during a visitation. However, Joanne remained compliant during the investigation. She completed the AOD evaluation and no treatment was recommended. She also completed the psychological evaluation; it was noted that she suffered from anxiety and depression, and she was receiving treatment via medication and ongoing counseling. Joanne was residing in a hotel at this time but had all supplies to provide care for the children. The case was substantiated for the DV incident and transferred to treatment to provide ongoing services and support to the mother.

One month later, the DFS Report Line received a report of emotional neglect of the children by their mother's paramour relating to a DV incident that occurred in their presence. The paramour was substantiated for emotional neglect, and criminally charged with Endangering the Welfare of a Child, Assault 3rd and Violation of a No Contact Order.

Then in August 2009, a subsequent referral was made to the DFS Report Line alleging severe physical and emotional neglect of the children as they were again residing in the home of the paternal grandparents, with the father, while NCOs were in place. At this time, DFS treatment services were also active with the family. Interviews of the mother, father and paternal grandparents were completed; observations of the three children were completed. The DFS investigation worker confirmed that the DFS treatment worker was aware of the living arrangements prior to this new referral coming in. No concerns were noted of mother's ability to care for the children. As a result, the children were placed in the care of the mother. The case was closed unfounded and linked to the open treatment case. Concerns were noted of history of DV between parents, possible substance abuse by mother, and continued parental conflict.

In September 2009, a referral alleging physical abuse of one of the twins was received by the DFS Report Line. The child had a black eye with a scratch near it, two red bruises on her chest and a bite mark on her ear. The child stated that her Aunt Penny (non-relative, Penny Caldwell) punched her in the face and stomach, because she took a book from her sister. She stated the bite mark was from her sister. DFS conducted interviews of the family. The children were again placed in the care of the paternal grandparents. The paternal grandparents filed for emergency custody but the petition was denied. It was discovered that Joanne had moved to Virginia during this time, leaving the children with Penny as she was ordered by DFS not to remove the children from the state. Joanne was substantiated for mild physical neglect for leaving the children in the care of a non-relative which resulted in the unexplained marks on the child. The case was closed with no evidence to substantiate but with concern of unexplained marks on the child.

During the treatment case, which was open from April 2009 to November 2009, Joanne and Daniel became consistently non-compliant. Then, in November 2009, the paternal grandmother was granted temporary guardianship of the three children, Alvin age nine months, and two four-year-old twin siblings, due to the parent's lack of stable housing and employment, domestic violence, and substance abuse issues. The paternal grandmother also admitted to a history of drug addiction; however, she had been clean for seventeen years. She further admitted to a cocaine binge in 2008 for one week. After receiving treatment, she had been clean since. The paternal grandmother was also prescribed Lamictal, Premarin, Adderal, and another depression medication in addition to Oxycodone. Treatment services were deemed no longer necessary.

Nine months following the closure of the treatment case, a referral was made to the DFS Report Line alleging physical abuse and mild to moderate emotional abuse of the children by the paternal grandparents and their father. The family stated the father had just recently moved in as he was released from incarceration. His probation officer was aware and although he was a registered sex offender, he was allowed to live in the home with his biological children. The family admitted to using a wooden spoon and hitting the children on the bottom or hand for discipline. DFS interviewed the children and adults in the home. Collaterals were completed. The case was closed, unsubstantiated with concern due to objects being used for physical discipline.

In March 2011, a routine referral was received by the DFS Report Line alleging mild physical neglect of the children by their paternal grandmother. The paternal grandparents were interviewed, and denied all accusations stating that the children's mother was making false allegations because she had been denied custody of the children. The DFS caseworker observed the areas of concern in the home (i.e. leak in the dining room ceiling, damaged basement, etc.), and interviewed/observed the children. The case was closed with no evidence to substantiate.

Criminal History: Mother

Joanne Edward's criminal history consisted only of traffic violations.

Criminal History: Father

Daniel Smith had an extensive criminal history consisting of Burglary, Theft, Criminal Mischief, Sexual Offense 3rd in another state, Fugitive from Another State, Failure to Register as a Sex Offender, and Offensive Touching.

Alvin's Near-Death Incident

In July 2011, an urgent referral was received by the Division of Family Services' (DFS) Child Abuse and Neglect Report Line alleging the lack of supervision of the children by the paternal grandmother. It was reported that one of the six-year-old siblings was admitted to the hospital due to ingestion of paternal grandmother's Oxycodone pills. The paternal grandmother admitted the pills were not kept out of the children's reach and were stored in a plastic bag rather than its original medication bottle. Although the urine drug screen returned with negative results, the child insisted that she swallowed two pills and her younger brother, Alvin, took half of a pill. It was advised that Alvin, who was not present, be examined at the hospital for the possible ingestion of pills as it was uncertain how many pills were missing. Alvin was transported to the hospital by his father, Daniel, who is a registered sex offender and not permitted to be with the children unless supervised by an adult. Alvin was not admitted, and his drug screen also returned with negative results. The hospital had concerns that the paternal grandmother was under the

influence; however, a field test was conducted by law enforcement with negative results. While hospitalized, the six-year-old made physical and sexual abuse allegations against her grandparents. A forensic interview was scheduled with both of the twins, and no disclosure was made. A substance abuse evaluation was ordered for the paternal grandmother. The evaluation was completed the following day, yielding negative results and no treatment was recommended. A safety plan was put into place by the DFS caseworker who stated that contact between the paternal grandmother and the children would be supervised by the paternal grandfather. Additionally, there would be no physical discipline and the children would not be together unsupervised.

Seven days later, a subsequent referral was made to the DFS Report Line alleging Alvin had taken the paternal grandmother's medication. Alvin was admitted to the children's hospital for observation. His urine drug screen was positive for benzodiazepines (diazepam). The paternal grandmother admitted that the medications were still not secured in the original medication bottle and stored out of the children's reach. Collateral contacts were made and Alvin was referred to services for his developmental delays.

DFS filed for custody of all three children and they were placed in foster care. In February 2012, custody of the children was rescinded to the mother on a trial reunification basis. In October 2012, a referral was made to the DFS Report Line alleging neglect of the children. The case was opened for investigation. No further details were provided.

Criminal /Civil Disposition

Kathy McDonald was substantiated for severe physical neglect of Alvin, and lack of supervision for the twin siblings; the case was transferred to treatment and the children placed in foster care.

Criminally, Kathy was charged with misdemeanor Endangering the Welfare of a Child; however, the charge was dismissed with prejudice.

Post-incident Criminal Disposition: Father

Post-incident, Daniel was convicted of Rape 2nd for having sexual relations with a fourteen-year-old. He was sentenced to 25 years confinement at Level V suspended after serving 20 years, 5 years at Level IV (Halfway House) suspended after serving 6 months, followed by 18 months at Level III probation. His estimated release date is September 2029.

System Recommendations

After review of the facts and findings of this case, the Commission determined that all systems did not meet the current standards of practice; therefore, the following system recommendations were put forth:

Division of Family Services (DFS)

1. CDNDSC recommends that the Division of Family Services (DFS) review their policy pertaining to the discharge of children to an appropriate caregiver prior to all safety assessments being completed, and results of such assessments being received and reviewed by the caseworker.

- a. Rationale: In July 2011, the DFS caseworker advised the hospital to discharge the children to the paternal grandmother because her substance evaluation was negative. However, the urine drug screen results were not yet received when the caseworker made this decision. One week later, the younger child overdosed and was admitted to the children's hospital after consuming the paternal grandmother's medication which were still accessible to the children, and included Oxycodone.
 - b. Anticipated Result: To ensure the safety and well-being of the children.
 - c. Responsible Agency: Division of Family Services
2. CDNDSC recommends the Division of Family Services (DFS) review and modify its policies, procedures, and training to clarify how caseworkers and supervisors can appropriately incorporate an individuals and family's multi-generational and chronic DFS history into their decision making.
- a. Rationale: The use of history was not utilized in the decision making process for the March 2011 and July 2011 investigations.
 - b. Anticipated Result: To ensure the safety and well-being of the children through an assessment of history and present day circumstances.
 - c. Responsible Agency: Division of Family Services