

live with A.L. CYS warned J.S. at least three times about the danger that D.H. posed to her children. Notwithstanding these warnings, D.H. was allowed to live, sleep and store personal belongings in the home where J.S. resided with A.L. Thereafter, on January 9, 2006, D.H. announced reconciliation with his estranged wife and desire to remove his personal belongings from J.S.'s home. J.S. and D.H. had a fistfight in front of A.L, and at that time D.H. threatened to punch A.L. in the face. At some point the Easton police arrived and removed D.H. from the home.

The following day Northampton CYS received an oral report regarding the altercation between J.S. and D.H., as well as D.H.'s threat toward A.L. Christopher Broubalow investigated on behalf of CYS. His investigation included attendance at a January 20, 2006 protection from abuse (PFA) hearing pursuant to which the court entered an order against D.H. and in favor of J.S. and A.L. At the PFA hearing, D.H. gave sworn testimony that J.S.'s residence was his home and that his clothes were there. J.S. and A.L. gave sworn testimony, but neither one corrected or contradicted D.H. on these points. Moreover, J.S. corroborated the fact that D.H. had clothes at her house and made arrangements with the court for D.H. to return with police to pick up his belongings.

Broubalow found that in spite of CYS' warnings, J.S. continued to allow D.H. to live in her home and to have contact with her daughter until the altercation of January 9, 2006. He filed an indicated report of child abuse against J.S., indicating that her action/inaction created an imminent risk of serious physical injury to, or sexual abuse of, a child. *See* 55 Pa. Code §3490.4 ("[t]he term child abuse means any of the following . . . (C) A recent act, failure to act or series of the acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or exploitation of a child").

Upon receipt of Broubalow's report, J.S. appealed to DPW to have the indicated report expunged on the basis that the underlying factual information is untrue. DPW submitted the matter for a hearing before Administrative Law Judge (ALJ) Shawn A. Bozarth. After taking testimony and hearing argument, the ALJ made several findings of fact and recommended denial of J.S.'s appeal. The Bureau of Hearings and Appeals (BHA) entered an order adopting the ALJ's recommendation. After granting reconsideration, Estelle B. Richman, the DPW Secretary, entered a final order upholding the BHA's denial.

J.S. raises a number of points of contention in her brief; however, the Court's review is limited to determining whether a petitioner's constitutional rights were violated, whether the adjudication is in accordance with law and whether the necessary findings are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704. J.S. complains that the ALJ failed to grant a request for continuance that she made five (5) days before the scheduled hearing and that the ALJ allowed the matter to proceed in the absence of legal representation for J.S. and her daughter. J.S., however, has not directed this Court's attention to any constitutional right or any provision of law violated by the ALJ's denying a continuance or proceeding without counsel. It is readily apparent that J.S. had ample opportunity to secure counsel for her appeal.

Additionally, J.S. raises an issue regarding the fact that D.H. died on April 19, 2006 and therefore no longer poses a threat to her daughter. It is of no consequence that D.H. is deceased other than the implication of Pa. R.E. 804(b)(1), which governs, *inter alia*, admissibility of testimony given as a witness at another hearing of the same or different proceeding if the party against whom testimony is now offered had adequate opportunity and similar motive to develop the testimony by direct, cross or redirect examination. D.H.'s PFA hearing testimony was

admitted as evidence against J.S. pursuant to R.E. 804(b)(1). The fact that D.H. is deceased does not negate J.S.'s prior conduct.

What remains then are J.S.'s arguments that D.H. lied about living in J.S.'s home and having contact with A.L. and that Broubalow is not credible because he believed D.H. and failed to prove his sex offender status. The Court notes that credibility determinations lie solely within the discretion of the factfinder, and it will not disturb such determinations on appeal absent a clear abuse of discretion. *Pinnacle Health System v. Department of Public Welfare*, 942 A.2d 189 (Pa. Cmwlth. 2008). Here, the ALJ was well within his discretion when he found D.H.'s prior testimony that he lived with J.S. and wanted to retrieve his belongings to be credible in spite of the subsequent conflicting testimony. This is especially true in light of the fact that J.S. did not dispute D.H.'s claims during the PFA hearing. Also, the ALJ was well within his discretion when he found Broubalow to be credible regarding D.H.'s prior history and the warnings to J.S.

While J.S. contends that D.H. lied to Broubalow about his prior conduct and that he was wrong about D.H.'s status on the Megan's Law listing, J.S. had an opportunity to confront Broubalow regarding these matters during her hearing before the ALJ. She declined to do so. Accordingly, the Court concludes that the necessary findings of fact that justify the denial of J.S.'s expunction appeal are supported by the testimony of Broubalow and D.H. Such testimony constitutes substantial evidence to support the findings, which the Court will not disturb.

DORIS A. SMITH-RIBNER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

J. S. In Re: A. L.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1711 C.D. 2007
	:	
	:	
Commonwealth of Pennsylvania,	:	
Department of Public Welfare,	:	
Respondent	:	

ORDER

AND NOW, this 4th day of June, 2008, the Court affirms the final order of the Secretary of the Department of Public Welfare.

DORIS A. SMITH-RIBNER, Judge