

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D31643  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 19, 2011

A. GAIL PRUDENTI, P.J.  
DANIEL D. ANGIOLILLO  
ANITA R. FLORIO  
JEFFREY A. COHEN, JJ.

---

2010-07520

DECISION & JUDGMENT

In the Matter of Rosemary Frimpong-Badu, petitioner,  
v Gladys Carrion, et al., respondents.

(Index No. 10546/10)

---

Loren I. Glassman, White Plains, N.Y., for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek  
and Patrick J. Walsh of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Commissioner of the New York State Office of Children and Family Services dated December 18, 2009, which, after a hearing, denied the petitioner's application to amend and seal a report maintained in the New York State Central Register of Child Abuse and Maltreatment.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

“At an administrative expungement hearing, a report of child abuse or maltreatment must be established by a fair preponderance of the evidence” (*Matter of Blythe v Carrion*, 63 AD3d 1059, 1059; *see Matter of Lee TT. v Dowling*, 87 NY2d 699, 703). “Judicial review of a determination that a report of child abuse or maltreatment has been substantiated is limited to whether the determination is supported by substantial evidence” (*Matter of Blythe v Carrion*, 63 AD3d at 1060; *see Matter of Gonzalez v Suffolk County Dept. of Social Servs. Child Protective Servs.*, 54 AD3d 341).

At the time of the subject incident, “a neglected child in residential care” (Social Services Law § 412[2][b]) included a child whose custodian “creates substantial risk of physical injury . . . to such child by other than accidental means” (Social Services Law former § 412[9][b]). Here, the Administrative Law Judge’s finding that the petitioner maltreated the subject child by creating a substantial risk of physical injury to the child by other than accidental means is supported by substantial evidence (*see Matter of Blythe v Carrion*, 63 AD3d at 1060; *see also Matter of Gonzalez v Suffolk County Dept. of Social Servs. Child Protective Servs.*, 54 AD3d 341; *see generally Matter of King v Perales*, 153 AD2d 694). Accordingly, the determination must be confirmed, the petition denied, and the proceeding dismissed on the merits.

PRUDENTI, P.J., ANGIOLILLO, FLORIO and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court