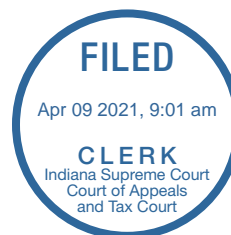


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

A.C.,
Appellant-Petitioner,

v.

Indiana Department of Child
Services,
Appellee-Respondent.

April 9, 2021
Court of Appeals Case No.
20A-MI-1975

Appeal from the
Marion Superior Court

The Honorable
James A. Joven, Judge

Trial Court Cause No.
49D13-1911-MI-49284

Kirsch, Judge.

[1] The Indiana Department of Child Services (“DCS”) received a report that A.C. (“Mother”) had neglected her children, S.C., E.C., and M.C. (collectively,

“Children”) due to allegations that she neglected medical attention for M.C. who had anxiety and asthma and allegations of educational neglect because Mother was homeschooling Children, and they were several grades behind where they should be. DCS initiated a Child in Need of Services (“CHINS”) case, which was ultimately dismissed by the juvenile court without issuing findings of fact or conclusions of law. DCS then substantiated the allegations of neglect against Mother, and an administrative law judge (“ALJ”) upheld the substantiation. Mother sought judicial review, and the trial court denied her petition and her subsequent motion to correct error. Mother appeals and raises the following restated issue for our review: whether the trial court properly denied her petition for judicial review of the ALJ’s decision, which had affirmed DCS’s classification of the child welfare report as substantiated for neglect as to Mother.

[2] We affirm.

Facts and Procedural History

[3] On July 2, 2018, DCS received a report alleging that Mother and C.C. (“Father”) had neglected S.C., E.C., and M.C. *Appellant’s App. Vol. II* at 63. The report alleged that Mother was addicted to prescription medication, that domestic violence occurred in the home, that Children were significantly behind in their education because they were not participating in their online school, and that M.C. had been to the hospital on multiple occasions due to his asthma. *Id.* Family case manager Lauren Scott (“FCM Scott”) initiated an assessment on July 5, 2018, and after completing the assessment, she

substantiated the report of neglect as to Mother and Father. *Id.* at 63-65. FCM Scott's supervisor approved and upheld the recommended substantiation. *Id.* at 65.

[4] FCM Scott substantiated the educational neglect allegation because Children were significantly behind in their schooling. *Id.* at 64-65. When the DCS assessment commenced, S.C. was sixteen years old, E.C. was fourteen years old, and M.C. was twelve years old. *Id.* at 62. Mother informed FCM Scott that Children were attending online classes, but when FCM Scott was not able to locate online school records for S.C. and E.C., Mother admitted that she was homeschooling them. *Id.* at 65. After obtaining academic records for S.C. and E.C., FCM Scott discovered that they were not attending school consistently and were failing all of their classes. *Id.* S.C. and E.C. missed a total of six months of schooling when they transitioned from in-person learning to online learning. *Id.* FCM Scott discovered that M.C. was enrolled in online schooling but had only completed three out of five of his courses the previous school year and had large gaps in his log in attempts. *Id.* at 64-65. S.C. should have been a junior in high school at the time of the assessment, but she had no high school credits. *Id.* at 99. E.C. was performing a couple of grades behind in school from where she should be for her chronological age. *Id.* at 100; *Appellant's App. Vol. IV* at 66. M.C. was supposed to be in the seventh grade but had only three credits for the sixth grade and was retaking those sixth-grade classes. *Appellant's App. Vol. II* at 64-65, 100.

[5] FCM Scott also substantiated the medical neglect of M.C. *Id.* at 65. Mother had failed to ensure that M.C. was taking his asthma medication as directed, had failed to take him to a primary care physician since he was five years old, and had consistently missed several specialist's appointments. *Id.* M.C. had been in the intensive care unit twice and the emergency room ten times due to his asthma. *Id.* Mother also had neglected to remediate mold issues in the home, which potentially contributed to M.C.'s asthma attacks. *Id.*

[6] On August 1, 2018, DCS filed a CHINS petition, alleging that Children were CHINS as to both Mother and Father, and a detention hearing was held on October 1, 2018, after which, on November 7, 2018, the juvenile court issued findings of fact and conclusion of law on the removal of Children from Mother. *Id.* at 65, 155-59. The juvenile court removed Children from Mother's care and placed them with Father and identified several issues with Mother's care for Children. *Id.* at 156-58. The juvenile court specifically found that: (1) Mother has taken on the role as the parent who was tending to the needs of the educational and medical needs of Children; (2) M.C. suffered from anxiety and life-threatening asthma and his asthma was exacerbated by his anxiety; (3) Mother failed to make appropriate follow-up medical appointments for M.C., did not fill his "life-saving prescription medication," and when M.C. was attending school in person, Mother failed to ensure that he had an emergency asthma inhaler while at school; (4) Mother fixated on irrelevant issues and did not go to the hospital to check on M.C. when he was taken there in an ambulance due to his asthma; (5) Mother was neglecting Children's education;

(6) Mother refused to secure an Individualized Education Plan (“IEP”) for M.C.; (7) E.C. had anxiety and developmental delays and had “been absent in any educational and/or school since July of 2018”; and (8) S.C. was significantly behind academically after being homeschooled by Mother. *Id.* The juvenile court found that Father had been providing adequately for Children and that he was committed to providing Children with the appropriate medical care and parental supervision. *Id.* at 157. Specifically, S.C., who had decided to move in with Father at the beginning of the case, was attending school consistently, and Father had agreed to assist in securing an IEP for M.C. *Id.* The juvenile court acknowledged that “both parents have a responsibility to provide medical care, education, and appropriate care for children” but found Mother was specifically “failing in providing necessary medical care and education.” *Id.* at 156.

[7] On November 9 and 16, 2018, the juvenile court held a hearing on the CHINS petition. *Id.* at 79. After DCS presented its evidence, Mother and Father moved for involuntary dismissal under Trial Rule 41(B). *Id.* Neither party requested findings of fact and conclusions thereon, and the juvenile court granted the motion to dismiss the CHINS case without making any findings of fact or conclusions of law. *Id.*

[8] On November 29, 2018, Mother requested an administrative review of DCS’s decision to substantiate neglect against her; Father also filed a request for administrative review of the substantiation of neglect against him. *Id.* at 38-40, 47-49. On January 10, 2019, Mother requested a hearing regarding her

administrative appeal. *Appellant's App. Vol. III* at 50. On April 12, 2019, DCS reversed the substantiation against Father. *Appellant's App. Vol. II* at 65.

[9] An administrative review hearing was held before an ALJ on September 23 and 24, 2019. *Appellant's App. Vol. III* at 180. At the hearing, FCM Scott, DCS education liaison Jeri Gibson (“Gibson”), DCS family caseworker Mary Catherine Youngblood (“Youngblood”), Father’s divorce attorney, and Mother all testified. *Id.* at 181-82. On November 6, 2019, the ALJ issued findings of fact and conclusions of law, affirming the determination of DCS to substantiate neglect against Mother. *Appellant's App. Vol. II* at 93-102. The ALJ found that Mother was a stay-at-home parent and was responsible for taking M.C. to his medical appointments and that Mother failed to follow up with M.C.’s medical appointments and failed to ensure M.C. was consistently using his asthma medications, which posed a serious threat to M.C.’s physical health. *Id.* at 97, 99. The ALJ determined that M.C. suffered from asthma and had been hospitalized on multiple occasions because of failing to use asthma medications as his doctor prescribed. *Id.* at 97-98. Further, the ALJ found that Children all experienced a significant delay in their educational progress as a result of Mother’s failure to properly supervise them while attending online schools and while being homeschooled. *Id.* at 97, 99-101. The ALJ found that S.C. began online schooling in the seventh grade and that her academic testing and transcript for eighth grade reflected that she was failing all classes, in part due to incomplete assignments. *Id.* at 99. S.C. was switched to home schooling by Mother and continued to be homeschooled at the time of the assessment, at

which time she had no high school credits, although she should have been a junior in high school. *Id.* As to E.C., the ALJ found that E.C. was enrolled in online school for part of her fifth-grade year but was unable to keep up with the curriculum due to a learning disability and had issues with absences, tardiness and not completing homework and assignments. *Id.* Mother began home schooling E.C. in fifth grade, which continued up to the time of the assessment, when she was discovered to be a couple of grades behind based on her chronological age. *Id.* at 100. As to M.C., the ALJ found that he began online school at the age of five and that he either attended online school or was homeschooled by Mother until the time of assessment. *Id.* M.C. did not work at grade level, had only three credits for the sixth grade, and needed IEP testing, but Mother would not sign the consent for his IEP testing and was opposed to him attending traditional school due to his health issues. *Id.*

[10] On November 25, 2019, Mother filed a verified petition for judicial review of the ALJ's administrative ruling. *Id.* at 2. The trial court denied Mother's petition for judicial review on July 14, 2020. *Id.* at 7. Mother filed a motion to correct error on August 19, 2020. *Id.* The trial court did not rule on Mother's motion to correct error, and as a result, the motion was deemed denied as of September 26, 2020. *Id.* Mother now appeals. Additional facts will be added as necessary.

Discussion and Decision

[11] We generally review a trial court’s ruling on a motion to correct error for an abuse of discretion. *Ind. Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 384 (Ind. Ct. App. 2017). An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.* However, where the issues raised in the motion are questions of law, the standard of review is de novo. *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 230 (Ind. Ct. App. 2010), *trans. denied*.

[12] On appeal, Mother appeals after the trial court denied her motion to correct error subsequent to its denial of her petition for judicial review of an administrative agency’s decision. As the Indiana Supreme Court has held, “[a]ppellate courts stand in the same position as that of the trial court when reviewing a decision of an administrative agency.” *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 844 (Ind. 2009). Judicial review under the Indiana Administrative Orders and Procedures Act is limited, and the person seeking judicial review bears the burden of establishing the agency action’s invalidity. Ind. Code § 4-21.5-5-14(a). We must defer to the agency’s expertise, and we may set aside an agency action only if the challenger shows that he or she has been prejudiced by a decision that is “(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without

observance of procedure required by law; or (5) unsupported by substantial evidence.” Ind. Code § 4-21.5-5-14(d). We do not try the case de novo, reweigh the evidence, judge witness credibility, or substitute our judgment for that of the agency. *Ind. Dep’t of Nat. Res. v. Prosser*, 132 N.E.3d 397, 401 (Ind. Ct. App. 2019) (citing Ind. Code § 4-21.5-5-11), *trans. denied*. We are bound by the agency’s findings of fact if those findings are supported by substantial evidence. *Id.* “Substantial evidence is more than a scintilla, but something less than a preponderance of the evidence.” *Id.* (quoting *State v. Carmel Healthcare Mgmt., Inc.*, 660 N.E.2d 1379, 1384 (Ind. Ct. App. 1996), *trans. denied*).

Res Judicata

[13] Initially, Mother argues that her motions for summary judgment filed with both the ALJ and the trial court should have been granted because the ALJ’s determination that the report of neglect was properly substantiated was precluded by res judicata. Specifically, Mother contends that, because the juvenile court dismissed the CHINS case, such dismissal consequently precluded the administrative action because the issues involved in both were exactly the same, and thus, a dismissal of the CHINS allegations meant that the substantiation of neglect could not continue. She asserts that the dismissal under Trial Rule 41(B) showed a total absence of evidence in favor of DCS, that the evidence was without conflict and was susceptible of only one inference, which was in her favor, and that such a dismissal precluded the administrative determination of substantiated neglect.

[14] “Generally speaking, res judicata operates ‘to prevent repetitious litigation of disputes that are essentially the same, by holding a prior final judgment binding against both the original parties and their privies.’” *In re Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. Ct. App. 2019) (quoting *Becker v. State*, 992 N.E.2d 697, 700 (Ind. 2013)). It applies “where there has been a final adjudication on the merits of the same issue between the same parties.” *Ind. State Ethics Comm’n v. Sanchez*, 18 N.E.3d 988, 993 (Ind. 2014). Similar to double jeopardy in the criminal context, res judicata operates to prevent a party from receiving the proverbial “second bite at the apple.” See *Garrett v. State*, 992 N.E.2d 710, 721 (Ind. 2013); *Burks v. United States*, 437 U.S. 1, 17 (1978).

[15] The principle of res judicata is divided into two branches: claim preclusion and issue preclusion. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). The first of these branches, claim preclusion, applies where a final judgment on the merits has been rendered and acts as a complete bar to a subsequent action on the same issue or claim between those parties and their privies. *Id.* When claim preclusion applies, all matters that were or might have been litigated are deemed conclusively decided by the judgment in the prior action. *Id.* The second branch of the principle of res judicata is issue preclusion, which bars the subsequent litigation of a fact or issue that was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit. *Id.* If issue preclusion applies, the former adjudication is conclusive in the subsequent action, even if the actions are based on different claims. *Id.* The former adjudication is conclusive only as to those issues that were actually

litigated and determined therein. *Id.* Thus, issue preclusion does not extend to matters that were not expressly adjudicated and can be inferred only by argument. *Id.*

[16] Here, the juvenile court's order dismissing the CHINS case did not contain findings of fact or conclusions of law and did not specify the reason for dismissal. *Appellant's App. Vol. II* at 79. Because the juvenile court did not issue findings of fact or conclusions of law, the reason for the dismissal of the CHINS case is not clear, and Mother cannot show that the dismissal was because the juvenile court made a determination that either the neglect did not occur or that Mother was not responsible for it. Therefore, *res judicata* does not apply because the juvenile court did not specifically determine the issue of whether neglect had occurred or whether Mother was responsible when it dismissed the CHINS case. Accordingly, the juvenile court's dismissal of DCS's CHINS petition without more is not binding or conclusive in the administrative hearing and cannot preclude the ALJ's determination.

[17] Further, contrary to Mother's contention, the juvenile court's dismissal of the CHINS case did not conclusively mean that it determined that Mother was not responsible for the abuse or that the abuse had not occurred. Mother contends that the juvenile court would have been bound "as a matter of law" to find the coercive intervention of the court necessary if she had neglected or abused Children. *Appellant's Br.* at 13. However, this is not true because Indiana courts have repeatedly determined that court intervention was not necessary in CHINS cases, even though the child's physical or mental condition was

seriously endangered as a result of a parent’s neglect or abuse. *See In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017) (finding that mother’s decision to leave her children alone, “unsupervised in a bathtub for two minutes, seriously endangered their physical or mental condition” but court intervention was not necessary); *In re S.D.*, 2 N.E.3d 1283, 1290 (Ind. 2014) (even though child began as a CHINS, by the time of the factfinding the coercive intervention of the court was no longer necessary); *In re E.K.*, 83 N.E.3d 1256, 1261-62 (Ind. Ct. App. 2017) (finding that even if the spanking of the child exceeded reasonable limits of corporal punishment and the child was endangered by the spanking, DCS failed to prove that the coercive intervention of the trial court was needed to protect the child), *trans. denied*. Because the juvenile court did not conclusively make a determination as to whether abuse or neglect occurred here or whether Mother was the perpetrator, the outcome of the CHINS case did not preclude DCS’S administrative determination that Mother neglected Children.

Hearsay

[18] Mother argues that the ALJ decision was erroneous because the ALJ allowed hearsay evidence to be admitted during the hearing as well as other evidence that Mother contends consisted of privileged medical records,¹ evidence not

¹ Mother argues that medical records of Children were privileged and should not have been admitted. However, under Indiana Code section 31-34-12-6, the physician-patient privilege does not constitute grounds for excluding evidence in a proceeding in which the child is alleged to be a child in need of services. Here, the medical records at issue were obtained during the DCS assessment that led to the substantiation of neglect and the filing of the CHINS case. It is reasonable to conclude that the rules regarding privilege in

based on personal knowledge, and a non-certified, preliminary order from the CHINS case. Mother contends that because all of this inadmissible evidence was allowed to be admitted at the hearing, the ALJ's decision was entirely based on hearsay, which is not allowed. She, therefore, asserts that the ALJ's decision to find the substantiation of neglect proper was erroneous.

[19] Hearsay is an out of court statement offered for the truth of the matter asserted. Ind. Evidence Rule 801(c). A hearsay statement is not admissible unless it falls under one of the enumerated exceptions in the Indiana Rules of Evidence or is otherwise provided by law. Evid. R. 802. Under Indiana Code section 4-21.5-3-26(a),

The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

If both hearsay evidence and non-hearsay evidence are admitted at an administrative hearing, an agency decision should not be invalidated based on the fact that some hearsay evidence was admitted at the administrative hearing. *See McHugh v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 842 N.E.2d 436, 441-42

CHINS proceedings would also apply to an administrative hearing to determine if a substantiation of neglect was supported by substantial evidence where the rules of evidence are relaxed in administrative hearings and a substantiation of neglect is a one of the issues to be determined in a CHINS proceeding.

(Ind. Ct. App. 2006) (finding that although hearsay evidence was admitted at the administrative hearing, other non-hearsay evidence supported the board's decision and the decision was therefore upheld); *Amoco Oil Co., Whiting Refinery v. Comm'r of Labor*, 726 N.E.2d 869, 876 (Ind. Ct. App. 2000) (finding that although report contained hearsay statements, it also contained non-hearsay statements that were relied upon for the committee's conclusions and provided independent support for the ALJ's order, irrespective of hearsay statements); *Hinkle v. Garrett-Keyser- Butler Sch. Dist.*, 567 N.E.2d 1173, 1179 (Ind. Ct. App. 1991) (written reports were admitted as improper hearsay evidence but did not amount to reversible error because there was competent, non-hearsay evidence upon which the school board based its order cancelling teacher's contract), *trans. denied*.

[20] Here, the ALJ's decision was not based entirely upon inadmissible hearsay evidence. The ALJ based her decision on various exhibits that were admitted, as well as testimony from FCM Scott; Gibson, the educational liaison; Mother; and Youngblood, the family caseworker. *Appellant's App. Vol. II* at 94-102. Testimony from FCM Scott, who conducted the assessment that led to the substantiation of neglect, regarding Mother's medical and educational neglect of Children was not based entirely upon hearsay. *Appellant's App. Vol. III* at 205-20, 227-29, 234-35; *Appellant's App. Vol. IV* at 7-8. She testified about specific statements Mother made to her regarding Mother's lack of appropriate care for M.C.'s asthma. *Appellant's App. Vol. III* at 228-29. Specifically, Mother told FCM Scott that Mother treated M.C.'s asthma by taking him to the

emergency room and that she did not have medical insurance for M.C., which interfered with the ability to the medication M.C. needed to treat his asthma.

Id. These statements are non-hearsay under Indiana Evidence Rule 801(d)(2)(a) as a statement by an opposing party that is being offered against the party. The ALJ also relied in part on the testimony from Gibson, the DCS educational liaison, which was not hearsay. Gibson testified about how Children were not enrolled in school and had missed a substantial number of educational credits and that Mother had to be pushed to enroll Children in school. *Appellant's App. Vol. IV* at 13-16, 47. She testified about her concern that, at the time of the assessment, Children were functioning a couple of grade levels behind and had failed to enroll in school after the first semester in 2017. *Id.* at 65-66.

Youngblood, the DCS caseworker, testified that Mother told her she did not want Children in school because she did not want them to “ever leave her” and so that they could be with her at all times. *Id.* at 119. This statement is non-hearsay under Indiana Evidence Rule 801(d)(2)(a) as a statement by a party opponent.

[21] The ALJ also relied upon the findings of fact and conclusions from the juvenile court’s detention order, which were binding on the administrative hearing pursuant to Indiana Code section 31-33-26-11, which states, “If a court having jurisdiction over a [CHINS] case under IC 31-34 has determined . . . whether: (1) a report of suspected child abuse or neglect is properly substantiated; (2) child abuse or neglect occurred; or (3) any person was a perpetrator of child abuse or neglect; the determination of the court is binding.” Ind. Code § 31-33-

26-11(a). In the juvenile court’s order after the detention hearing, the juvenile court concluded, “The children’s physical or mental condition is seriously impaired or seriously endangered if the children are not immediately taken into custody so that [DCS] may restrict Mother’s access to the children.” *Appellant’s App. Vol. II* at 158. In its order, the ALJ found,

The findings of fact . . . of the Court exercising CHINS jurisdiction are binding in this administrative appeal pursuant to IC 31-33-26-11 and are therefore incorporated into this decision by the ALJ. After hearing the evidence in this case, the ALJ makes additional findings consistent with the findings of the CHINS court as set forth below in this decision.

Id. at 18.

[22] The findings of fact from the juvenile court’s detention order support the ALJ’s decision and included the following findings of fact: (1) Mother has taken on the role as the parent who was tending to the needs of the educational and medical needs of Children; (2) M.C. suffered from anxiety and life threatening asthma and his asthma was exacerbated by his anxiety; (3) Mother failed to make appropriate follow-up medical appointments for M.C., did not fill his “life-saving prescription medication,” and when M.C. was attending school in person, Mother failed to ensure that he had an emergency asthma inhaler while at school; (4) Mother fixated on irrelevant issues and did not go to the hospital to check on M.C. when he was taken there in an ambulance due to his asthma; (5) Mother was neglecting Children’s education; (6) Mother refused to secure an IEP for M.C.; (7) E.C. had anxiety and developmental delays, and had

“been absent in any educational and/or school since July of 2018”; and (8) S.C. was significantly behind academically after being homeschooled by Mother. *Id.* at 156-58.

[23] Although the ALJ relied upon some hearsay in the form of Children’s medical records and educational records that showed they were failing courses and missing school, there was ample non-hearsay evidence admitted during the administrative hearing to support the ALJ’s order. *Id.* at 97, 181, 190, 210-20, 233. The fact that the ALJ considered hearsay evidence does not amount to reversible error because there was competent, non-hearsay evidence upon which the ALJ based its order substantiating the neglect. *See McHugh*, 842 N.E.2d at 441-42.

Arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law

[24] Mother asserts that the ALJ’s decision violates all of the statutory factors under Indiana Code section 4-21.5-5-14(d). She first contends that the decision was arbitrary and capricious because DCS unsubstantiated the report of neglect against Father while continuing to pursue the allegations against Mother and because DCS did not request the juvenile court to make findings and conclusions when it dismissed the CHINS case. “A decision is deemed arbitrary and capricious when it is ‘patently unreasonable and is made without consideration of the facts and in total disregard of the circumstances.’” *Ind. Alcohol & Tobacco Comm’n v. Spirited Sales, LLC*, 79 N.E.3d 371, 380 (Ind. 2017) (quoting *AB. v. State*, 949 N.E.2d 1204, 1217 (Ind. 2011)). ““An action of an

administrative agency is arbitrary and capricious only where there is no reasonable basis for the action.” *Id.* (quoting *Breitweiser v. Ind. Office of Env’t Adjudication*, 810 N.E.2d 699, 702 (Ind. 2004)).

[25] Here, the ALJ’s decision to find the substantiation of neglect proper was not arbitrary because the report had been unsubstantiated as to Father. The ALJ’s decision was reasonable and made with a consideration of the facts and circumstances of the case. When Children were removed from Mother’s care during the CHINS case, the juvenile court determined that Mother was not providing the necessary medical care and education for Children, whereas Father was willing to do so. *Appellant’s App. Vol. II* at 156-58. The juvenile court found that it was “not ignoring the fact that both parents have a responsibility to provide medical care, education, and appropriate care for children.” *Id.* at 156. Instead, it found that Mother was “failing in providing necessary medical care and education.” *Id.* It also found that, at the time of the detention order, Father had ensured that Children were attending school, was willing to obtain IEPs for Children, and was “committed to the betterment of [Children’s] education and to [M.C.’s] health matters.” *Id.* at 156-57. When it unsubstantiated the report of neglect as to Father, DCS was following the juvenile court’s stated reasoning made in its findings, which demonstrated that Father was not responsible for the medical and educational neglect of Children. *Id.* at 65, 156-58. The facts and circumstances show that Mother, and not Father, was responsible for the medical and educational neglect of Children because Mother had taken on the role as the parent who was tending to the

needs of the educational and medical needs of Children and, thereafter, failed to attend to those needs. Therefore, the ALJ's decision to affirm the classification of the report against Mother as substantiated was not arbitrary and capricious.

[26] Further, the fact that DCS did not request that the juvenile court issue findings and conclusions in the CHINS case within thirty to sixty days of its order does not render the ALJ's decision arbitrary or capricious. Initially, Mother has waived this issue because she has failed to cite to the record or any authority at all and has failed to develop a cogent argument in her contention that DCS's failure to request findings of fact and conclusions of law from the juvenile court makes the ALJ's decision capricious. *See Pittman v. State*, 45 N.E.3d 805, 820-21 (Ind. Ct. App. 2015) (finding that defendant waived his argument because it was not accompanied by cogent argument, citation to the record, or legal authority); *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (“[A] party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record”), *trans. denied*. Waiver notwithstanding, there is no authority stating that DCS must request findings of fact and conclusions of law in a CHINS case before an administrative determination on a separate neglect substantiation case can be made. No statute expressly requires formal findings in a CHINS factfinding order. *In re Br.B.*, 139 N.E.3d 1066, 1073 (Ind. Ct. App. 2019), *trans. denied*. Mother has therefore failed to show that the ALJ's administrative decision was arbitrary or capricious.

[27] Mother next argues that the ALJ’s decision was an abuse of discretion because the ALJ overruled “nearly every objection” that Mother raised at the administrative hearing. *Appellant’s Br.* at 22. An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Sandleben v. State*, 29 N.E.3d 126, 133 (Ind. Ct. App. 2015), *trans. denied*. Initially, Mother has waived this argument because she fails to cite to the record or any authority in support of her position. *Pittman*, 45 N.E.3d at 820-21; *Smith*, 822 N.E.2d at 202-03. Waiver notwithstanding, the ALJ overruled a majority of Mother’s objections because they were objections to evidence based on hearsay. The ALJ properly overruled Mother’s hearsay objections because hearsay is admissible in administrative proceedings. Ind. Code § 4-21.5-3-26(a) (“The administrative law judge may admit hearsay evidence.”). Mother’s argument does not persuade us that the ALJ’s decision to affirm the substantiation of neglect was an abuse of discretion.

Contrary to constitutional right, power, privilege, or immunity

[28] Mother asserts that the ALJ’s decision is contrary to a constitutional right, power, privilege, or immunity because DCS obtained confidential educational and medical documents from the underlying CHINS case and the ALJ’s decision was based upon testimony from a review of these documents. In her allegation, Mother does not identify a specific part of the constitution that the ALJ’s decision violates, fails to cite to any portion of the record, fails to provide any case law or authority, and fails to make any cogent argument to support her position. *Appellant’s Br.* at 23. She has therefore waived this argument. *Smith*,

822 N.E.2d at 202-03. Mother’s argument on this issue is so lacking that we cannot frame a reasoned exploration of the issue without knowing the constitutional provision that has been violated.

In excess of statutory jurisdiction, authority, or limitations, or short of statutory right

[29] Mother argues that the ALJ’s decision was in excess of statutory jurisdiction, authority, or limitations or short of statutory right because the ALJ failed to conduct a hearing within ninety days of her request for appeal of the administrative appeal hearing. Under 465 Indiana Administrative Code 3-3-9, DCS “will schedule a hearing to be held within a reasonable time after the date the department receives the hearing request.” 465 Ind. Admin. Code 3-3-9(c)(1). However, when a party seeks a continuance, it “shall constitute a waiver of time deadlines otherwise applicable under this rule for scheduling and completing the hearing.” 465 I.A.C. 3-3-18(b). Here, Mother waived the “reasonable time” deadline to hold a hearing. On November 29, 2018, Mother requested an administrative review of DCS’s decision to substantiate neglect against her, and on January 10, 2019, she requested a hearing regarding her administrative appeal. *Appellant’s App. Vol. II* at 38-40; *Appellant’s App. Vol. III* at 50. On February 8, 2019, both parties agreed to a continuance of the hearing at a prehearing conference. *Appellant’s App. Vol. III* at 83, 104-05, 185-86. On March 15, 2019, Mother requested additional time to file a summary judgment motion. *Id.* at 136-37. By agreeing to the continuance on February 8 and requesting additional time on March 15, Mother waived the “reasonable time”

deadline to hold a hearing under 465 Indiana Administrative Code 3-3-9(c)(1). Contrary to Mother's assertion, the administrative rules do not impose a ninety-day time limit on the hearing, and 465 Indiana Administrative Code 3-3-9(c) does not state that a hearing must be held within ninety days of when DCS receives the hearing request. Therefore, we conclude that the ALJ's decision was not in excess of statutory authority.

Without observance of procedure required by law

[30] Mother also seems to suggest that she has the same right to a speedy trial as criminal defendants and that the ALJ violated that right by requiring her to either accept a continuance or proceed to the hearing when DCS filed its discovery order a half a day late. *Appellant's Br.* at 23-24. However, she does not provide any authority for this theory, and such a right does not exist in the administrative rules. The rules provide for a requirement that the ALJ hold a hearing within a reasonable period of time after the request for a hearing is received. 465 I.A.C. 3-3-9(c)(1). Because Mother agreed to a continuance and then later requested additional time, the hearing was held within a reasonable time and Mother waived the time requirement. Therefore, we conclude that the ALJ's decision was not without observance of procedure required by law.

Unsupported by substantial evidence

[31] Mother asserts that the ALJ's decision was not supported by substantial evidence. "Substantial evidence is more than a scintilla, but something less than a preponderance of the evidence." *Prosser*, 132 N.E.3d at 401. "A

decision is unsupported by substantial evidence if there is no ‘relevant evidence which a reasonable mind might accept as adequate to support a conclusion.’”

Lockerbie Glove Factory Town Home Owners Ass’n, Inc. v. Indianapolis Hist. Pres. Comm’n, 106 N.E.3d 482, 488 (Ind. Ct. App. 2018) (quoting *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1091 (Ind. Ct. App. 1998), *trans. denied*), *trans. denied*. Therefore, a substantiation of neglect is supported by substantial evidence if a reasonable mind could determine that the parent failed to provide adequate education or medical care for her children.

[32] Pursuant to Indiana Code section 31-33-8-12, upon completion of an assessment, DCS is required to classify reports as substantiated or unsubstantiated. “Substantiated,” in reference to a child abuse or neglect report made under Indiana Code article 31-33, means “a determination regarding the status of the report whenever facts obtained during an assessment of the report provide a preponderance of evidence that child abuse or neglect has occurred.” Ind. Code § 31-9-2-123. A parent’s failure to ensure that her children receive an adequate education or adequate medical care constitutes neglect. *In re Eq. W.*, 106 N.E.3d 536, 543 (Ind. Ct. App. 2018) (affirming the trial court’s CHINS adjudication where parents claimed to be homeschooling children, but the children were clearly behind in their education), *trans. granted sub nom. CHINS*

V.B. v. Ind. Dep't of Child Servs., 119 N.E.3d 91 (Ind. 2018), and opinion *aff'd in part, vacated in part*, 124 N.E.3d 1201 (Ind. 2019).²

[33] Here, there was substantial evidence presented to support the conclusion that Mother neglected Children's educational needs. Evidence was presented that Children were removed from a brick-and-mortar school to attend online classes and were later homeschooled by Mother. At the time of the assessment, Children's educational records and testimony from witnesses demonstrated that they were behind in school for their age. S.C. should have been a junior in high school at the time of the assessment, but she had no high school credits. *Appellant's App. Vol. IV* at 96. E.C. was a couple of grades behind in school, and M.C. was supposed to be in the seventh grade but only had three credits for the sixth grade. *Id.* at 66, 99. Further, at the time of the assessment, Mother first told FCM Scott that Children were attending online classes, but when FCM Scott attempted to get Children's records from that online school and was not able to obtain records from S.C. and E.C., Mother admitted that she was homeschooling them. *Appellant's App. Vol. II* at 65; *Appellant's App. Vol. III* at 7-8. The evidence showed that, at the time of the assessment, Children suffered

² While not binding precedent, we note that our court has previously held in unpublished decisions that a parent's pattern of neglecting a child's medical needs supported a finding of medical neglect. *See In re N.T.*, No. 20A-JC-502, 2020 WL 5938242, *8-*9 (Ind. Ct. App. Oct. 7, 2020) (finding that parent's failure to follow recommendations and treatment plans prescribed by child's medical providers supported CHINS finding of medical neglect); *In re K.J.W.*, No. 02A03-1405-JC-158, 2014 WL 5577370, *4 (Ind. Ct. App. Nov. 3, 2014) (finding that Mother's historical pattern of neglecting Child's medical needs, including not seeking medical attention when child had a rash all over his body and not having the proper medical equipment for child who suffered respiratory problems, was sufficient to establish that Mother's medical neglect posed a serious, ongoing threat to Child's well-being).

significant delay in their educational progress and had not attained the skills associated with their appropriate grade levels due, at least in part, to their participation in on-line and/or home schooling, which was supervised by Mother. This educational delay was caused by Mother's lack of supervision in ensuring that Children consistently attended and participated in their online and/or home-schooling curriculum and completed all assignments. The ALJ's decision that educational neglect was properly substantiated was supported by substantial evidence.

[34] There was also substantial evidence that Mother neglected M.C.'s medical needs. Evidence showed that, at the time of the assessment, Mother had taken on the role as the parent who was tending to the medical needs of Children and had failed to follow up with M.C.'s doctor and reschedule doctor's appointments for his asthma, which posed a serious threat to M.C.'s physical health and constituted neglect. *Appellant's App. Vol. II* at 181, 190. M.C. suffered from anxiety and life-threatening asthma, and his asthma was exacerbated by his anxiety. The evidence showed that Mother had failed to ensure that M.C. was taking his asthma medication as directed, had failed to take him to a primary care physician since he was five years old, and had consistently missed several specialist's appointments. *Id.* at 65. M.C. had been in the intensive care unit twice and the emergency room ten times due to his asthma. *Id.* Evidence also showed that Mother fixated on irrelevant issues and did not go to the hospital to check on M.C. when he was taken there in an ambulance due to his asthma. *Appellant's App. Vol. IV* at 117-18. FCM Scott

testified that Mother told her that she treated M.C.'s asthma by taking him to the emergency room and that she did not have medical insurance for M.C., which interfered with the ability to obtain the medication M.C. needed to treat his asthma. *Appellant's App. Vol. III* at 228-29. The ALJ's decision that medical neglect was properly substantiated was supported by substantial evidence.

[35] We conclude that reasonable minds could reach the same conclusion as the ALJ. *See Lockerbie Glove Factory*, 106 N.E.3d at 488. The testimony of witnesses, and exhibits admitted all establish that Mother neglected Children's educational and medical needs. Mother had taken on the role as the parent who was tending to the educational and medical needs of Children, and at the time of the assessment, Mother was failing in providing necessary medical care and education for Children. The ALJ's decision was supported by substantial evidence, and the trial court trial court properly denied her petition for judicial review of the ALJ's decision and her subsequent motion to correct error.

[36] Affirmed.

Altice, J., and Weissmann, J., concur.