

## Parental Mental Illness and Child Neglect

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- There is no specific definition of “parental mental illness” as neglect.

FCA 1012

f) "Neglected child" means a child less than eighteen years of age

(i) **whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care**

(A) in supplying the child with **adequate food, clothing, shelter or education** in accordance with the provisions of part one of article sixty-five of the education law, or **medical, dental, optometrical or surgical care, though financially able to do so** or offered financial or other reasonable means to do so; or

(B) in providing the child with **proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court;** provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) **who has been abandoned,** in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

- So the child has to have an impairment or be at imminent risk of an impairment and this has to be due to something the parent has done or failed to do in providing the child with minimally necessary care. There can't be just proof of the child's impairments, nor can there just be proof of bad acts of a parent – there must be a causal nexus also established. “Proving” that a parent is mentally ill does not prove neglect – it is the parent's behavior and its effect on the child that is the real issue.

**Some old cases:**

**Matter of H. Children** 156 AD2d 520 (2<sup>nd</sup> Dept. 1989) - Children NOT neglected where mother obtaining treatment and not posing any threat

**Matter of Zariyasta S.** 158 AD2d 45 (1<sup>st</sup> Dept. 1990) – Neglect does not require prove of a mental illness diagnoses of the parent, it is the threat to the child that is the issue, not the formal diagnosis

**Matter of Ayana E.** 162 AD2d 330 (1<sup>st</sup> Dept. 1990) – Mother kept apartment dark, blinds closed, lights off, bathed and changed and fed children excessively and compulsively, got evicted, would not follow through on housing or help from DSS

**Matter of Benjamin YY.** 159 AD2d 815 (3<sup>rd</sup> Dept. 1990) – Mother made suicide attempt and child found in bed with large knife – removal warranted

**Matter of Erica M.** 206 AD2d 876 (4<sup>th</sup> Dept. 1994) – Father NOT neglectful even though diagnoses of manic-depressive who was “deteriorating” and in need of an inpatient evaluation as child was at day care every day, father in methadone program and loving and caring with child – no evidence that child was neglected or in imminent danger of being neglected

**Matter of Amber M.** 208 AD2d 1054 (3<sup>rd</sup> Dept. 1994) – Mother unable to care for her child where she has long history of chronic schizophrenia with delusions, visual and auditory hallucinations, three suicide attempts, numerous hospitalizations and unexcused absences from hospitals.

**Matter of Wilbur O.** 220 AD2d 842 (3<sup>rd</sup> Dept. 1995)- Mother neglected children due to delusions that father was using satanic rituals against the children and convinced children of the same causing emotional harm to the children

**Matter of Jesse DD.** 636 NYS 2d 925 (3<sup>rd</sup> Dept. 1996) – Mother had long standing mental health issues and refused treatment for herself , would not get needed counseling for the children, expert testimony that her mental health was likely to deteriorate to the point of being a clear threat to the children although not an immediate threat and had not actually harmed children

**Matter of Raul B.** 647 NYS2d 262 (2<sup>nd</sup> Dept. 1996) – Mother mentally ill, resistant to treatment, threats made to the child and to her own mother although no past or present harm to child still neglect

**Matter of Catherine K.** 224 AD2d 880 (3<sup>rd</sup> Dept. 1996) – Mother had delusions that child was being sexually abused, kept her away from others and treated her like an infant

**Matter of Caress S.** 250 AD2d 490 (1<sup>st</sup> Dept. 1998) – Mother had erratic temper, bizarre behavior and would not get treatment

**Matter of Dakota K.** 267 AD2d 1054 (4<sup>th</sup> Dept. 1999) – Mother mentally ill, unable to cope with anger and frustration, slammed baby’s carriage into side of the house

**Matter of Krewsean S.** 273 AD2d 393 (2<sup>nd</sup> Dept. 2000) – Mother with severe depression, was unfocused, unable to keep appointments or a regular schedule for child

**Some newer cases:**

**Matter of Christopher L.** 286 AD2d 627 (1<sup>st</sup> Dept. 2001) – Mother neglected child as she had untreated mental illness and abused drugs, would not cooperate with any assistance, had an “unstable home” and “erratic behavior”

**Matter of Lewis Y.** 293 AD2d 682 (2<sup>nd</sup> Dept. 2002) – Father neglected child by not protecting child from mentally ill mother when they all resided together – mother had schizophrenia and voices told her to eat the child, would not take meds and sometimes hallucinated even when taking meds

**Matter of Thalia L.** 303 AD2d 162 (1<sup>st</sup> Dept. 2003) – Mother neglected children as had an ongoing mental illness and was paranoid – kept the children indoors with door locked and shades drawn even in warm weather

**Matter of Soma H.** 306 AD2d 531 (2<sup>nd</sup> Dept. 2003) – Father neglected children even though no present or past harm to child – he is a schizophrenic and delusional, heard voices urging him to kill people and molest his children, this occurred daily even when he took meds and he believed voices were real, expert testimony that he should not be alone with children

**Matter of Ann Marie SS.** 309 AD2d 659 (3<sup>rd</sup> Dept. 2003) – Mother neglected baby – she had a rifle and had made threats, child was in a fully soaked diaper and there was a 10” meat cleaver in the child’s diaper bag along with a trigger lock. Mother made bizarre statements about police breaking into her home and health care providers threatening her with guns – she spoke in rambling diatribes and giggled and laughed inappropriately – she clearly had an untreated mental illness which posed a threat to her baby

**Matter of Senator NN.** 11 AD3d 771 (3<sup>rd</sup> Dept. 2004) – Mother neglected 3 year old. She called county employees and ranted and screamed about the child’s ears, she threatened the medical professionals and spoke unintelligibly. The child was whining but had not medical condition at all – the mother was obsessed with his ears. The mother yelled and pounded her fist at the police and had to be restrained and arrested on mental health grounds. She was diagnosed with multiple mental health issues and in the violent state could not provide proper care for the child and the child was genuinely threatened by her inability to control herself.

**Matter of Samuel E.** 797 NYS 2d 496 (1<sup>st</sup> Dept. 2005) – Father neglected child – he had untreated mental illness which seriously impaired his judgment – delusions and paranoia – the child’s needs, particularly as to the child’s education and his own mental health issues – were not being met

**Matter of Julian K.** 803 NYS 2d 312 (3<sup>rd</sup> Dept. 2005) – Mother neglected her 2 children as they suffered negative physical and emotionally due to exposure to the mother’s violent and destructive behavior – she had fits of anger in front of the children which would result in the police being called, she would tell the children that the court’s orders re custody and visitation did not need to be followed, made false allegations against the father and urged the children to do so, made 11 suicide attempts in 4 years, twice calling the children to “say goodbye” - even with mental health services, she could not care for the children

**Matter of Jason Brian B.,** 33 AD3d 995 (2<sup>nd</sup> Dept. 2006) – Mother neglected child as she had a history of mental health issues, poor impulse control and depression, aggressive behavior with the father – she was not able to care for the child and her mother had to actually provide the care

**Matter of Kayla W.,** 47 AD3d 571 (1<sup>st</sup> Dept. 2008) – Mother neglected child as she had major depressive disorder, poor impulse control, poor insight into her condition such that a psychiatrist and a psychologist who saw her in the 2 days before the petition testified that she would not be able to properly care for her 2 year old – dissent by 2 judges who found that experts did not find that mother was in fact mentally ill or that her condition constituted any specific threat to the child

**Matter of Viveca AA.,** 51 AD3d 1072 (3<sup>rd</sup> Dept. 2008) – Mother neglected child - long history of multiple serious mental illnesses, hospitalized 6 times in the past, uncooperative with treatment or meds, took child out of school but cannot care for her safely

**Matter of Ifeiyi O.,** 53 AD3d 501 (2<sup>nd</sup> Dept. 2008) - Mother with long history of multiple mental illnesses. Could not meet child's special needs and in denial of her own issues, psychiatrist testified that child would be at risk in mother's care

**Matter of Kazmir K.,** 6/16/09 (1<sup>st</sup> Dept. 2009 ) – Father neglected child – long history of mental illness, suicide attempts, made another suicide attempt without arranging for care of 13 year old

**Matter of Jerrod G.,** 73 AD3d 503 (1<sup>st</sup> Dept. 2010) – Father NOT neglectful where he had mental health and substance abuse issues but no link of causal connection to any impairment or imminent impairment of the children.

**Matter of Christopher R.,** 11/30/10 (1<sup>st</sup> Dept. 2010) – Mother neglected children as she had long history of mental illness and would not seek treatment or take meds even if it meant children would be taken, hospitalized on multiple occasions, kept child out of school

**Matter of Jonathan S.,** 12/14/10 (1<sup>st</sup> Dept. 2010) – Mother neglected children as she had a recurrent major depressive disorders and thoughts of killing herself and drowning the children in the bath – no expert needed to demonstrate that this mental illness impacts her ability to care for the children

**Matter of Ronald Anthony G.,** 83 AD3d 608 (1<sup>st</sup> Dept. 2011) – Mother neglected her 13 month old and her newborn based on her untreated mental health issues – she slept in the subway and lived on the streets with the children and would not follow feeding advice from the doctor

**Matter of Ariel B.,** 6/2/11 (3<sup>rd</sup> Dept. 2011) – Mother neglected her 2 children – she was mentally ill and would not take her meds, erratic and violent bit one child, put her hands on the throat of another, threw a table down a stairs into an area where the children were, fits of anger, DV in front of the children

**Matter of Alexis H.**, 12/30/11 (4<sup>th</sup> Dept. 2011) – Mother neglected children – long term mental illness and failure to comply with treatment, unsanitary home, home not safe for the children

**Matter of Naomi S.**, 87 AD3d 936 (1<sup>st</sup> Dept. 2011) – Mother neglected child, long history of mental illness, multiple hospitalizations, non compliance with treatment and meds – was incapable of safely caring for child, at imminent risk

**Matter of Amber Gold**, 88 ad3D 1001 (2<sup>ND</sup> Dept. 2011) – Both parents neglect child where mother mentally ill and paranoid and child at imminent risk and father did not take steps to protect child

**Matter of Ariel C. W.-H.**, 89 AD3d 1438 (4<sup>th</sup> Dept. 2011) – Mother neglected child, while neglect pending, mother was TPRed on mental illness grounds for older child – more mental health issues as hospitalized twice more after TPR

**Matter of Joseph A.**, 1/10/12 (2<sup>nd</sup> Dept. 2012) – Mother NOT neglectful - she was unstable but not proof that the children were impacted - no casual connection – vague and contradictory proof as to if she left the children alone (10 and 12 years old) – both children attend school, doing very well in school, even better than grade level, healthy, up to date with medicals, correct height and weight

**Matter of Briana S.**, 1/5/12 (1<sup>st</sup> Dept. 2012) – Mother neglected children as she was mentally ill, retarded, poor impulse control, impaired judgment, depressed, refused meds, repeated hospitalizations – children missed medical appointments and one had to be hospitalized with dehydration – expert testimony not needed

**Matter of Cerenithy Ecksthine B.**, 92 AD3d 417 (1<sup>st</sup> Dept. 2012) – Father's mental health put his 2 year old and his 4 month old at imminent risk of neglect, years of mental illness was overwhelming, hospitalized multiple times, diagnosed as bipolar, history of violent physical assaults against family members, noncompliant with medication and treatment; no proof he had harmed the children but expert testimony that disorders would worsen in demanding environment of young children would mean gross lapses in his impulse control, had not been hospitalized in two years but not in treatment or compliant with medication and family testified to recent threatening behaviors; children were at risk due to prior behavior pattern of explosive outbursts, inability to control himself.

**Matter of Isaiah M.**, \_\_AD3d\_\_, dec'd 6/12/12 (1<sup>st</sup> Dept. 2012) - Mother neglected her child, had auditory hallucinations telling her a demon wanted her to harm boy, mother was involuntarily committed to the hospital for a month based on her delusions, psychotic and bizarre behavior, no insight into her condition, had experienced delusions about demons since her own childhood, judgment strongly impaired, exposed the child to a substantial risk.

**Matter of Cyraia B.**, \_\_AD3d\_\_, dec'd 6/20/12 (2<sup>nd</sup> Dept. 2012) – Father was NOT neglectful - no casual connection established between father's mental illness and any imminent risk to the child or impairment of the child. Child not present when the father was allegedly violent toward the mother and no evidence that there was any impairment or risk of impairment.

**Matter of Princess Ashley C., 96 AD3d 682 (1<sup>st</sup> Dept. 2012)** - mother had long standing mental health issues, suffered from major depression, anxiety and trichotillomania which is an anxiety disorder that resulted in her pulling out her hair and peeling the skin off her feet. She would not comply with treatment and so her condition deteriorated, no insight into how this impacted her children; children not properly supervised, had excessive school absences and often did not have enough to eat.

**Matter of Immanuel C.-S., 104 AD3d 615 (1<sup>st</sup> Dept. 2013)** - mother had an untreated mental illness and was suffering from paranoid ideation and delusions. She thought people came into her apartment and her car and put spoiled food in her refrigerator and listened to her phone conversations. The home was in a deplorable condition. The child had not seen a doctor or a dentist in years. The mother's testimony at court was unfocused. The child was at risk of harm.

**Matter of Christy S. v Phonesavanh S., 108 AD3d 1207 (4<sup>th</sup> Dept. 2013)**- father neglected the child's emotional condition in that the father exhibited "bizarre and paranoid behavior" which led to the child being frightened and depressed. The child's out of court statements were corroborated by admissions the father made to the caseworker. The court properly awarded sole Art. 6 custody to the mother as the adjudication of neglect constituted a change in circumstances since the prior joint custody order. Sole custody to the mother was in the child's best interests.

## **MENTALLY ILL PARENTS and NEWBORN BABIES**

**Matter of Baby Boy E., 187 AD2d 512 (2<sup>nd</sup> Dept. 1992)** – Mother had serious and chronic mental illness and delusions. If baby released to her would be a substantial probability of neglect.

**Matter of Ronald M. Jr., 254 AD2d 838 (4<sup>th</sup> Dept. 1998)** – Parents were NOT proven to have neglected newborn even where mother had history of untreated mental health and substance abuse issues – no evidence of substance abuse at birth, no observations of mental illness problems at birth. Expert who testified that infant would be at risk based opinion on unproven assumptions about bizarre behavior of mother at the hospital but no proof that this behavior actually happened. Nurse who saw mother for about 20 mins said mother acted childlike but could not provide any evidence as to anything she saw that might make her think the mother would hurt the baby. Parents had been found to have neglected a child 16 months earlier but that was about DV and there were no allegations that they were in violation of any order

**Matter of Brandon OO., 289 AD2d 721 (3<sup>rd</sup> Dept. 2001)** - Mother of newborn neglectful as she had schizo affective disorders, used pot during pregnancy, abused alcohol – at time of birth her mental health problems were "under reasonable control" but expert testified that he had "no opinion" about if she could parent the newborn safely; had history of indicated child neglect reports, vague about obtaining treatment, living with father who was untreated sex offender

**Matter of Hannah UU., 753 NYS2d 168 (3<sup>rd</sup> Dept. 2002)** – Mother of newborn is neglectful by summary judgment when 3 months earlier mother attempted suicide while caring for her 3 year

old, only 8 weeks since court had made a finding that her mental health was so bad that the 3 year had been neglected and placed in care, not enough time to remedy the situation

**Matter of Henry W.,** 30 AD3d 695 (3<sup>rd</sup> Dept. 2006) – Mother neglected newborn – has schizophrenia and other children TPRed on mental illness. She said baby had been switched in utero and that baby had been cut out of her, operated on and returned to her and that an abortion and other surgeries had been performed on her while she was sleeping. She claimed the father was in a plot to murder her and refused medication.

**Matter of Simeon F.,** 58 AD3d 1081 (3<sup>rd</sup> Dept. 2009) – Both parents neglected infant – long history of mental illnesses, hospitalizations, failure to take meds and cooperated with treatment – mother was an inpatient in hospital mental health unit when she gave birth – had surrendered baby by time of appeal so moot in any event

**Matter of T-Shauna K.** 6/2/09 (1<sup>st</sup> Dept. 2009) – Mother found to have neglected newborn by summary judgment motion – had mental illness and was hospitalized in the past and would not follow recommendations, no insight into conditions, recently adjudicated to have educationally neglected older children

**Matter of Majarae T.,** 6/11/10 (4<sup>th</sup> Dept. 2010 ) – Summary judgment neglect on mother re newborn where TPR on mental illness grounds just made re older child

**Matter of Jayvien E.,** 70 AD3d 430 (1<sup>st</sup> Dept. 2010) – NOT neglect re mother and her newborn – mother did “yell” at a nurse and referred to her child as “greedy” and had prior history of depression and hospitalization – at hospital did have mental health consult but was not diagnosed with mental illness that would place baby at imminent risk – prior alternations with a mother and the child’s father but these were vague and not timely and also did not seem linked to mother’s ability to care for the baby – even with a strong negative inference for her failure to testify, not enough proof for neglect

**Matter of Anton AA.,** 1/12/12 (3<sup>rd</sup> Dept. 2012) – Mother neglected newborn – she was mentally ill and disabled, would not take meds, living in a motel and no housing or winter clothing, after the birth living in a camp ground – DV in the home, prior neglect of older child who leg was broken at one month of age by a boyfriend, unwilling and uncooperative with services for that child, impaired judgment as to paramours

**Matter of Jane Aubrey P.,** 94 AD3d 497 (1<sup>st</sup> Dept. 2012) - Mother neglected newborn – she has bipolar disorder, engaged in activities which raised concerns about safe parenting abilities, at the hospital and during the birth, acted inappropriately, was inappropriate at a parenting skills training program

**Matter of Nhyashanti A.,** 102 AD3d 470(1<sup>st</sup> Dept. 2013) - mother derivatively neglected her infant son, found to have neglected her older children just 10 days before this baby was born, parental judgment still remained impaired and she had not completed anger management services or a mental health evaluation, not compliant with mental health treatment for more than a year.

**Matter of Aamir L.,** 102AD3d 786 (2<sup>nd</sup> Dept. 2013) -mother neglected her newborn baby and derivatively neglected her older child. After the baby was born, the mother displayed psychotic symptoms and was placed in the psychiatric unit. There she refused to comply with treatment and refused antipsychotic drugs - severe psychotic symptoms made her unable to care for the baby.

**Matter of Shay-Nah FF.,** 106 AD3d 1398 (3<sup>rd</sup> Dept. 2013) - mother neglected her newborn baby. The mother had depressive disorder, post traumatic stress disorder and bipolar disorder. When the child was born, the older two children were already in foster care and while the matter was pending, the mother consented to a permanent neglect adjudication as to them and was given a suspended judgment with supervised visitation. - continued to not obtain proper mental health care while pregnant with this child and was aggressive with the older children on visits. She did not obtain prenatal care until her last months of pregnancy. She had poor impulse control and anger management issues which had led to her slapping the two year old in the face causing injury and punching the three year old in the face and back, causing injury. She continued to have problems obtaining and keeping a suitable residence and was looking for a new apartment at the time of the hearing due to a physical altercation with a neighbor. She had just obtained income the month before the fact finding.

**Matter of Lakshmi G.,** 110 AD3d 640 (1<sup>st</sup> Dept. 2013) - father neglected his 6 week old infant when he left the baby in the care of her mother given what the father knew of the mother's mental state. The mother had told the father that she had been having hallucinations and hearing voices for more than a year. No reasonable prudent parent would leave an infant with another parent who was in such a conditions. After the father left the baby with the mother, she threw the infant to the pavement as she claimed to have seen a light in the sky with a figure in a chariot which she took to be signs from God that the child was possessed.

**When is it REALLY about mental health but allegations are or finding is made on something else?**

**Matter of Jessica R.** 657 NYS2d 164 (1<sup>st</sup> Dept. 1997) – Mother at an ER with 2 year old and calls child a “bitch” and a “bad child” and says the child is violent and has the “devil in her” . Would not restrain child who was running around the ER, admitted refusing to let child nap sh she could see how it felt to be kept up at night. Said it was a “miracle” that she had not killed the child. Mother threatened to hurt hospital staff, had a box cutter on her, showed signs of borderline personality disorder. Child was not harmed but imminent danger of being harmed due to mothers' mental state. Older sisters also neglected as mother had “infected” them with the idea that the 2 year old was possessed by evil spirits.

**Matter of Barbara S.,** 664 NYS2d 475 (2<sup>nd</sup> Dept. 1997) – Father neglected child by taking child from her school for no legitimate reason and locking her in a hot car, refusing to release her even when police arrived and asked him to release child. No expert testified but father appeared to have a “mental” problem.

**Matter of Deborah M.,** 679 NYS2d 623 (2<sup>nd</sup> Dept. 1998)- Mother neglected child where child had rib injuries, bruises and a loss of consciousness, would not talk in front of mother and then said “Mommy squeezed me” when mother not in the room. Mother made odd and inconsistent statements and claimed to have “multiple disorders” and said that she could do many things at one time and could act faster than normal persons. She had been observed on a roof top with the child screaming about a dead child.

**Matter of Jessica YY.,** 685 NYS 2d 489 (3<sup>rd</sup> Dept. 1999) – Mother did not neglect newborn although observed to be impatient, angry , hostile and emotional during the pregnancy, but attended all medical appointments and a substance abuse program. Baby was not born with any positive tox although mother had used drugs and alcohol during pregnancy. Worker noticed smell of alcohol in the hospital room and when confronting mother about it, mother claimed it was hairspray and proceeded to “demonstrate” but spraying hospital room all over with hair spray – baby was in room but did not wake up. No evidence of mental health records offered and not evidence that the mother was ever violent with anyone.

**Matter of Caleb L.,** 287 AD2d 831 (3<sup>rd</sup> Dept. 2001) – Mother neglected child by screaming, taunting and threatening 7 year old on telephone calls to child – pressuring child to say he wanted to live with the mother – child would become very upset and cry and was under extreme emotional pressure by mother’s behavior – mother would not take recommended meds

**Matter of Anesia E.,** 805 NYS2d 623 (2<sup>nd</sup> Dept. 2005) – Mother neglected her 1 year old baby by claiming child had medical conditions that child did not have – claimed child had daily seizures and brought child to ER 14 times, child was admitted 5 times, many unnecessary medical tests and examinations and unnecessary medications given to child – was “unnecessary and “potentially harmful” as child had no observed seizures and no medial issues – child could have developed infections or gone into respiratory arrest

**Matter of Jasmine D.,** 55 AD3d 906 (2<sup>nd</sup> Dept. 2008) – Father neglected child by locking himself and child in room in a homeless shelter and shaving child’s head and threatening shelter staff with bodily harm in child’s presence

**Matter of Jessica J.,** 57 AD3d 271 (1<sup>st</sup> Dept. 2008) – Mother neglected children by “unreasonable over reaction” to special needs child having been left at the wrong bus stop – would not send child to school, would not take cab fare offered, would not walk child the 6 blocks to school – threatened to kill herself and her children in front of the children if the children were removed – this resulted in detrimental impact on the children

**Matter of Elizabeth W.,** 6/11/10 (4<sup>th</sup> Dept. 2010) – Both parents neglected the children as mother repeatedly subjected them to unnecessary and demeaning physical examination and made them take a toxic herbal remedy and father did not protect the children from her