

Circuit Court for Montgomery County
Case No. C-15-CV-22-001302

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1726

September Term, 2022

MONTGOMERY COUNTY DEPT. OF
HEALTH AND HUMAN SERVICES

v.

RUENDIS GRANADOS ARRIAZA

Friedman,
Zic,
Curtin, Yolanda L.
(Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 26, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

This case requires us to review an ALJ’s finding that “ruled out” the Appellee, Ruendis Granados-Arriaza, as having committed child sexual abuse on his brother-in-law, C.D.¹ The Montgomery County Department of Social Services, Appellant here, argues that the ALJ’s methods and findings were inconsistent with the trauma-informed methods that this Court endorsed in our recent decision in *Prince George’s County Department of Social Services v. Taharaka*, 254 Md. App. 155 (2022).

As we shall explain, the Department misreads our decision in *Taharaka*. There, this Court found that the ALJ’s decision was infected by stereotyping and was inconsistent with modern, trauma-informed methods. As a result, in *Taharaka*, we reversed and remanded the matter for a new factfinding. *Taharaka*, 254 Md. App. at 189. Here, by contrast, we see none of the stereotyping that infected the factfinding process in *Taharaka*. Rather, our review of the decision here reveals that the ALJ made appropriate factfinding based on the evidence presented and properly allocated the burden of proof to the Department. As a result, we affirm the ALJ’s determination that the allegations against Granados-Arriaza were “ruled out.”

FACTS

C.D. is the youngest of five children. C.D. and his older brother, E.D., live with their parents. His three sisters, Norma, Leydi, and Yesenia are older and no longer live with their

¹ The initials “C.D.” have been chosen at random. Neither C.D.’s given name nor his surname begin with these letters.

parents. His sister, Norma, and her husband, Granados-Arriaza, have a son, and they live in the same apartment complex as C.D. and his parents.

On October 23, 2019, when C.D. was eight years old, Granados-Arriaza and his family visited C.D. and his mother. After the visit, C.D. told his mother that Granados-Arriaza had gone alone into C.D.'s room and told him that he was going to pull down C.D.'s underwear. C.D. then told his mother that Granados-Arriaza had been sexually abusing him since he was five years old. When asked what abuse means, C.D. told her that Granados-Arriaza does to him "everything that a girl does to a boy." C.D.'s mother immediately called Granados-Arriaza and Norma and discussed C.D.'s accusation. Granados-Arriaza denied the accusations. Later that day, C.D. confronted Granados-Arriaza and repeated his accusations directly to him.

C.D. later told another one of his sisters, Leydi, about the sexual abuse. Leydi told C.D. he would go to the doctor to make sure he was ok. C.D.'s parents took him to a pediatrician, Dr. Jose D. Villagre. C.D. told Dr. Villagre that Granados-Arriaza "has repeatedly taken him to his bed, got him naked, and 'did the things that a man [does] to a woman.'" C.D. told Dr. Villagre that Granados-Arriaza abused him when his family was out running errands or at church, that the abuse had started when he was about five years old, and it had been repeated as recently as the week before. Dr. Villagre referred C.D. to the Tree House Child Advocacy Center of Montgomery County for "preventative health

management.” Dr. Villagre also made a report to the Department,² which launched a joint investigation with the Montgomery County Police Department (MCPD). The Department assigned a licensed clinical social worker, Victoria Castrillo, to the case, while the MCPD assigned Detective Carolina Wormuth.

Later that day, C.D.’s parents brought him to the Tree House Child Advocacy Center (“Tree House”) where a licensed clinical social worker, Sara Malave, conducted a forensic interview with him. The forensic interview was recorded and Wormuth and Castrillo viewed it remotely. The interview was structured using the ChildFirst interviewing protocol, which employs open-ended questions to elicit information from a child.³

During the interview, C.D. disclosed to Malave that Granados-Arriaza had been abusing him since he was five years old. He alleged that most recently, Granados-Arriaza had abused him in a bedroom while his parents were in the living room and his brother, E.D., was in another room. C.D. reported that Granados-Arriaza had told C.D. that he would “return tomorrow.” C.D. added that Granados-Arriaza had abused him in a variety of places in the past including his parents’ bedroom, the bathroom, a closet, a park, and in Granados-Arriaza’s car. C.D. repeated that the sexual abuse entailed “what a boy and girl

² Dr. Villagre is a mandated reporter of child sexual abuse. MD. CODE, FAM. LAW (“FL”) § 5-704(a)(1); *see also Taharaka*, 254 Md. App. at 164 n.3 (discussing mandated reporters).

³ In *Taharaka*, this Court discussed methods of forensically interviewing children who are the alleged victims of sexual child abuse. *Taharaka*, 254 Md. App. at 184 n.19 (describing whether and to what extent to discount the credibility of answers to leading questions as a “difficult question”).

does in bed in the movies.” He said that Granados-Arriaza would tell him to take off his clothes and lay in bed and that the “front” of Granados-Arriaza’s body would touch his “back.” On an anatomical drawing, C.D. identified Granados-Arriaza’s penis as the “front” and C.D.’s buttocks as the “back.” C.D. then became withdrawn and would no longer respond to questioning.

Castrillo and Detective Wormuth subsequently interviewed C.D.’s parents and two of his adult sisters, Yesenia and Leydi. Yesenia relayed C.D.’s disclosure that he had been sexually abused since he was five years old. Leydi said that C.D. had told her that Granados-Arriaza wanted to take his pants off. When he told her this, C.D. pointed to his behind and said that Granados-Arriaza touches his “private part.” Castrillo then forensically interviewed other children in C.D.’s family, including his older brother, E.D., Granados-Arriaza’s son, and four other children, who had nothing to report on the matter.

About two weeks later, C.D. was taken back to Tree House for a medical evaluation, examination, and treatment. Dr. Evelyn Shukat, a pediatrician specializing in child abuse, conducted a medical evaluation of C.D. Dr. Shukat noted that C.D. did not make eye contact, “shut down” many times, and that he found conversation to be difficult. Ultimately, however, C.D. disclosed details of the abuse to Dr. Shukat. C.D. told Dr. Shukat that the abuse occurred when his parents were not home and described the abuse to include penile-anal penetration, forced fellatio, and kissing on the mouth. C.D. also said that Granados-Arriaza had taken pictures of C.D.’s genitals to post on Facebook, and once paid him money in exchange for the sexual abuse. According to C.D., Granados-Arriaza urged him to stay silent about the abuse. C.D. told Dr. Shukat that he no longer wants to

live and that he “thinks about hurting himself with sharp objects.” Dr. Shukat concluded that C.D.’s reluctance to discuss the abuse was “worrisome” and that, coupled with his suicidal ideations, indicated that C.D. was in danger of self-harm.

PROCEEDINGS BELOW

In January of 2020, the Department identified Granados-Arriaza as the individual responsible for C.D.’s abuse. Granados-Arriaza appealed this decision and requested a hearing before the Office of Administrative Hearings (OAH). Due to the COVID-19 pandemic, there was a delay in setting a hearing date. OAH then stayed the hearing because the State’s Attorney filed criminal charges against Granados-Arriaza.⁴

By May 2021, the OAH was informed that the State’s Attorney had dropped the criminal charges against Granados-Arriaza.⁵ As a result, the stay was lifted and the ALJ held a contested case hearing. The Department presented its case through Castrillo, who the court admitted as an expert in child sexual abuse investigations and recantation. In addition to Castrillo’s testimony, the Department offered paper exhibits and a DVD containing the video recording of C.D.’s forensic interview at Tree House. Counsel for

⁴ Section 5-706.1 of the Family Law article provides: “If a criminal proceeding is pending on charges arising out of the alleged abuse or neglect, the Office of Administrative Hearings shall stay the hearing until a final disposition is made.” FL § 5-706.1(3)(I).

⁵ The record does not explicitly state the reason that the State’s Attorney dropped the charges against Granados-Arriaza. We understand, and nobody here disputes, that C.D. recanted his allegations against Granados-Arriaza. We will discuss later the effect of that recantation on the ALJ’s decision that C.D.’s disclosures were not internally consistent.

Granados-Arriaza argued that C.D.'s recantation should be considered as strong evidence that the alleged sexual abuse had not occurred.

The ALJ issued a 28-page written opinion discussing his factual findings, legal issues, and his conclusions of law. The ALJ identified the issues in dispute as (1) whether the Department's finding of indicated child sexual abuse was correct and (2) whether Granados-Arriaza was properly identified as the person who committed child sexual abuse. In considering these issues, the ALJ disregarded C.D.'s recantation because the record contained no evidence surrounding the circumstances of it. Instead, he focused on C.D.'s disclosures that were in the record, and used the factors laid out in *Montgomery County v. P.F.* to determine if they were reliable. *See Montgomery Cty. Dept. of Health & Human Servs. v. P.F.*, 137 Md. App. 243 (2001).

The ALJ found that C.D.'s repeated disclosures were not sufficiently reliable to support a finding of child abuse for six reasons. Most, if not all, of these reasons involved the Department's failure to properly investigate and produce evidence to support C.D.'s allegations.

The ALJ found (1) that C.D.'s statements were uncorroborated and not internally consistent because the Department failed to follow up on C.D.'s increasingly detailed allegations and produce evidence of the process used to obtain that information. He also found (2) that C.D.'s statements were unsupported by extrinsic evidence showing that Granados-Arriaza had the opportunity to commit the abuse because the Department failed to verify facts that would place Granados-Arriaza at the locations where the abuse

occurred. The ALJ concluded that the Department’s failure to investigate evidence concerning these factors undermined its finding of “indicated.”

The ALJ then focused on questions the Department left unanswered in its case, such as (3) why C.D. chose to come forward several years after the abuse and (4) why C.D. recanted and under what circumstances. The ALJ expressed skepticism regarding the timing and certainty of C.D.’s statements. He also detailed concerns regarding (5) the nature and duration of the abuse and (6) the use of leading questions during the investigation process. The ALJ wrote that there were “serious questions” raised about these factors. His analysis centered on the Department’s failure to produce evidence showing how frequently the abuse occurred and if C.D. was alone with Granados-Arriaza when it did. He reiterated that the Department also failed to produce evidence of C.D.’s physicians or family’s methods of questioning, which were significant in evaluating the credibility of C.D.’s statements. Due to these failures, the ALJ modified the Department’s finding to “ruled out.”

The Department appealed to the circuit court, which affirmed the ALJ’s decision. The Department then timely filed the appeal that is now before us. As described above, the Department’s principal argument is that the ALJ’s ruling here is inconsistent with our decision in *Taharaka*.⁶

⁶ Because the Department’s brief focuses on the argument that the ALJ’s decision was inconsistent with *Taharaka*, that is where we shall focus as well. The Department’s other argument, that the ALJ failed to properly credit hearsay evidence, is without merit. The Department argues that the ALJ erred by not recognizing “the inherent reliability” of the hearsay evidence from the physicians who treated C.D. There is no doubt that statements made for the purpose of medical diagnosis or treatment are admissible in Court

ANALYSIS

As we noted above, in Maryland, an ALJ is required to use a multi-factor test to assess the reliability of statements made by children who are alleged to be the victims of child sexual abuse. *Taharaka*, 254 Md. App. at 170-71 (relying on MD. CODE, CRIM. PROC. (“CP”), § 11-304(e)).⁷ We review the ALJ’s findings to determine only if there was substantial evidence to support his decision or whether it was arbitrary and capricious. *Taharaka*, 254 Md. App. at 169.

as an exception to the hearsay rule, MD. R. 5-803(b)(4), and that even if they weren’t, the rules against hearsay don’t apply in contested case hearings at the OAH. Thus, C.D.’s statements to Dr. Villagre and Dr. Shukat were admissible, and the record reflects that they were, in fact, admitted. That says nothing, however, about the weight that the ALJ was required to give such statements. As we wrote previously, “the admission of this child’s statement into the administrative record does not mean that the ALJ was required to give it the same weight that [the Department] attached to it.” *P.F.*, 137 Md. App. at 273. We find no categorical error in the ALJ’s treatment of the statements reported in the physicians’ reports. We also note that because the ALJ did not find the Department’s evidence to be credible, the burden did not shift and the ALJ was not required to consider whether Granados-Arriaza put forth sufficient evidence to refute the allegations of sexual abuse.

⁷ In *Taharaka*, we explained that these factors were adopted by the General Assembly as part of the “tender years” exception to the hearsay rules, and then applied by this Court in *P.F.* to other statements by children to which the tender years exception does not facially apply. *Taharaka*, 254 Md. App. at 170-71 n.8-9. We also explained our concern that “many of these factors are not written in a way that comports with current understandings of the credibility of victims of child sexual abuse.” *Id.* at 171 n.10. We called on the General Assembly to “reconsider both these factors and the manner in which they are expressed.” *Id.* So far however, that hasn’t happened. As in *Taharaka* then, it is our duty to use these factors “in a manner that is consistent with current understandings of trauma-informed credibility assessments.” *Id.*

Factor No. 1: “The child victim’s personal knowledge of the event”

Factor No. 1 requires the ALJ to determine whether the child victim had actual personal knowledge of the abuse. CP § 11-304(e)(i); *Taharaka*, 254 Md. App. at 171.

The ALJ here concluded that C.D. was the subject of the alleged sexual abuse, and therefore that he would have personal knowledge of the events. The ALJ also found that C.D. was of a sufficient age to discuss what occurred, and knew Granados-Arriaza personally, because Granados-Arriaza is his brother-in-law. We hold that this finding was supported by substantial evidence. C.D. was the victim of the alleged sexual abuse and was old enough to detail the abuse he claims took place. Therefore, he would have personal knowledge of the events he claims occurred. This conclusion is supported by substantial evidence.

Factor No. 2: “The certainty that the statement was made”

Factor No. 2 requires the ALJ to determine “[t]he certainty that the statement was made.” CP § 11-304(e)(ii). Although this factor could be read in different ways,⁸ the ALJ here evaluated the certainty with which C.D. made the allegations of abuse as a question of whether C.D.’s statement was—and remained—internally consistent. The ALJ noted that C.D.’s allegations were “unwavering” when they were initially disclosed but subsequently became increasingly detailed before being recanted.

⁸ To illustrate the point that different ALJs might read this factor differently, the ALJ whose work we reviewed in *Taharaka* found that it was certain that the statement had been made because it was recorded on videotape. *Taharaka*, 254 Md. App. at 173. We found that interpretation of the factor to be “reasonable.” *Id.*

In *Taharaka*, we cautioned ALJs to be careful about how they consider the internal inconsistency of a child victim’s statements. *Taharaka*, 254 Md. App. at 180-82 & 180 n.17 (discussing internal consistency of statements in connection with Factor No. 9). Here, the ALJ seems to have heeded our caution, as he made no finding at all in connection with Factor No. 2. Later, however, the ALJ returned to the question of C.D.’s alleged expansion (in connection with Factor No. 8) and alleged recantation in Section V of his Opinion).

As to Factor No. 2 itself, however, the ALJ made no specific finding so there is nothing for this Court to review.

Factor No. 3: “Any apparent motive to fabricate or exhibit partiality by the child victim, including interest, bias, corruption, or coercion”

Factor No. 3 asks whether the alleged child victim had a motive to fabricate the allegations. CP § 11-304(e)(iii). In *Taharaka*, this was an important factor, as the ALJ there found that the child victim was motivated by a desire not to live with her grandmother anymore. *Taharaka*, 254 Md. App. at 173-74. Although we accepted the ALJ’s findings there as reasonable, we cautioned that different family dynamics can make the analysis of an alleged victim’s motivations and biases complex. *Id.* at 174 n.12.

Here, however, the ALJ found that C.D. had no motive to lie about the abuse. The ALJ weighed this factor in favor of the credibility of C.D.’s disclosure, finding that there was no indication that he was motivated to fabricate his story. The ALJ found that there was no evidence that C.D. or others had anything to gain from accusing Granados-Arriaza of sexual abuse or that anyone coerced C.D. into making allegations against Granados-

Arriaza. This conclusion was supported by substantial evidence in the record. In fact, the record indicates that C.D. came forward despite having reasons not to do so.⁹

Factor No. 4: “Whether the statement was spontaneous or directly responsive to questions”

Factor No. 4 asks whether the child victim’s statement was spontaneous or prompted, CP § 11-304(e)(iv), based on the apparent belief that spontaneous statements are more credible. As we pointed out in *Taharaka*, modern social science does not support that belief and recognizes that direct questioning may be necessary for children to come forward regarding their abuse. *Taharaka*, 254 Md. App. at 175 n.13. As a result, in *Taharaka* we noted that while we may not disregard this factor, “neither are we willing to exaggerate its importance.” *Id.*

In this case, however, the ALJ found that C.D.’s statements to his mother and father were spontaneous. He additionally found that C.D. was directly responsive to questions posed by his physician and his relatives who were present when he confronted Granados-Arriaza. The ALJ's findings indicate that he did not view this factor in favor of or against C.D. His choice to treat neither statement as more or less credible therefore takes into account exactly what we expressed in *Taharaka* and modern social science supports. This finding was supported by substantial evidence in the record. C.D. voluntarily disclosed the abuse to his relatives and doctors and repeated those allegations when asked about them.

⁹ As we state above, the record indicates that Granados-Arriaza urged C.D. to remain silent about the abuse and convinced him that if he came forward, he would be blamed and considered a liar.

Factor No. 5: “The timing of the statement”

Factor No. 5 asks whether anything about the timing of the statement makes it more or less credible. CP § 11-304(e)(v). In *Taharaka*, the ALJ found that the timing of the disclosure—a long period after the alleged abuse occurred and while the victim was having difficulties with her grandmother—made the disclosure less credible. *Taharaka*, 254 Md. App. at 175-76. We were critical of the ALJ’s application of this factor, *id.* at 175-77, and rightly so: modern social science does not support the idea that the timing of a disclosure is a useful indicator of its credibility. *Id.* at 176 n.14.

In the instant case, the ALJ was sensitive to issues of timing, writing:

[T]he Child’s initial statement was prompted by his immediate concern—not to be left at home when his mother went to church or to run errands for fear [Granados-Arriaza] would come into the apartment and abuse him. There is an unanswered question, however, why the Child chose that moment to express the concerns, the abuse having occurred over several years; however, these types of allegations are difficult to make and the timing is therefore not determinative of reliability.

Although the ALJ raised questions as to the timing of C.D.’s disclosures, we note that he previously found that C.D.’s disclosures were prompted by abuse that occurred a week earlier. Accordingly, we do not view the timing of C.D.’s disclosures as questionable. We also note, however, that despite the ALJ’s skepticism, his ultimate conclusion recognized that timing of disclosures is not determinative of reliability, which we explained in *Taharaka*. There is therefore nothing arbitrary or capricious here.

Factors No. 6 & 7: “Whether the child victim’s young age makes it unlikely that the child victim fabricated the statement that represents a graphic, detailed account beyond the child victim’s expected knowledge and experience” and “the appropriateness of the terminology of the statement to the child victim’s age”¹⁰

These two statutory factors are based on the understanding that absent abuse, young children are unlikely to have the ability or vocabulary to describe sexual abuse. CP § 11-304(e)(vi), (vii).

Under this factor, the ALJ made no finding in favor of or against the Department. He noted only that the Department’s witness found C.D.’s descriptions to be age appropriate and that C.D. was able to identify the parts of Granados-Arriaza’s body that were used during the abuse through anatomical drawings. He made no finding that the descriptions were age appropriate or not himself. He also observed that C.D.’s description of the abuse as “what men and women do in the movies” was unclear but did not explicitly find that it was beyond C.D.’s age or understanding. This conclusion is supported by substantial evidence.

Factor No. 8: “The nature and duration of the abuse or neglect”

This factor asks whether there is anything about the nature and duration of the abuse that makes it more or less credible. CP § 11-304(e)(viii). On this factor, the ALJ was critical of the Department’s evidence. The ALJ pointed out that the Department failed to produce

¹⁰ At the time that *P.F.* was published, factors 6 and 7 were a single factor. The General Assembly divided that factor into factors 6 and 7 when it amended CP § 11-304(e). The ALJ follows the numbering format in *P.F.* We, however, have adjusted our numbering format to reflect the General Assembly’s change, which is current law.

evidence about whether C.D. was frequently left home alone, giving Granados-Arriaza the opportunity to abuse him. As the finder of fact, we defer to the ALJ's determination that the Department failed to produce sufficient evidence to persuade him of how often C.D. was left alone and how often Granados-Arriaza had the opportunity to abuse C.D. The ALJ's determination regarding this factor was not arbitrary or capricious.

Factor No. 9: "The inner consistency and coherence of the statement"

This factor asks whether the disclosure of abuse was internally consistent and coherent. CP § 11-304(e)(ix). As noted above in connection with Factor No. 2, this Court in *Taharaka* noted that social science does not support the apparent belief that internally consistent disclosures are more likely to be true. *Taharaka*, 254 Md. App. at 173 n.11, 180-82, & 180 n.17.

In the instant case, the ALJ noted that C.D.'s disclosures were "generally consistent, but with variations that tended to expand over the interview process," that is, C.D. described more abuse and in more detail as time went by. While the ALJ appeared skeptical of C.D.'s increasingly detailed disclosures, his opinion emphasized that the Department failed to ask follow-up questions about these disclosures. Moreover, the ALJ noted that the Department failed to explain the process that Dr. Shukat used to interview C.D. and why she did not ask follow-up questions as the disclosures became increasingly detailed.¹¹ Thus,

¹¹ We note, however, that even if the ALJ's credibility determination was affected by his skepticism of C.D.'s disclosures, his findings were still consistent with *Taharaka*. In *Taharaka*, one reason that the ALJ counted this factor against the Department was because her disclosures became more detailed in later interviews. *See Taharaka*, 254 Md. App. at 180. We rejected holding that against the Department, explaining that a "progression in detail as the interviews become more detailed [is] how the process is

we understand the ALJ’s findings on Factor No. 9 not as counting against C.D.’s credibility so much as against the Department for its failure to properly investigate, follow-up, and persuade the ALJ. We do not view this finding as infected by the same stereotyping that we found in *Taharaka*, but rather as an appropriate requirement that the Department prove its case. As such, the ALJ’s determination regarding Factor No. 9 was not arbitrary or capricious.

Factor No. 10: “Whether the child victim was suffering pain or distress when making the statement”

This factor asks whether the child victim was distressed when making the disclosure, CP § 11-304(e)(x), under the apparent belief that more distress makes a disclosure more credible. In *Taharaka*, this Court was critical of this factor noting that “social science reveals that . . . assumptions about how a victim of child sexual abuse *should* react are misguided.” *Taharaka*, 254 Md. App. at 182 (emphasis in original); *see also id.* at 182-84.

In this case, the ALJ found that C.D. was in distress when he “shut down” during his appointment with Dr. Villagre and during his forensic interview with Malave. The ALJ noted that C.D.’s family did not say how C.D. presented when he disclosed the abuse to them. The ALJ also found that C.D. was in distress when he spoke with Dr. Shukat, who

supposed to work--not proof of inconsistency.” *Id.* We explained that while the child’s allegations became increasingly detailed, her story did not fundamentally change. *Id.* That is not the case here. The record here indicates that C.D.’s story *did* change. Accordingly, even if the ALJ counted this factor against the Department’s case for that reason, his finding was supported by substantial evidence in the record.

admitted C.D. to the hospital for suicidal ideations. The ALJ observed that Dr. Shukat did not explain the link between C.D.’s allegations of child sexual abuse and his suicidal ideations.

In our view, and as the ALJ opined, the record supports that C.D. was distressed when detailing the abuse. During the forensic interview, C.D. became quiet, had a “flat affect,” shut down, broke eye contact, and stopped responding to questions. Additionally, C.D. became embarrassed and withdrawn after discussing the abuse with Dr. Villagre.

C.D. was distressed during his visit with Dr. Shukat as well. Dr. Shukat reported that C.D. was unable to discuss his feelings and that many times he would “shut down” and not talk. She also, as the ALJ points out, admitted him to the hospital for suicidal ideations. While we may not have found that Dr. Shukat needed to and failed to establish the link between C.D.’s disclosures and his suicidal ideations like the ALJ did, we hold that the ALJ’s findings were supported by substantial evidence.

Factor No. 11: “Whether extrinsic evidence exists to show the defendant ... had an opportunity to commit the act complained of in the child victim’s statement”

Factor No. 11 requires an ALJ to evaluate extrinsic evidence to determine whether it supports that the alleged abuser had the opportunity to abuse the victim. CP § 11-304(e)(xi).

It is with respect to Factor No. 11, that the ALJ really took the Department to task. The ALJ found over and over that the Department had failed to obtain and produce corroborative evidence that would demonstrate the credibility of C.D.’s disclosure.

The ALJ found that there was no evidence showing that Granados-Arriaza had an opportunity to commit abuse in C.D.’s family’s apartment and that there was no evidence that C.D. was even recently left alone in the apartment with Granados-Arriaza. The ALJ explained that none of C.D.’s allegations that placed Granados-Arriaza at the apartment were ever followed up on in C.D.’s forensic interview, his interview with Dr. Shukat, or in the Department’s interviews with his family members. For example, the ALJ emphasized that in the forensic interview, C.D. said that Granados-Arriaza “always” sexually abused him when he was by himself. As the ALJ noted, however, Malave made no efforts to discuss the most recent events that C.D. alleged occurred, including the event that brought about the report in the first place. Instead, C.D.’s interview mostly focused on abuse allegations from five years previous. The event that prompted the report was also not discussed in the forensic interview with C.D.’s parents or in the interview with C.D.’s brother, E.D.

The ALJ also counted this factor against the Department because of its failure to investigate other corroborating evidence. For instance, C.D. alleged that Granados-Arriaza abused him in his mother’s room and that Granados-Arriaza frequently fell asleep in the bed, causing C.D. to relocate to the couch until his mother came home. The ALJ found that the Department could have easily verified this information with C.D.’s mother and shown that Granados-Arriaza had the opportunity to be in the family’s apartment while they were away but did not do so.

The ALJ pointed out numerous other parts of C.D.’s story that the Department failed to investigate. For example, C.D. alleged that E.D. was in the house and would lock his

door when the abuse took place. The Department, however, never asked E.D. about this fact. Similarly, the Department never asked whether Granados-Arriaza was left alone with C.D., E.D., or any other children. Furthermore, C.D. alleged that Granados-Arriaza would have coffee with his father and later return to the house. The Department never questioned C.D.'s father about this fact or whether Granados-Arriaza thereby had access to C.D.

The ALJ also addressed how C.D. allegedly called his mother and informed her that Granados-Arriaza was asleep in her bed, that his mother told Granados-Arriaza to leave more than once, and that at least once, C.D.'s underwear had been left on his parents' bedroom floor after sexual abuse occurred. The Department never asked C.D.'s mother, however, about whether she had ever found C.D.'s underwear in her bedroom. The ALJ explained that these facts could have placed Granados-Arriaza at C.D.'s family's apartment and supported that Granados-Arriaza had the opportunity to commit the crime. Yet the Department failed to ask about these facts in its interview with C.D.'s mother.

C.D. additionally detailed other allegations of the abuse that were not followed up by Malave or Dr. Shukat. C.D. mentioned that he was abused in several different locations including Granados-Arriaza's car, the bathroom, the closet, and the park. The ALJ observed, however, that the Department asked only general questions about the car and did not ask about the abuse that C.D. alleged had taken place there or in other locations.

Lastly, the ALJ found that the Department failed to gather evidence on whether Granados-Arriaza took or uploaded pictures of C.D.'s genitals onto Facebook, as C.D. alleged. This evidence could have supported that Granados-Arriaza had the opportunity to

commit the abuse and did in fact commit the abuse. The Department did not seek out any forensic evidence from Granados-Arriaza’s phone to support the allegation.

The ALJ therefore concluded that the Department’s failure to seek corroborating evidence that might have been available undermined its finding of “indicated.”¹²

We hold that the ALJ’s findings with respect to Factor 11 were supported by substantial evidence. Aside from the initial disclosure on October 23, 2019, when Granados-Arriaza was confirmed to have visited the family home, there is no other evidence that he was present or had the opportunity to abuse C.D. The Department’s failure to search for and provide extrinsic evidence corroborating C.D.’s disclosures, especially when that evidence could easily have been obtained, would reasonably cause an ALJ to question the credibility of C.D.’s allegations and conclude that the Department did not meet its burden.

The Department asserts that Granados-Arriaza’s age, marriage to C.D.’s sister, and home “next door” serve as sufficient evidence to show that he had the opportunity to abuse C.D. These facts were not persuasive to the ALJ, and reasonably so. They do not place

¹² The Department argues that Factor No. 11 does not require corroborative evidence and that the ALJ’s demand that the Department produce that evidence is arbitrary and capricious. That misses the point. While the Department is correct that there is no requirement that it provide corroborative evidence, the ALJ did not require it. Instead, he simply considered the lack of corroborating evidence in his assessment of what weight should be given to the child’s statements and whether the Department met its burden by a preponderance of the evidence. Given that the ALJ is the factfinder and his role is to weigh and determine the credibility of the evidence, he handled this factor as he should have. Accordingly, we defer to the ALJ’s findings and conclusions regarding this factor.

Granados-Arriaza at the locations where C.D. said the abuse occurred.¹³ Therefore, the ALJ’s decision to find that the Department had failed to prove this Factor was neither arbitrary nor capricious.

Factor No. 12: “Whether the statement was suggested by the use of leading questions”

Factor No. 12 requires the ALJ to consider whether an investigator used leading questions in interviewing the victim. CP § 11-304(e)(xii). As we wrote in *Taharaka*, “leading questions that suggest the answers can and should undermine credibility.” *Taharaka*, 254 Md. App. at 184 n.19. Nonetheless, we also noted that modern, trauma-informed forensic interview techniques endorse the careful use of some leading questions when interviewing children about alleged sexual abuse. *Id.* (citing Emily Denne, Colleen Sullivan, Kyle Ernest, & Stacia N. Stolzenberg. *Assessing Children’s Credibility in Courtroom Investigations of Alleged Child Sexual Abuse: Suggestibility, Plausibility, and Consistency*, CHILD MALTREATMENT (May 2020), at 7).

The ALJ here found that the questions posed by Malave in the forensic interview were asked by an experienced interviewer and were not leading questions. The ALJ also found that it was unclear whether Dr. Villagre, Dr. Shukat, or C.D.’s family members had used leading questions when they discussed C.D.’s allegations with him. The ALJ seemed disturbed that nobody from the Department was prepared to describe the physicians’

¹³ See *P.F.*, 137 Md. App. at 275-76 (affirming an ALJ’s finding that a child’s statement was unreliable because the Department relied solely on the child’s statement, failed to produce corroborative evidence that could have supported or devastated its findings regarding how the act occurred, and failed to investigate extrinsic evidence supporting the allegation).

respective interview techniques or discuss whether C.D.’s relatives could have influenced his disclosures. Nevertheless, it is clear from our review of the ALJ’s opinion that he viewed this factor neutrally, and neither counted it in favor of nor against the credibility of the disclosure. This seems consistent with our caution in *Taharaka* and was not arbitrary or capricious.

Factor No. 13: “[T]he credibility of the person testifying about the statement.”

This factor focuses on the credibility of the individual who testified about the disclosure. CP § 11-304(e)(xiii). Here, the ALJ acknowledged that no one challenged Castrillo’s testimony or credibility. Yet he questioned the Department’s failure to pursue corroborating evidence or other evidence that could have diminished its conclusions or contradicted C.D.’s allegations. We hold that the ALJ’s finding was neither arbitrary nor capricious. We defer to the ALJ to determine the weight of the evidence and if the Department met its burden by a preponderance of it.

CONCLUSION

When we read the ALJ’s opinion in the *Taharaka* case, our overwhelming impression was that the ALJ’s opinion was based on stereotypes and not on modern, trauma-informed social science. When we read the ALJ’s opinion here, by contrast, our overwhelming impression is that the ALJ found that the Department had failed to present the evidence necessary to demonstrate that C.D.’s disclosure was credible. These are, quite simply, two different cases.

Given that the ALJ’s findings are supported by substantial evidence and are neither arbitrary nor capricious, we defer to his factfinding and affirm his conclusions that the

Department did not meet its burden of proof. Because the Department did not adequately prove (1) that C.D.’s disclosures were credible and (2) that Granados-Arriaza was the individual responsible, we affirm the ALJ’s decision to modify its finding to “ruled out.”

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

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