



STATE OF DELAWARE
Child Death, Near Death and Stillbirth Commission
900 King Street
Wilmington, DE 19801-3341

CAPTA¹ REPORT

In the Matter of
Anthony Lee-Smith
Minor Child²

9-03-2011-00009

April 18, 2013

¹ The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

² To protect the confidentiality of the family, case workers, and other child protection professionals, pseudonyms have been assigned.

Background and Acknowledgements

The Child Death, Near Death and Stillbirth Commission (CDNDSC) was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child's death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

Case Summary

The child who is the subject of this review, Anthony Lee-Smith, was born in January 2010 to mother, Samantha Smith. Child was born via spontaneous vaginal delivery at 39 weeks gestation, weighing 6 pounds and 11 ounces. At birth, child presented with no known congenital anomalies or abnormal conditions.

Immediately following the birth of Anthony, the Division of Family Services' (DFS) Child Abuse Reportline received an urgent referral alleging mild physical neglect of Anthony by mother, Samantha. The report indicated that upon delivery mother tested positive for marijuana; however, Anthony's urine drug screen was negative. The report was accepted for investigation due to mother's known history of substance abuse during pregnancy. Anthony was discharged from the hospital on day two of life after a safety plan had been implemented by DFS, stating the mother and child were to reside with maternal great-grandparents and that all contact between mother and child was to be supervised.

After discharge, the birthing hospital received confirmation that mother had tested positive for gonorrhea. Since mother and child had left the hospital, the DFS caseworker was contacted and informed of mother's diagnosis and the urgency for Anthony to be treated due to possible exposure during delivery. The DFS caseworker contacted mother, that same day, and informed her that she was positive for Gonorrhea and therefore Anthony needed to be treated. Mother informed the caseworker that she understood and she would immediately obtain the necessary medical treatment for Anthony. Anthony received treatment two days later, at 4 days of age. He was treated with an intramuscular injection of antibiotics for Gonorrhea.³

Twelve days after Anthony's birth, the Child Abuse Reportline received an urgent referral alleging dependency, due to parental mental incapacitation, of Anthony by his

³ There is no mention in FACTS that Anthony received treatment for gonorrhea and no follow-up by caseworker occurred to see if treatment had been received.

mother. At this point in time, child and mother were residing in the home of the maternal great-grandparents. The maternal great-grandparents reported that they were no longer able to care for Anthony due to their poor health and the continued level of stress that Samantha was causing within their home.⁴ At the time of this report Samantha's whereabouts were unknown. Due to the great-grandparents inability to provide further care for Anthony, DFS was granted temporary emergency custody of Anthony and Anthony was placed in a foster home. In February 2010, the DFS investigation was completed and mother was substantiated for dependency of Anthony due to her substance abuse issues which prevented her from providing the appropriate and necessary care for Anthony.

That same month, at six weeks of age, Anthony presented to the Emergency Department (ED) via ambulance. It was reported that Anthony was in a vehicle with his foster mother when he had become unresponsive. Cardiopulmonary resuscitation (CPR) was initiated by foster mother until Emergency Medical Services (EMS) arrived. Anthony was intubated on scene. Upon arrival to the ED, Anthony had no electronic activity in the heart (asystole) and was hypothermic. Shortly thereafter, a sustainable heart rhythm was detected. Anthony was stabilized and then transferred to the Pediatric Intensive Care Unit of Delaware's children's hospital.

Mother's History:

In September 2001, an urgent referral was received by the Child Abuse Reportline alleging the physical abuse of Samantha Smith by step-grandmother. During the course of this investigation, it was discovered that Samantha had two older siblings who were placed in foster care in the 1990s as a result of physical abuse. Moreover, Samantha's mother had died due to complications from acquired immune deficiency syndrome (AIDS) in 1995. The investigation stemming from 2001 was closed as unsubstantiated for physical abuse.

Three years later, in May 2004, another report was received by the Child Abuse Reportline alleging dependency of Samantha. Reports indicate that in 2002, maternal grandparents took custody of Samantha at the request of DFS. Maternal grandparents were no longer able to provide care for Samantha as her negative behaviors continued to escalate. Samantha was placed with maternal uncle, where upon DELJIS inquiry revealed that maternal uncle had an extensive history of drug trafficking. Placement of Samantha with maternal uncle was determined to be appropriate. Approximately one month later, maternal uncle informed DFS that he was no longer able to financially support Samantha and therefore requested that another placement be found.

In August 2005, Samantha was involved in a physical altercation with two adolescent females where she was admitted to the hospital due to the injuries she

⁴ On the evening of 1/17/10, it was reported that Samantha had threatened to physically harm the great-grandfather. This threat arose when Samantha wanted to leave the home in order to go to Delaware Park and maternal great-grandfather told her no. However, Samantha left the home anyway and then proceeded to call the home repeatedly forcing the great-grandparents to unplug the phone from the wall.

sustained. Four months later, in December, Samantha was involved in another altercation with her foster father in which she had threatened to harm him with two kitchen knives. Samantha was arrested and initially charged with felony level aggravated menacing and misdemeanor level terrorist threatening and offensive touching. Samantha was removed from the foster home and placed in a group home. Several weeks later, Samantha was placed in another DFS foster home. In March 2006, Samantha pled guilty to three misdemeanor level offenses which included aggravated menacing, terrorist threatening, and offensive touching. Samantha was ordered to receive 12 months at level III probation, complete anger management classes, attend counseling, abide by curfew, attend school, and meet with her probation officer as expected.

In April 2006, Samantha disclosed that she was pregnant with her first child. That same month, Samantha engaged in a verbal dispute with her paramour and then threatened to jump out the widow. Nine days later, Samantha tested positive for marijuana and admitted to drinking alcohol while pregnant. It was noted that during a prenatal visit, an obstetrics nurse stated that fetal alcohol syndrome only happens when one is consuming an alcoholic beverage every day. Drinking once a month will not harm the fetus.

In July 2006, Samantha was sentenced to 90 days at a group home for violation of probation. Samantha was placed in intense observation after making suicidal and homicidal threats. It was again reported that Samantha had a history of planning/threatening/attempting suicide over the years and has a profound history of familial loss and repeated rejection/abandonment issues by parental figures. Samantha spoke with a clinical psychologist and denied any intent to harm herself or her unborn child.

Approximately one month later, Samantha was admitted to a mental health facility due to suicidal and homicidal ideations. During initial evaluations, it was made known that Samantha exhibited aggressive and self-mutilating behaviors, was destructive to property, rebellious, and was considered a constant runaway. Four days after her admission, Samantha was discharged. Again Samantha denied any suicidal or homicidal ideation.

In December 2006, DFS filed for custody of Samantha's first born child. Both Samantha and child continued in foster care. In January 2007, DFS received a referral alleging dependency due to parental mental incapacitation. The case was substantiated for mild emotional neglect. During the course of the investigation another report was received alleging Abusive Head Trauma (AHT) of the child by mother. Child was examined at the children's hospital where it was determined that no injuries were present and there was no concern of AHT. Although child was placed in a new foster home, DFS began attempts at reunification with child's father. Child was eventually placed into the care of his father.

In January 2008, Samantha gave birth to her second child. DFS received a referral alleging mild physical neglect of this child. The reporter indicated that prior to

and after birth, Samantha had tested positive for marijuana. The newborn's urine drug screen was negative. The case was closed as unsubstantiated and linked to the current treatment case. Concerns were noted by DFS regarding mother's history as a child, involuntary placement of her first born child, substance abuse history, and poor parenting skills. The treatment case was later closed in early December 2008, due to risk reduction, despite mother not completing any elements of her case plan.

In July 2009, paternal grandmother was granted custody of Samantha's second child. Paternal grandmother petitioned for custody following an investigation stemming from December 2008, where child had suffered from a skull fracture at ten months of age. The investigation conducted by DFS revealed that the child was brought to the hospital by his parents, stating that in prior days he had fallen off a sofa onto a hardwood floor. Mother and father did not observe the incident. Mother stated that they were visiting extended family and all the children were upstairs playing and under the supervision of a 17 year old cousin. The cousin had taken the child downstairs, unbeknownst to the parents, and placed him on the sofa where he then fell off. Parents closely monitored the child to ensure that he was functioning properly. Child was not showing any signs of injury or discomfort until days later, when parents noticed a bump on the back side of the child's head. Child was taken to the hospital where he was examined and found to have a left parietal skull fracture/subdural bleed. A skeletal survey was completed and negative for further injuries. The attending confirmed that the injury was consistent with the parent's explanation. No concerns of delay in treatment were noted. However, the attending did raise concern that the child has not been followed by a regular pediatrician since 3 months of age and, therefore, was behind on his immunizations. The case was unsubstantiated with concern and risk and transferred to treatment due to mother's lack of parenting skills, her untreated substance abuse issues, and her extensive history with DFS as a child and as an adult. In May 2009, the case was closed due to mother's noncompliance with services. Shortly thereafter, paternal grandmother filed for and was granted custody of the child.

Father's History:

Father of Anthony Lee-Smith has no previous history with the Department of Services for Youth, Children and Their Families. In addition, criminal history was noncontributory, consisting of misdemeanor level offenses and/or civil violations.

Anthony's Death Event:

In February 2010, the Child Abuse Reportline received an urgent referral that Anthony had been transported to the Emergency Department (ED) via ambulance. It was reported that foster mother was taking child to a hair dressers' business which was located approximately 2 miles from foster mother's residence (10-12 minute ride). When foster mother placed Anthony in the car she noted that he was somewhat fussy and that during the drive he became quiet. Foster mother attributed the child's fussiness to the diaper rash for which the child had been receiving treatment, for approximately two weeks. Foster mother reported that when she arrived at the hair dressers, she went to take

Anthony out of his car seat only to find that he was not breathing. She immediately started CPR and called Emergency Medical Services. Paramedics responded and upon arrival noted that Anthony was not breathing and had no pulse. Upon arrival to the ED, Anthony was in asystole and hypothermic. While in the ED, a sustainable heart rhythm was detected. Child was transferred to the Pediatric Intensive Care Unit at Delaware's children's hospital for further evaluation and treatment. It was noted that DFS gave consent to treat and that communication would be ongoing as higher levels of treatment were needed. While child was en route to the children's hospital, DFS caseworker confirmed with the hospital social worker that parents would need to sign consents to treat.

Foster mother reported that the night before, Anthony did not sleep well. She assumed he was fussy due to his diaper rash. Anthony was brought to his primary care provider with complaints of a "rash in the private area that has been spreading for a few days." The rash was noted to be red bumps on the groin and lower abdomen, no pus but some flaking of skin. Anthony was prescribed Nystatin and foster mother was informed that if the rash did not improve or worsened within 5-7 days the child should return. Child had no fever.

Child remained mechanically ventilated. Ophthalmology examination demonstrated no retinal hemorrhages. Infectious Disease work-up was negative for any invasive infection. Toxicology screen was positive for barbiturates due to medication that had been administered. Child also tested positive for Methicillin-resistant *Staphylococcus Aureus* (MRSA). Over the course of the next day, Anthony's kidney function rapidly declined, his body's clotting system began working improperly, and he was showing signs of possible seizures. An electroencephalography (EEG) and other neurological testing demonstrated significant brain damage.

Two days after admission, Anthony's mother removed him from the ventilator and Anthony died shortly thereafter. Child died at one month of age with the cause of death being Sudden Unexplained Death in Infancy (SUDI) and his manner of death undetermined. An autopsy was not performed and prosecution was not sought in this case.

Primary System Recommendations

After review of the facts and findings of this case, the Child Abuse and Neglect Panel determined that all systems did not meet the current standards of practice and therefore the following system recommendations were put forth:

FAMILY COURT:

- (1) CDNDSC recommends that the Court Appointed Special Advocates (CASA) Program draft policy and procedure in order to best direct and assess how a CASA should proceed in a case involving life threatening circumstances and/or

life ending decision making for children in the custody of the Division of Family Services (DFS).

- a. Rationale: Although DFS had custody of the child at the time of death, mother was still able to make medical decisions for her son. Confusion arose as to how to proceed and whether DFS needed to be consulted prior to abiding by mother's request.
- b. Anticipated Result: To create policy and procedure as to how a CASA should proceed in a case involving life threatening circumstances and/or life ending decision making
- c. Responsible Agency: Family Court

MEDICAL:

- (2) CDNDSC recommends that Delaware hospitals document all correspondences and/or communications that occur between the hospitals and DFS and/or the Department of Justice (DOJ).
 - a. Rationale: Medical documentation reveals that contact was made with the DOJ and DFS. However, documentation does not state when such conversations occurred, the decisions or requests made, or the individuals involved in such decision making.
 - b. Anticipated Result: Better documentation among medical providers
 - c. Responsible Agency: Delaware Hospitals
- (3) CDNDSC recommends that the treating hospital review its policy and procedure pertaining to withholding and/or withdrawing a child from life support with specific regard to a child who is in the State's custody and that current policy establishing a uniform language with reference to the party who is able to make these decisions on behalf of the child.
 - a. Rationale: It does not appear that policy and/or procedure was followed by the treating hospital when withdrawing a child from life support that is in the State's custody. Moreover, language within the current policy is not uniform and therefore elicits confusion when determining what party has the right to make such decisions on behalf of the child.
 - b. Anticipated Result: Revision of policy and procedure to establish uniformity and consistency throughout.
 - c. Responsible Agency: Treating Hospital
- (4) CDNDSC recommends that treating hospital follow the recommended guidelines from the Centers for Disease Control and Prevention to perform an autopsy when Sudden Unexplained Death in Infancy (SUDI) or Sudden Infant Death Syndrome (SIDS) is the suspected cause of death.
 - a. Rationale: If an autopsy had been completed, an accurate and precise cause of death may have been able to be determined.
 - b. Anticipated Result: Promote consistent classification and reporting of cause of death, standardize and improve data collection, and to reduce SUIDI/SIDS by using improved data to identify those at risk.

- c. Responsible Agency: Treating Hospital and Medical Examiner's Office

OFFICE OF THE CHIEF MEDICAL EXAMINER:

- (5) CDNDSC recommends that the Medical Examiner's Office follow the recommended guidelines from the Centers for Disease Control and Prevention to perform an autopsy when Sudden Unexplained Death in Infancy (SUDI) or Sudden Infant Death Syndrome (SIDS) is suspected cause of death.
 - a. Rationale: If an autopsy had been completed, an accurate and precise cause of death may have been able to be determined.
 - b. Anticipated Result: Promote consistent classification and reporting of cause of death, standardize and improve data collection, and to reduce SUIDI/SIDS by using improved data to identify those at risk.
 - c. Responsible Agency: Office of the Chief Medical Examiner