Circuit Court for Washington County
Case No. 21-C-17-059293

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2564

September Term, 2017

IN THE MATTER OF
LAUREN MCCLANAHAN

Graeff,
Shaw Geter,
Ripken, Laura S.
(Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 26, 2019

Lauren McClanahan, appellant, challenges the determination made by an Administrative Law Judge ("ALJ") on August 17, 2016, which was affirmed by the Circuit Court for Washington County on February 5, 2018, that she was responsible for indicated child abuse with mental injury of her daughter, R, who was born in 2005. She presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the ALJ properly apply the *mens rea* standard announced in the Court of Appeals' *McClanahan* decision?

2. Does Md. Code (2012 Repl. Vol.) § 5-708 of the Family Law Article entitle Ms. McClanahan to immunity from prosecution?

3. Did the circuit court err in admitting reports from R's guidance counselor because they were privileged?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Background

This is the second time this case has been before the appellate courts. In *McClanahan v. Washington Cty. Dep't. of Soc. Servs.*, 445 Md. 691, 695–98 (2015), the Court of Appeals summarized much of the relevant background of this case, as follows:

> In 2010 the Washington County Department of Social Services ("the Department") conducted investigations of Mother's alleged abuse and neglect of her daughter ("R"). The investigations were triggered by multiple allegations by R that her biological father (Mother's ex-husband) had sexually abused her when she visited him. Mother reported these allegations at various medical facilities, where R was subjected to eight vaginal exams

over the course of several years.[1] These exams showed evidence of vaginal redness or discharge, not sexual abuse. Those who examined R, however, could not fully discount her allegation that her father had "hurt her bottom." As one medical professional noted, a normal exam does not exclude sexual assault.

R received a ninth vaginal exam at a pediatric practice. Mother took R in because of a cough and an injury. When R reported that her father hurt her "bottom," a physician assistant examined her vaginal area.[2] [She] referred Mother to a medical facility equipped to further evaluate R. But at the Department's request, that facility refused to conduct a SAFE exam on R. This is the only evidence that a medical professional refused to examine R out of concern for her mental health. Mother testified that since then, R made more allegations of abuse against her father, but that she was afraid to take her to a doctor.

The Department asked two experts in clinical welfare, Dr. Carlton E. Munson ("Munson") and Ronald E. Zuskin, LCSW-C ("Zuskin"), to assess R. Munson and Zuskin diagnosed R as suffering from several mental disorders and identified Mother as the cause of R's mental injury.

After conducting its investigations, the Department notified Mother that it found her responsible for indicated child abuse mental injury and indicated child neglect. Exercising her right of appeal under Md. Code (1984, 2012 Repl. Vol.), § 5-706.1(b) of the Family Law Article ("FL"), Mother requested contested case hearings through the Office of Administrative Hearings to challenge both findings. The Administrative Law Judge ("ALJ") who was assigned to Mother's appeal held a hearing for both cases in 2011.

In its decision, the ALJ affirmed the Department's finding of indicated child abuse mental injury. Relying heavily on Munson's and Zuskin's assessments, the ALJ concluded that Mother's actions "were either an intentional attempt to manipulate and influence the outcome of an ongoing custody dispute with R[ ]'s father, or were a result of her subconscious efforts to have R[ ] remain close to her."

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[1] Some of these vaginal exams were SAFE exams. SAFE is an acronym for a sexual assault forensic examination. *Cooper v. State*, 434 Md. 209, 215 (2013), *cert. denied*, 573 U.S. 903 (2014). The ALJ found that the Department conducted approximately 14 sexual abuse investigations of R's father before it investigated Mother for alleged abuse and neglect.

[2] The physician assistant, Jane Shughart, observed redness in R's vaginal area, with "mucus discharge and what appeared to be a black co[a]rse hair."

Munson concluded that Mother had caused R's mental injury by "engaging in conscious or unconscious suggestive utterances to R[ ] about abuse by the father and engaging in alienating activities related to the father." Munson also explained that R suffered emotional and behavioral problems because of Mother's "frequent abuse allegations," which "resulted in repeated exams and investigations." Zuskin reached similar conclusions. Although Zuskin did not state that Mother "coached" R to make false abuse allegations, he believed that Mother reinforced her daughter's behavior by responding to R's statements of abuse with "animal protectiveness and closeness." Munson and Zuskin contacted Amy Hershey, a licensed social worker who counseled R and incorporated their communications with her into their assessments of R.[3]

The ALJ rejected Mother's argument that she had acted reasonably, ruling that no medical evidence justified the repeated allegations Mother and R had made. The ALJ authorized the Department to identify Mother in a central registry as being responsible for child abuse mental injury.

The ALJ, however, modified the Department's finding of indicated child neglect to "ruled out child neglect." The ALJ reasoned that because Mother's acts already constituted child abuse mental injury, that same conduct could not constitute child neglect mental injury. The Department did not appeal this ruling.

Mother appealed the ALJ's decision to the Circuit Court for Washington County as provided by Md. Code (1984, 2014 Repl. Vol.), § 10-222(a) of the State Government Article ("SG"). Affirming the ALJ's decision, the Circuit Court concluded that Hershey's statements were not privileged and that the ALJ did not err in permitting Munson and Zuskin from relying on communications with and a report from Hershey. The court also found that Mother had failed to preserve her arguments that she was immune from liability by making a good faith report of child abuse, that Munson and Zuskin were not qualified as experts, and that Munson's and Zuskin's testimony was inadmissible. Finally, the Circuit Court rejected Mother's argument that a finding of indicated child abuse mental injury requires proof of intent.

In a reported opinion, the Court of Special Appeals affirmed the judgment of the Circuit Court. *McClanahan v. Washington Cnty. Dep't of Soc. Servs.*, 218 Md. App. 258, 96 A.3d 917 (2014), *cert. granted*, 440 Md. 461, 103 A.3d 593 (2014). In relevant part, the intermediate appellate court concluded that the ALJ did not err by failing to include scienter as an element of indicated child abuse mental injury. *Id.* at 277–83, 96 A.3d at 928–31.

[3] Amy Hershey's therapy report states that R made "three separate disclosures of sexual abuse while in session."

> The court also concluded that Mother had failed to preserve the privilege and immunity issues. *Id.* at 283–86, 96 A.3d at 931–33.

(Footnotes omitted.)

II.

The Court of Appeals' Decision

The Court of Appeals granted Mother's Petition for Writ of Certiorari and reversed this Court's decision. *McClanahan*, 445 Md. at 699. Mother asked the Court to consider the following questions:

> 1. Does the Court of Special Appeals['] decision that a parent can be strictly liable for child abuse by mental injury by seeking medical help for her five year old based on the child's disclosures and symptoms, absent any finding that the parent acted intentionally, recklessly, or in bad faith to cause injury, violate the Due Process Clause, Family Law Article §§ 5-701 *et seq.*, and *Taylor v. Harford County Department of Social Services*, 384 Md. 213[, 862 A.2d 1026] (2004)?
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> 2. Did Petitioner's attorney waive Petitioner's objections to the privileged testimony of a therapist by discussing the assertion of privilege by the child's attorney in the collateral child custody proceeding?
>
> 3. Did the ALJ's decision against Petitioner violate the immunity provisions of [FL] Article § 5-708 and [Md. Code (1973, 2013 Repl. Vol.), § 5–620 of the] Courts and Judicial Proceedings Article [ ]?

Id.

The Court addressed only the first question. It concluded that, "to be included as a 'child abuser' in DHR's central registry, a person must either intend to injure the child or at least act in reckless disregard of the child's welfare." *Id.* at 711. "In other words, a parent's conduct must constitute a gross departure from the type of conduct a reasonable person would engage in under the circumstances." *Id.* at 712. Accordingly, the Court of

Appeals reversed the judgment of this Court and remanded to the ALJ "to make factual findings and conclusions of law, consistent with [the] opinion." *Id.*

II.

Proceedings Subject to Appeal

A.

Reconsideration by ALJ

On June 30, 2016, the ALJ requested that the parties submit new briefs on the issues, advising that it would render its decision within thirty days from submission of the briefs. On August 17, 2016, the ALJ rendered her decision.

Based on a review of the same record, the ALJ made additional findings of fact that she had not made previously. These findings, in pertinent part, were as follows:

> 1. Between February 19, 2008 and July 1, 2010, CPS conducted fourteen investigations regarding [R], with all allegations being ruled out.
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> 2. On June 23, 2010, [Mother] took [R] to the Washington County Hospital at approximately 4:00 a.m.
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> 3. At approximately 3:40 p.m. on June 23, 2010, [Mother] returned with [R] to Washington County Hospital for a SAFE examination. [Mother] misrepresented to the Washington County medical staff that the physician at Chambersburg Hospital ER told her to bring [R] to Washington County Hospital for a SAFE exam because there was too much discharge for a urinary tract infection.
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> 4. While at Washington County Hospital on November 17, 2010, [Mother] made no mention that Ms. Shughart had observed a black co[a]rse hair in [R's] genital area during the office visit that day.
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> 5. On May 14, 2010, Mr. McCarthy[, a CPS worker,] spoke to [Mother] and informed her that CPS had concerns for the psychological well-being of [R] due to the repeated medical exams to which [R] had been subjected.

The ALJ noted that the Court of Appeals explained that a parent who in good faith reports child abuse can be a protector of the child, and therefore, a parent taking a child for multiple sexual abuse examinations "falls within the realm of conduct that could benefit the child." 445 Md. at 712. Accordingly, the ALJ stated that "a finding of child abuse-mental injury in this case must be based on evidence that supports a conclusion that [Mother's] actions were at least reckless regarding her child's health."

The ALJ found that Mother "made conscious and deliberate decisions each and every time she subjected [R] to interviews and intrusive vaginal examinations over a two year period." She noted that "[t]here was only one instance documented in the record" when Mother took R "for an examination based on the recommendation of a medical profession[al]." This occurred after Ms. Shughart examined R at White Oak Pediatric, found a black coarse hair, and advised Mother to take R to another facility better equipped for further evaluation. The ALJ stated that, "[i]nexplicably, when [Mother] took [R] to the Washington County Hospital upon Ms. Shughart's recommendation, she never mentioned that she had been referred by White Oak based on the findings of the black coarse hair." Instead, the medical record reflects that Mother only reported that R "had told her doctor that her father 'hurt her in her front bottom.'"

The ALJ also noted misrepresentations by Mother to hospital staff. On June 23, 2010, Mother took R to Chambersburg Hospital "based on [R's] purported report of abuse." Hospital staff determined that R should be treated for a urinary tract infection, and because Chambersburg Hospital does not do SAFE exams, R should be taken to Washington

County Hospital for a follow-up exam. At 4:20 a.m., Mother took R to Washington County Hospital seeking a SAFE exam. R was "sleepy" and "uncooperative," so Mother left and returned to the hospital later that day at approximately 3:43 p.m. The ALJ explained:

> The Washington County Hospital notes from that afternoon reflect that [Mother] stated that she was to "bring the patient here for a SAFE exam because there was too much discharge for a UTI." . . . [Mother] further reported to Washington County Hospital nurse that the urinalysis results from Chambersburg Hospital showed "high protein and trace leukocytes." . . . [Mother's] statement that Chambersburg Hospital Doctors stated that there was too much discharge for a urinary tract infection is not supported by the medical records. Chambersburg Hospital medical records specifically document treatment for a urinary tract infection. The hospital medical record makes no suggestion that [R's] symptoms were due to anything other than a urinary tract infection. The examination of [R] revealed no trauma and no injuries that were consistent with [R] being stuck by a needle. The medical personnel found it important to note that [Mother] reported that she would continue bringing [R] back for exams until something was done. . . . [Mother's] statements are reflective of a reckless disregard for the mental well being of [R] as she [was] willing to continue to subject her to repeated examinations until she received her desired result, which I can readily infer was to have [R's] father implicated for child sexual abuse.

The ALJ then concluded: "Based on my careful review of the entire record, I reject [Mother's] assertion that her actions were reasonable and justifiable," stating that there was "absolutely no medical evidence of any injury consistent with ongoing sexual abuse," and Mother "was put on notice as early as 2008 that there was concern by medical professionals about the psychological impact on [R] of the repeated exams." The ALJ again reiterated that Mother had been dishonest with medical professionals over the course of these numerous examinations.

The ALJ ultimately determined that Mother's conduct in "repeatedly subjecting her five-year-old daughter to numerous invasive examinations of her genitalia over the course

of a two-year period was reckless conduct that resulted in mental injury directly attributable to that conduct." As such, the ALJ concluded that the Department's finding of indicated child abuse-mental injury, and its identification of Mother as responsible for that child abuse-mental injury, should be affirmed.

B.

Circuit Court Consideration

Mother appealed the ALJ's decision to the circuit court. On December 8, 2017, the circuit court held a hearing.

Mother argued that the ALJ's decision should be reversed because the ALJ had "allowed no additional evidence" on remand, yet "somehow without any real analysis or explanation, determined that this new standard [set by the Court of Appeals] was met." Counsel asserted that there was "nothing in the record to suggest that [Mother] acted with reckless disregard or grossly departed from the type of behavior that a reasonable parent could engage in . . . in this set of facts." Additionally, counsel for Mother stated: "[W]e don't plan to address in our argument our privilege and immunity claims because they were not addressed in the ALJ's decision, [but] we're just going to rest on our briefs on . . . those points."

The Department asserted that the Court of Appeals had "determined that the ALJ did not apply the proper law," and on remand, "her job was to simply apply the correct law." It argued that it was incorrect "to say that the Court of Appeals directed or intended

for [the ALJ] to take additional evidence," and it argued that the ALJ did analyze why mother had been reckless according to the standard set forth by the Court of Appeals.

On February 5, 2018, the circuit court affirmed the ALJ's decision. The circuit court stated that, on remand following the Court of Appeals' decision, "the ALJ was required to make additional findings regarding [Mother's] state of mind when she subjected R to repeated exams." After setting forth the ALJ's additional findings of fact, the circuit court stated:

> The ALJ's findings support the reasonable conclusion that [Mother] had actual knowledge of the substantial and unjustifiable risk of mental and emotional harm to R because she had been warned by multiple professionals that harm had been occurring by her conduct. Armed with this knowledge, [Mother] made a conscious and deliberate decision to continue subjecting R to repeated exams. These findings of fact are supported by substantial evidence in the record, including but not limited to voluminous medical reports and testimony.

Accordingly, the court concluded that the ALJ had applied the facts to the law "consistent with the standard set forth by the Court of Appeals," and it affirmed the decision.

This appeal followed.

DISCUSSION

I.

Mother's first contention is that the ALJ "failed to properly apply the *mens rea* standard announced by the Court of Appeals." She asserts that the "Court of Appeals expressly concluded that the existing record of 'the conduct in this case' . . . did not give rise to an inference of intent to harm or reckless disregard," and the ALJ improperly relied

on the same record, without taking new evidence, and came to a different conclusion from that of the Court of Appeals.[4]

The Department disagrees. It asserts that the ALJ was not required to accept additional evidence in the case, and the ALJ "relied on substantial evidence in the record and correctly applied the law to find that [Mother] acted recklessly and psychologically impaired her daughter by repeatedly taking her for intrusive physical examinations during which sexual abuse was never detected."

A.

Standard of Review

When an appellate court reviews the final decision of an administrative agency, it looks through the circuit court's decision "and evaluates the decision of the agency." *In re J.C.N.*, 460 Md. 371, 386 (2018) (quoting *Kor-Ko Ltd. V. Md. Dep't of Env't*, 451 Md. 401, 409 (2017)). The Court of Appeals recently set forth the relevant standard of review:

> "Where the agency's findings of fact are supported by substantial evidence, in the form either of direct proof or permissible inference, in the record before the agency, an appellate court may not substitute its judgment, even on the question of the appropriate inference to be drawn from the evidence, for that of the agency." *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 433, 442, 624 A.2d 941, 945 (1993). Stated differently, this Court "reviews an agency decision [to assess] whether there is substantial evidence in the record to support the decision and whether the decision is based upon an error of law.["] *Motor Vehicle Administration v. Krafft*, 452 Md. 589, 603, 158 A.3d 539, 547 (2017). As we have previously stated, "the test for substantial evidence is 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached[.]'"

[4] At oral argument, counsel for Mother agreed that the ALJ was not required to take new evidence, but he argued that, based on the record that existed, abuse could not be found.

> *Motor Vehicle Administration v. Shea*, 415 Md. 1, 18, 997 A.2d 768, 778 (2010).

Motor Vehicle Admin. v. Smith, 458 Md. 677, 685–86 (2018). "The ALJ's legal conclusions are reviewed *de novo*." *In re J.C.N.*, 460 Md. at 387.

B.

Analysis

FL § 5-701 defines "abuse," in the context of child abuse, as follows:

> (1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed . . . .

A local department may make one of three findings after investigating a report of suspected abuse: (1) "indicated," a finding that there is credible evidence, which has not satisfactorily been refuted, that abuse or neglect did occur; (2) "ruled out," a finding that abuse or neglect did not occur; or (3) "unsubstantiated," a finding that there is insufficient evidence to support either of the above findings. *McClanahan*, 445 Md. at 702; FL § 5-701.

The Court of Appeals, in the first round of appeals in this case, rejected the Department's argument that, pursuant to the regulations it promulgated regarding the elements for a finding of indicated child abuse, "a parent's mental state is not material in a case of child abuse mental injury." *Id.* at 704. The Court rejected a strict liability standard relating to parents who injure their children, noting that "the parents action must be examined in context." *Id.* at 705. It concluded that, "[b]ecause FL § 5-701(b) does not differentiate between mental injury and physical injury, we do not interpret Subtitle 7 to

sanction a regulation in which a parent can be deemed a child abuser for unintentionally causing mental injury but not liable for unintentionally causing physical injury." *Id.* at 706.

The Court acknowledged that "there may be examples of mental injury arising from parental conduct that are so reprehensible that an ALJ might infer intent to harm or reckless disregard just from the act." *Id.* It stated, however, that "[t]he nature of the conduct in this case is patently different" because the parental conduct was "ostensibly for a child's protection." *Id.* at 707.

The Court ultimately concluded that, "to be included as a 'child abuser' in DHR's central registry, a person must either intend to injure the child or at least act in reckless disregard of the child's welfare." *Id.* at 711. It continued:

> The standard we have adopted does not permit inclusion of a parent's name in the central registry as a child abuser if the parent's inappropriate motivations for reporting child abuse were only at the subconscious level, even if the child was mentally injured. A standard of liability reaching the subconscious level veers much too close to strict liability for parental decisions. *See Taylor*, 384, Md. at 231, 862 A.2d at 1036.
>
> Even if Mother intended to gain an advantage in the ongoing custody battle, inclusion on the central registry as a child abuser is not permitted unless Mother intended to harm R or acted in reckless disregard of R's welfare. . . .
>
> In a case where the alleged abuser's conduct falls within the realm of conduct that could benefit the child, as medical treatment does, there must be some evidence that supports a conclusion that the parent was at least reckless vis-à-vis the child's health. In other words, a parent's conduct must constitute a gross departure from the type of conduct a reasonable person would engage in under the circumstances.

Id. at 711–12.

Accordingly, the Court remanded the proceedings to the ALJ to make factual findings and conclusions of law consistent with the Opinion. *Id.* at 712. As to the remaining issues, it explained in a footnote that, "[i]f there [was] a finding on remand adverse to Mother, [the Court] might address the second and third questions presented if the case reache[d] [it] again." *Id.* at 712 n.24.

Turning to Ms. McClanahan's contentions here, we initially reject her contention that the "Court of Appeals expressly concluded that the existing record of 'the conduct in this case' . . . did not give rise to an inference of intent to harm or reckless disregard." As indicated, although the Court did distinguish this case from one where the act was so reprehensible that "an ALJ might infer intent to harm or reckless disregard just from the act," *id.* at 707, it subsequently explained that, "[i]n a case where the alleged abuser's conduct falls within the realm of conduct that could benefit the child, as medical treatment does, there must be some evidence that supports a conclusion that the parent was at least reckless vis-à-vis the child's health." *Id.* at 712. It then remanded the proceedings "to the ALJ to make factual findings and conclusions of law, consistent with [its] Opinion." *Id.* Accordingly, the Court of Appeals did not determine that the record here was insufficient to sustain a finding that Ms. McClanahan had acted recklessly, but rather, it remanded for the ALJ to apply the standard it had articulated to the facts of Ms. McClanahan's case.

The ALJ did that on remand, making additional findings of fact and determining that the evidence established that Mother acted recklessly regarding R's mental health.[5] The ALJ noted that Mother "continually subjected [R] to vaginal examinations in the absence of any evidence of sexual abuse other than [R's] statements," despite "no medical evidence of any injury consistent with ongoing sexual abuse" and the expressed "concern by medical professionals about the psychological impact on [R] of the repeated exams." The ALJ noted that "medical personnel found it important to note that [Mother] reported that she would continue bringing [R] back for exams until something was done," stating that this was "reflective of a reckless disregard for the mental well being of [R] as she is willing to continue to subject her to repeated examinations until she received her desired result, which I can readily infer was to have [R's] father implicated for child sexual abuse."

Based on our review of the record and the ALJ's opinion, we conclude that the ALJ correctly applied the law and, because "'a reasoning mind reasonably could have reached the factual conclusion the agency reached,'" *Motor Vehicle Admin. v. Shea*, 415 Md. at 18 (quoting *Motor Vehicle Admin. v. Dalawter*, 403 Md. 243, 257 (2008)), the ALJ's findings of fact were supported by substantial evidence. We will not substitute our judgment for

[5] Indeed, the ALJ specifically stated the standard the Court of Appeals had explained must be applied, as follows:

> The [*McClanahan*] Court explained that a parent taking a child for medical treatment, which in this case was multiple sexual abuse examinations, falls within the realm of conduct that could be beneficial to a child. Therefore, a finding of child abuse-mental injury in this case must be based on evidence that supports a conclusion that [Ms. McClanahan's] actions were at least reckless regarding her child's health.

that of the ALJ. *See Liberty Nursing Ctr., Inc.*, 330 Md. at 443 (When there is substantial evidence supporting an agency's findings, "an appellate court may not substitute its judgment, even on the question of the appropriate inference to be drawn from the evidence, for that of the agency.").

II.

Mother next summarily contends that she was entitled to immunity from prosecution under FL § 5-708 "because the State failed to show that [she] acted in bad faith when she sought medical treatment for R."[6] She provides no further argument in this regard.

The Department contends that this Court should decline to consider the issue of immunity because, when this case originally came before this Court, we determined that Mother failed to preserve the issue. It asserts that the doctrine of the law of the case governs this appeal.

As this Court has explained:

> Under the law of the case doctrine, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183, 840 A.2d 715 (2004). Moreover, "'[d]ecisions rendered by a prior appellate panel will generally govern the second appeal' at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and

[6] Md. Code (2012 Repl. Vol.) § 5-708 of the Family Law Article provides:

> Any person who makes or participates in making a report of abuse or neglect under § 5-704, § 5-705, or § 5-705.1 of this subtitle or a report of substantial risk of sexual abuse under § 5-704.1 of this subtitle or participates in an investigation or a resulting judicial proceeding shall have the immunity described under § 5-620 of the Courts and Judicial Proceedings Article from civil liability or criminal penalty.

> following the decision would result in manifest injustice." *Id.* at 184, 840 A.2d 715 (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 231, 640 A.2d 743 (1994)). And, more recently, in *Holloway v. State*, 232 Md. App. 272, 282, 157 A.3d 356 (2017), we observed that the law of the case doctrine applies, not only to a claim that was actually decided in a prior appeal, but also to any claim "that could have been raised and decided."

Grandison v. State, 234 Md. App. 564, 580 (2017), *cert. denied*, 458 Md. 588 (2018), *cert. denied*, 139 S.Ct. 1350 (2019).

In Mother's initial appeal to this Court, she argued that she was entitled to immunity "because she was required to report child abuse to the Department." *McClanahan*, 218 Md. App. 258, 286 (2014). We held that, because Mother failed to raise this issue before the ALJ, the issue was not preserved for our review. *Id.*[7] Pursuant to the doctrine of the law of the case, and in the absence of any explanation why this conclusion does not apply to this appeal, we will not reconsider our earlier decision that the issue is unpreserved for review.

III.

Mother's final contention is that the ALJ erred in admitting evidence summarizing R's sessions with her therapist, Ms. Hershey. Her argument in that regard consists solely of an assertion, without citation to any authority, that those records were privileged under

[7] Although the Court of Appeals overturned this decision on the first issue, which dealt with scienter, as we explained, *supra*, it declined to address the two other issues, addressing immunity and privilege. In a footnote, the Court stated that, if there was a finding on remand adverse to Mother, and if the case again reached the Court of Appeals, it "might" address these issues. *McClanahan v. Washington Cty. Dept. of Soc. Servs.*, 445 Md. 691, 712 n. 24 (2015). The Court did not, as Mother states, expressly note that this Court must revisit these issues on a further appeal.

Pennsylvania law, where Ms. Hershey was licensed, and therefore, they should have been excluded by the ALJ upon objection.

The Department's argument on this issue mirrors that on the immunity issue. It contends that, because this Court previously determined that Mother failed to preserve the privilege issue, "there is no basis on which to disturb this Court's prior determination" that the issue was not preserved. We agree.

In deciding Mother's initial appeal, we held that, because Mother "failed to assert any privilege during the administrative proceeding," the issue was not preserved for this Court's review. *Id.* at 285–86. As with the immunity issue, Mother has provided no compelling reason—or any reason at all—for us to reconsider this conclusion.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.