

## Suing Child Protective Services When A Child Starves To Death

If at some point a lawsuit is brought against the department of human services/CPS in connection with that death, compassionate, yet experienced plaintiff and defense attorneys, familiar with the inner workings of CPS, will definitely be needed.

**By Daniel Pollack** | July 22, 2021 at 10:30 AM



The agonizing headlines grab our attention:

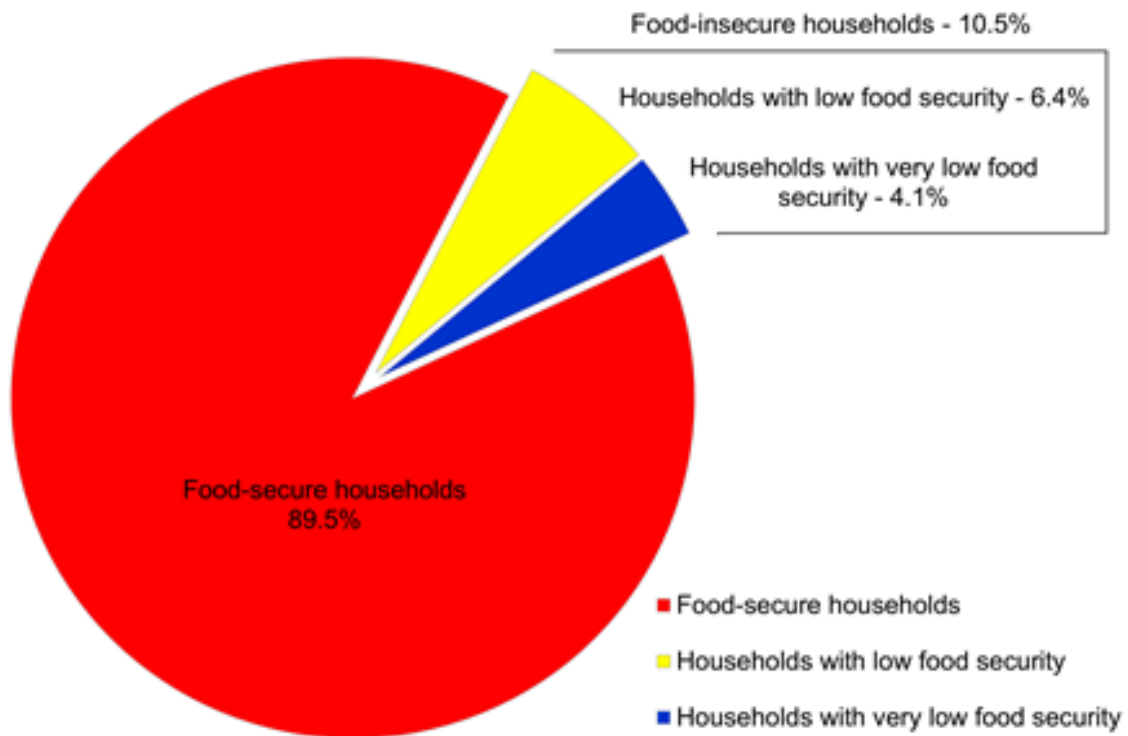
[Four years after teen's starvation death, report says DHS failed to heed earliest reports of abuse](#)

[Authorities visited starving Southwest Washington teen days before death](#)

[Report faults DCF, schools in death of 14-year-old boy with autism](#)

According to the United States Department of Agriculture, Economic Research Service, in 2019, 10.5% of all U.S. households were [food insecure](#); 4.1%, or 5.3 million people, had “very low food security – normal eating patterns of one or more household members were disrupted and food intake was reduced at times during the year because they had insufficient money or other resources for food.”

**U.S. households by food security status, 2019**



Source: USDA, Economic Research Service, using data from the December 2019 Current Population Survey Food Security Supplement.

A child can starve to death over a prolonged period of time even when Child Protective Services (CPS) and other authorities are involved, either sporadically or continuously. This is because the child will likely, at least occasionally, be

provided food by its caregiver. For this reason, evidence of a child starving may not be obvious. Depending on the exact circumstances, stored energy and nutrients sufficient to meet the body's needs can fend off starvation for weeks or even months. Eventually, those reserves are exhausted and crucial kidney, liver, and heart functions collapse.

Who is legally responsible for the child's death? Whether applied to a criminal or civil case, there will be a dispute regarding whether the caregiver intentionally withheld sustenance or whether the child's death was the result of neglect. On the civil side, plaintiffs will assert that systemic failures in policy, practice, supervision, and training were telltale signs of negligence, recklessness, and/or indifference. These assertions may be accompanied by allegations that the department of human services/CPS denied medically necessary treatment despite knowing or being on notice of the child's frail state.

Defendants will likely try to point to the paucity of evidence that it engaged in any constitutional violations or otherwise illegal conduct and are therefore entitled to qualified immunity. If the lawsuit is filed in federal court, under federal qualified immunity, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). "Qualified immunity also balances two important interests -- the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L. Ed. 2d 565 (2009).

Depending on the nature of the involvement of CPS, numerous questions must be asked. Among them:

- Exactly what was the reason for the involvement of CPS initially? Did it involve abuse or neglect or both?
- Was abuse or neglect previously substantiated?
- Were law enforcement or other agencies involved? What were the reasons for their involvement regarding the family and child?
- What was the mental health status of the caregivers?
- What were the financial circumstances under which the child was living?
- Were department/CPS scheduled visits made in a timely way? During those visits, was the child seen?
- Were regular medical visits scheduled and kept?
- Did the child have a history of malnutrition or dehydration? Did it have other health issues that would cause it to fail to thrive?

CPS workers have stressful and demanding jobs. They are constantly being accused of removing a child too soon or too late. And so, it's hard to say what "err on the side of caution" sometimes means. When a child dies of starvation, it is understandable that the immediate focus is on grieving and emotional loss. If at some point a lawsuit is brought against the department of human services/CPS in connection with that death, compassionate, yet experienced plaintiff and defense attorneys, familiar with the inner workings of CPS, will definitely be needed.

**Daniel Pollack** is an attorney and professor at Yeshiva University's School of Social Work in New York City. Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu); 646-592-6836.