

**Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
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Linda S. Spears, Commissioner

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IN THE MATTER OF: Ms. E.M.

Fair Hearing # 2017-0429

FAIR HEARING DECISION

The Appellant, EM, appealed the decision of the Department of Children and Families, pursuant to M.G.L. c.119, §51B, to support the allegation of physical abuse on behalf of her daughter, S.

Procedural History

On February 15, 2017, the Department of Children and Families (“Department”) received the first of two 51A reports, pursuant to M.G.L. c. 119, §51A; all alleged the physical abuse of S (the “child” or “S”) by EM (“Appellant”). A subsequent report was filed on February 16, 2017, which also alleged physical abuse of the child by the Appellant. On March 9, 2017, the Department supported the allegation of physical abuse by the child.

The Department notified the Appellant of its decision and of her right to appeal. The Appellant made a timely request for a Fair Hearing pursuant to 110 CMR 10.06. A hearing convened on March 30, 2016, at the Department’s Lowell Area Office in Massachusetts.

The Appellant requested a paper review so a fair hearing was not convened.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this matter, having no direct or indirect interest, personal involvement, or bias in this case.

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit A: Intake Report 51A reported dated 2/15/17

Exhibit B: Intake Report 51A reported dated 2/16/17

Exhibit C: Child Abuse/Neglect Non-Emergency Response – 51B Report, 3/09/17

Exhibit D: Police Report dated 2/14/17

For Appellant:

Exhibit 1 Appellant's Letter to DCF dated July 19, 2014, which includes a letter from her Nanny regarding her employment from the summer of 2014

The Hearing Officer need not strictly follow the rules of evidence....only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

Statement of the Issues

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, and on the information available at the time of and subsequent to the response, the Department's decision or procedural action in supporting the 51A report violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant; if there is no applicable statute, policy, regulation or procedure, whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant; for a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, whether there was reasonable cause to believe that a child had been abused or neglected and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The Appellant, EM, is the mother of the reported child S who was seven (7) years old at the time of the reported incident. (Exhibit A; Exhibit B)
2. The Appellant, the mother of the child, was a caregiver, pursuant to Department regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16. (Fair Hearing Record)
3. A 51A report was filed on February 15, 2017, pursuant to MGL c. 119, §51A, alleging physical abuse of S by the Appellant. According to the report, the child had a bump on her head and two (2) black eyes and reported that her mother "hurt her on the floor." The report was screened in for a non-emergency response pursuant to MGL c. 119, §51B, and assigned. A subsequent report was filed on February 16, 2017, which also alleged the physical abuse of S by the Appellant. The child reported that her mother hits her and represented with several bruises on her face and black and blue eyes. This report was screened in and incorporated into the pending response as permitted by DCF policy. A referral was made to the District Attorney's office. (Exhibit A, p. 8; Exhibit B, pgs. 6-7)
4. The Department was involved with the family in December 2016, for a 51A that alleged neglect and physical abuse of S by the Appellant and neglect of her

younger sibling B by the Appellant. The Department conducted a response and the allegations were unsupported. (Exhibit B, p. 5; Exhibit C, pgs. 1-2)

5. At the time of the response, the Appellant and the father of the child were involved in a contentious divorce. They shared legal custody, the Appellant had physical custody and there was a visitation schedule. (Exhibit C, p 8; Exhibit D)
6. The child sustained the injuries on February 9, 2017, when the Appellant "threw her on the ground." The child stayed home from school Friday February 10, 2017 because she had sustained an injury. The school was closed on Monday February 13, 2017, due to a snow day. (Exhibit C; Exhibit D)
7. The child was absent from school on Friday February 10, 2017. When the child returned to school on Tuesday February 14, 2017, she had a bruise on her forehead and two black eyes. The school principal (TG) first saw the child's the bruising on her forehead and around her eyes on February 15, 2017. The child came to school with make up on her face. The child was sent to the school Nurse and reported that she sustained the injury when her mother pushed her. (Exhibit C, p. 5)
8. The child was playing with a game (Pie Face) and dropped it on the floor causing the Appellant to become angry with her. The Appellant began yelling at S and then ran towards S who tried to run away. The Appellant caught her and threw her into her bedroom resulting in her head hitting the floor. The child said it was "painful" and she cried. (Exhibit C, pgs. 5-6; Exhibit D)
9. The Department viewed the child's injuries on February 17, 2017, which consisted of a "large bruise on her forehead which was a yellow greenish color. The bump looked raised and she also had two bruises under her eyes." (Exhibit C, pgs.5-6; Exhibit D)
10. The Appellant put make-up on the child's bruises in an attempt to conceal them. (Exhibit C, p. 6)
11. In the past, the child had been hit with an open hand on her arm and the Appellant had pulled her hair but she denied that anything like this had happened before. (Exhibits C & D)
12. The child was described as being more "withdrawn" at school this year and the Appellant had been spoken to about seeking counseling for the child. (Exhibit C, p. 5)
13. At home the child gave the Appellant a hard time. (Exhibit C, p. 6; Exhibit 1)
14. The disclosures made by the child were consistent and detailed. The child was interviewed by the school prior to the DCF response, then DCF and the Police

during the response. There was no evidence that the child was motivated to lie. Edward E. v. Department of Social Services, 42 Mass. App. Ct. 478 (1997) (Exhibit C; Exhibit D; Fair Hearing Record)

15. The Appellant did not dispute what the child had reported regarding the incident however she maintained that while she did use force, the child hitting her head was accidental. (Exhibit C, p. 6; Exhibit D)
16. The Appellant acknowledged that she has pulled the child's hair and has been rough with her, grabbing her face which has resulted in the child sustaining a mark to the side of her face. The Appellant acknowledged being frustrated and using "aggression" with S since moving into their current residence on November 1, 2016. (Exhibit C, pgs. 6-7; Exhibit D)
17. The Appellant was overwhelmed and dealing with Anxiety and felt terrible when she saw the bump on the child's forehead after the incident. The Appellant iced the bruise and applied make-up and gave numerous reasons for her decision to do this. (Exhibit C; Exhibit D; Exhibit 1)
18. The Appellant was arrested and charged with assault with injury to a child. (Exhibit C, p. 7)
19. At the end of its response, the Department supported the aforementioned report for physical abuse of the reported child S by the Appellant. It was learned that on February 9, 2017, the Appellant became angry with the child, chased her and threw her into her room where she hit her head. The child sustained a bump to her forehead and two black eyes. The Appellant kept the child out of school the following day and when she sent her to school used make-up in an attempt to conceal the injuries. The bruising was still significant when the child was interviewed by the Department six days later. The Appellant was charged with assault on a child with an injury. The Appellant spoke of being easily frustrated with the child and admitted to pulling her hair and grabbing her face causing an injury. The case closed after the response as the child's father obtained custody. The Department concluded that the Appellant's actions constituted physical abuse as defined by its policies and regulations. (Exhibit C, pgs. 21-22) DCF Protective Intake Policy #86-015, Revised 2/28/16; 110 CMR 2.00
20. After considering all the evidence, I find that it was reasonable for the Department to support the allegation of physical abuse of S by Appellant for the following reasons:
 - It was undisputed that on Thursday February 9, 2017, the Appellant was angry with the child and began to chase her through the house when she threw her into her bedroom resulting in the child hitting her head;
 - The child sustained a bump to her forehead and two black eyes and was kept home from school the following day, Friday February 10, 2017. On

Monday there was a snow day and when the child returned to school on Tuesday February 14, 2017, the injuries were still visible and the Appellant had applied concealer to them;

- The Appellant acknowledged that she was easily frustrated with the child.
- The totality of the evidence did support a finding of abuse as defined by Department policies and/or regulations. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16;
- The Department did have sufficient evidence to support a finding that the Appellant abused S under Department policies and regulations. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16 (See Findings; Fair Hearing Record)

Applicable Standards

To “support” a report means:

- that there is reasonable cause to believe that a child(ren) was abused and/or neglected;
and
- that the actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)’s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 4.32 (2).

“[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A.” Care and Protection of Robert, 408 Mass. 52, 63 (1990). This same reasonable cause standard of proof applies to decisions to support allegations under s. 51B. Id. at 64; M.G.L. c. 119, s. 51B “Reasonable cause” implies a relatively low standard of proof which, in the context of 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Id. at 64.

“Reasonable cause to believe” means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected. Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caretaker; physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals (e.g. professionals, credible family members); and the social worker and supervisor’s clinical base of knowledge. 110 CMR 4.32

A “caregiver” means a child’s (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child’s health or welfare, and (e) any other person entrusted with the responsibility for a child’s health or welfare whether in the child’s home, a relative’s home, a school setting, a day care setting (including baby-sitting), a foster home, a group care facility, or any other comparable setting. As such,

“caregiver” includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The “caregiver” definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is himself/herself a child (i.e. baby-sitter). 110 CMR 2.00

“Abuse” means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

Physical Injury: Death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such non-trivial injury; or soft tissue swelling or skin bruising depending upon such factors as the child's age, the circumstances under which the injury occurred, and the number and location of bruises. (*Id.*)

To prevail, an Appellant must show based upon all of the evidence presented at the hearing by a preponderance of the evidence that: (a) the Department's or Provider's decision was not in conformity with the Department's policies and/or regulations and/or statutes and/or case law and resulted in substantial prejudice to the Appellant, (b) the Department's or Provider's procedural actions were not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party, (c) if there is no applicable policy, regulation or procedure, that the Department or Provider acted without a reasonable basis or in an unreasonable manner which resulted in substantial prejudice to the aggrieved party; or (d) if the challenged decision is a supported report of abuse or neglect, that the Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected. 110 CMR 10.23.

Analysis

The Appellant disputed the allegation of physical abuse that was supported on behalf of her child. The Appellant did not dispute that the altercation took place and acknowledged that while she had used force when throwing the child she did not intend for the child to get hurt. The Appellant felt awful when she realized the child had hit her head and put ice on the bump on her forehead. The Appellant acknowledged becoming frustrated with the child. The Appellant argued that the child sustained accidental injuries “where I was trying to help my child regulate her emotions.”

In her written statement, the Appellant argued that DCF response was not fair and relied heavily on information they obtained from the child's father, with whom she alleged there was a history of domestic violence. The Appellant also submitted a statement from a woman (N) who babysat for her children and spoke to the Appellant's care of the children and the contentions relationship between the Appellant and the father. I did not

find the Appellant's argument persuasive and relied on the facts and the evidence submitted.

The Appellant had been coming increasingly frustrated with the child and it was undisputed that Appellant had slapped the child and pulled her hair prior to this incident. On this day, the Appellant did not intend for the child to get injured she acknowledged that she was angry with the child and chased her. The child also recognized that the Appellant was angry with her. When the Appellant caught the child she threw her into her bedroom with force and this is when the child fell and sustained the injuries to her face; bruise on her forehead and black eyes. The child was kept home from school the day after the incident and when she returned, about five days later, the injuries were still visible despite the Appellant's efforts to conceal them with make-up. These events were not disputed. The Appellant's actions on that day created a substantial risk of injury to the child and resulted in her falling and sustaining substantial injuries to her face. 110 CMR 2.00

Based on the evidence presented, I find that the Department's decision to support the allegations of physical abuse was made in conformity with its policies and with a reasonable basis. 110 CMR 2.00, 4.32

Conclusion

The Department's decision to support the allegations of physical abuse of S by Appellant is **AFFIRMED**.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c.30A, §14). In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Lisa Henshall
Administrative Hearing Officer



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit

Date: 11/22/2017