

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET  
BOSTON, MASSACHUSETTS 02111**

Linda S. Spears  
Commissioner

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IN THE MATTER OF        )  
                                  )  
                  JP            )  
                                  )  
                  FH # 20170522    )  
                                  )

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing was JP. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect, and neglect – substance exposed newborn, pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On March 16, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect – substance exposed newborn of J by his mother, JP. A response was initiated. On March 21, 2017, a second 51A report was received, also filed by a mandated reporter, alleging the neglect of T and Jo by mother, JP. On April 6, 2017, the Department made the decision to support the allegations of the neglect of T and Jo and the substance exposed newborn status of J by their mother. The Department notified JP (Ms. P or "Appellant") of its decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on June 14, 2017, at the DCF [REDACTED] Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for thirty days to allow additional evidence to be submitted. Evidence was received by the Fair Hearing Unit and on July 14, 2017, the record on this matter was closed.

The following persons appeared at the Fair Hearing:

Lauren Decas	Fair Hearing Officer
JP	Appellant
CP	Attorney for Appellant
SH	Community Support Worker
TG	Department Response Worker
BL	Department Observer

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 Fair Hearing was recorded on one compact disk.

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

For the Department:

- Exhibit 1 Child Abuse/Neglect Report dated 3/16/17
- Exhibit 2 Child Abuse/Neglect Report dated 3/21/17
- Exhibit 3 Child Abuse/Neglect Non-Emergency Response completed 4/6/17

Appellant

- Exhibit A Communication from DCF from 2013 and 2014
- Exhibit B DCF Support letter and court documents from 2016 relative to JW
- Exhibit C December 2016 affidavit
- Exhibit D [REDACTED] Public Schools enrollment requirements
- Exhibit E Letter to school requesting educational evaluation of Jo
- Exhibit F Letter verifying shelter placement dated 2/7/17
- Exhibit G Affidavit for Abuse Prevention Order 2/27/17
- Exhibit H Letter to schools from JP
- Exhibit I Emergency Assistance and [REDACTED] Referral form
- Exhibit J March 7, 2017 court report
- Exhibit K March 1, 2017, Excuse Slip from OB/GYN
- Exhibit L 3/16/17 51A report
- Exhibit M 3/21/17 51A report
- Exhibit N 3/23/17 UC and ER notes of JP
- Exhibit O 51B Investigation dated 4/6/17
- Exhibit P Fair Hearing Scheduling Letter
- Exhibit Q J.W. Foster Parent Observations, copy of emails
- Exhibit R Letters to the Judge from T and her adult sister
- Exhibit S June 12, 2017 court report
- Exhibit T Family Action Plan
- Exhibit U Letters from [REDACTED] Family Medical Care
- Exhibit V Form from Dept. of Housing and Community Development
- Exhibit W Conditional Custody Order dated April 2016

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

**Issue to be Decided**

The issue presented in this 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, the issue is 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, the issue is 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) 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. (110 CMR 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16)

### Findings of Fact

1. At the time of the filing of the subject 51A reports, T was nine years old, Jo was six years old, M was three years old and J was one day old. The children had been living with their mother, JP, and her boyfriend (father of M and J) in ██████████ MA but had very recently moved to a shelter in ██████████ with JP. (Fair Hearing Record)

2. The Appellant is the mother of the subject children; therefore she is deemed a caregiver pursuant to Departmental policy. DCF Protective Intake Policy #86-015, rev. 2/28/16.

3. The P family had a history of protective services involvement dating back to 2011. Supported allegations and concerns for the children involved domestic violence, substance abuse, truancy, and hygiene. JP's three older children (one who was now an adult) resided with their father, JW, off and on since 2011. M was born a substance exposed newborn in 2014, her father is JF. In March of 2016 the Department filed a Care and Protection Petition on behalf of M; parents were awarded conditional custody. In December of 2016, a Care and Protection Petition was filed on behalf of Jo and T. The family had an ongoing case manager from the Department and concerns remained for the wellbeing of the children in the Appellant's home.  
(Testimony of TG)

4. The Department had concerns relative to the living condition of the home JP and her children were residing in. JP alleged in an affidavit for protection dated 2/27/17, that JF was forcing her to have sex and threatening that he would make her lose her children, following her constantly, being very suspicious of her actions, and gave her Chlamydia. JP wrote that she was extremely anxious and afraid and DCF was aware and wanted her to ensure her children were safe and could stay together. She entered a shelter with her children. (Exhibit G, Exhibit 3)

5. JP was awarded an abuse prevention order from JF valid through March 13, 2017.  
(Exhibit G)

6. On March 16, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A from a mandated reporter alleging the neglect – substance exposed newborn of J by his mother, JP. JP was prescribed Subutex. (Exhibit 1)

7. On March 21, 2017, a second 51A report was received, also filed by a mandated reporter, alleging the neglect of T and Jo by mother, JP. According to the reporter, Jo had missed twenty one days of school and was tardy thirty days, with five unexcused dismissals. T had been absent seventeen days, tardy thirty one days and had three unexcused dismissals. Jo was on an IEP and T was working below grade level. School staff were concerned and felt the children's behavior and demeanor showed that they were being impacted by trauma in their life and a recent exposure to a significant incident of domestic violence was noted. (Exhibit 2)

8. T, Jo, and M were behind with physicals, immunizations, and well child checks. (Testimony of TG)

9. On March 22, 2017, JP was not feeling well and left the hospital<sup>1</sup> with JF. J remained hospitalized and was treated for withdrawal symptoms with medication. T, Jo, and M were staying with a friend of JP<sup>2</sup>'s. (Fair Hearing Record)

10. On March 23, 2017, the Department filed a Care and Protection Petition on behalf of J. DCF was awarded temporary custody of him as well as T, Jo, and M. (Exhibit 3, p.3)

11. The Department was aware that JP had participated in eighteen (18) supervised urine screens from July 6, 2016 through December 20, 2016, which were all negative for substances except her prescriptions. (Fair Hearing Record)

12. On April 6, 2017, the Department supported the allegations of the neglect of T, Jo<sup>3</sup>, and the substance exposed newborn neglect of J by JP. (Exhibit 3)

13. Mornings were a chaotic time for the P household. Jo had meltdowns about going to school. The children were often late or not able to attend school due to many factors; sickness and lice were a contributing factor. Neither Jo nor T were in counseling services. (Testimony of JP)

14. The children's hygiene and attendance dramatically improved upon entering foster care. (Testimony of TG)

15. After consideration of the relevant evidence, I find the Department's decision to support the allegation of neglect-substance exposed newborn of J by the Appellant was not based on reasonable cause and was substantially prejudicial to the Appellant.

16. The relevant evidence supports the Department's decision that T and Jo were neglected by JP. School professionals noted behavioral and demeanor changes in T and Jo consistent with exposure to trauma, poor attendance, and tardiness. Hygiene and living conditions were concerning. (Exhibit 3)

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<sup>1</sup>JP had been boarding there with her newborn. JP was seen at Urgent Care the next day and diagnosed with a Urinary Tract Infection.

<sup>2</sup> JP made this arrangement prior to going into labor with J.

<sup>3</sup> M was not found to be neglected at that time.

### Applicable Standards

In order to “support” a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred 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. DCF Protective Intake Policy #86-015, rev. 2/28/16.

“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. 110 CMR 4.32(2).

“Reasonable cause” is “[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

“Neglect” is defined as failure by a caregiver, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; malnutrition; or failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

#### “Substance Exposed Newborn” (SEN)

A newborn who was exposed to alcohol or other drugs in utero ingested by the mother, whether or not this exposure is detected at birth through a drug screen or withdrawal symptoms. A SEN may also be experiencing Neonatal Abstinence Syndrome (NAS), which are symptoms and signs exhibited by a newborn due to drug withdrawal. NAS is a subset of SEN. Fetal Alcohol Syndrome (FAS) as diagnosed by a qualified licensed medical professional is also a subset of SEN. DCF Protective Intake Policy 86-015, revised 2/28/16.

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 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

### Analysis

It is undisputed that the Appellant was a caregiver pursuant to Departmental policy. Protective Intake Policy #86-015, rev. 2/28/16

The Appellant contested the Department's decision to support an allegation that J was a substance exposed newborn and that she neglected T and Jo. The Appellant maintained that she was doing everything DCF asked of her prior to becoming sick during her pregnancy and thereafter. The Appellant argued it was she alone who was caring for her children, that DCF was not helpful or responsive when she entered shelter, and that she could depend only on her community support worker for rides and caring for her children. The Appellant further argued that she and JF were getting along at the time that DCF made her leave his home, the home was only disorganized due to totes for storage, and that the timing of entering shelter while being sick and very pregnant was not conducive to stability.

The evidence supports the Appellant's assertion that she did make appropriate arrangements for her children for her expected hospitalization upon delivery. The record also supports that the Appellant worked closely with her community support worker, whom she relied on heavily. This does not negate the evidence that supports the Department's finding of neglect; the children were exposed to discord in the chaotic home which led to them having behavioral and demeanor changes, they were not up to date medically and their attendance at school had historically been poor and continued to be poor. During an investigation, the Department is obliged to collect facts and information to corroborate or disprove allegations of neglect and while "reasonable cause [to believe]" implies a relatively low standard of proof, the Department remains obliged to demonstrate there is substantial evidence to support its decision(s). 110 CMR 4.32; Daniels v. Board of Registration in Medicine, 418 Mass. 380, 389, 636 N.E.2d 258 (1994) There was such evidence in the subject matter.

Regarding the Department's determination that J was a substance exposed newborn, the Department must consider the entire record, including whatever in the record fairly detracts from the weight of the evidence supporting its conclusion. Arnone v. Commissioner of the Department of Social Services, 43 Mass. App. Ct., 33, 34 (1997); the record did not reflect that the Department did so in this response. Rather, the Department was aware the Appellant and J were only positive for Subutex, which was prescribed to her, when the decision was made to support this allegation. The subject investigative response had many statements which detracted from the evidence supporting the conclusion that J was substance exposed. Although the Department was concerned that the Appellant did not obtain prenatal care until midway through her pregnancy, and concerned that her three year old child was born a substance exposed newborn who spent months in the hospital, there was no evidence gathered during the subject investigation which would reasonably lead one to believe J was a substance exposed newborn for any substance aside from what was prescribed to the Appellant, Subutex.

Conclusion

The Department's decision to support the allegation of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

The Department's decision to support the allegation of **neglect-substance exposed newborn** by the Appellant was not made with a reasonable basis and therefore, is **REVERSED**.

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

Laureen Decas (AKA)

Laureen Decas  
Administrative Hearing Officer

Date: 3-2-18

Susan Diamantopoulos CRB

Susan Diamantopoulos  
Fair Hearing Supervisor

Date: \_\_\_\_\_

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Linda S. Spears  
Commissioner