

**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)
)
 JR) **FAIR HEARING DECISION**
)
 FH # 20170004)
)

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

Procedural History

On December 18, 2016, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of R by her mother, JR. A response was conducted and on December 21, 2016, the Department made the decision to support the allegation of the neglect of R by JR. The Department notified JR (hereinafter "JR" 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 March 22, 2017, at the DCF Cape Cod Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
JR	Appellant
PA	Department Attorney
JG	Department Response Social Worker

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 A: Child Abuse/Neglect Report, dated 12/18/16
- Exhibit B: Child Abuse/Neglect Emergency Response, completed 12/21/16
- Exhibit C: ██████████ Police Incident Report 12/18/16
- Exhibit D: Copy of text messages

Appellant

None

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 whether 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 is the mother of the subject child, R; therefore she was a caregiver pursuant to Departmental regulations 110 CMR 2.00; DCF Protective Intake Policy 86-015, rev. 2/28/16. (Exhibit A, p.2; Exhibit B, p. 3)
2. At the time of the filing of the 51A report, R was six (6) months old. R was JR's third child. R's father was RB, who did not reside with JR. (Exhibit A, p.2)
3. JR and RB have a history of DCF involvement due to issues of domestic violence between them. JR and RB had both been arrested for assaulting each other. Protective Orders were in place. (Fair Hearing Record)
4. R was in DCF custody via a Care and Protection Petition filed on her behalf. At the time of the 51A report, JR had unsupervised visitation with R. (Fair Hearing Record)

5. On December 18, 2016 the Department received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging neglect of R by the Appellant. According to the reporter, RB went to the police station around midnight to show police text messages from JR stating she was going to suffocate the child, R, and blame it on the father, RB. JR texted that RB had better not leave the area, because he would be blamed for the murder. RB reported he and his girlfriend were receiving hundreds of texts from JR, which the police did see. The report was screened in for an emergency response. (Exhibit A)

6. The Department had concern about JR's past mental health history due to significant episodes of anger and rage. From March, 2014 until November, 2014 the Department worked with JR and her second child and she was placed in a teen parenting program. JR had another child removed from her care resulting in a termination of parental rights. (Exhibit B, p.1)

7. Police reviewed RB's phone and text messages. Multiple text messages were found on RB's phone stating JR was going to suffocate the baby until it turned blue, and RB better not leave the area because he was going to be blamed for the murder. (Exhibit B, p. 2)

8. JR reported she had lost her cell phone and initially denied sending threatening text messages to RB. However, when the police called her phone number it rang in her bedroom. (Exhibit B, p.3) JR then told the police she texted RB messages out of anger but did not mean what she said in the texts about her daughter. (Exhibit B, p.2; Exhibit C)

9. During the home visit with police on the night of the incident, JG observed R in JR's bed, the baby crib was full of clothes and other baby items, there was no room for a baby to sleep in the pack and play; and the home had a strong odor of marijuana. (Exhibit B, p.3)

11. On December 21, 2016, pursuant to M.G.L. c. 119, §51B, and based on the evidence gathered during its investigation, the Department supported the allegation of the neglect of R by JR due to concerns: JR made threats to smother R via text messages to RB; JR was co-sleeping with R on a visit; and the home smelled of marijuana. (Exhibit B)

12. JR alleged she invited RB to her home to come with her and R for Christmas pictures on the day of the alleged incident, despite their violent relationship. JR alleged that RB stole her cell phone from their home and sent the threatening messages himself; however the police called her phone and it was in her bedroom; and JR acknowledged to the police she sent RB texts but did not mean what she wrote. I do not find JR to be persuasive. (Exhibit B; Testimony of JR)

13. Based upon the evidence, I find the Department's decision to support the allegation of neglect of R by the Appellant was based on reasonable cause and made in compliance with its regulations. The actions of JR posed substantial risk to R's safety and well-being. (See Analysis)

Applicable Standards

A "support" finding of abuse or neglect means that there is reasonable cause to believe that a child(ren) was abused and/or neglected; and the actions or inactions by the parent(s)/caregiver(s) placed 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

"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) 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's and supervisor's clinical base of knowledge. 110 CMR 4.32(2)

"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. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990) "[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §51A" Id. at 63. This same reasonable cause standard of proof applies to decisions to support allegations under § 51B. Id. at 64; M.G.L. c. 119, § 51B

"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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

A "Caregiver" means (1) a child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or (2) any other person entrusted with responsibility for a child's health or welfare, whether in the child's home, a relative's home, a school setting, a child care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such, the term "caregiver" includes, but is not limited to school teachers, babysitters, school bus drivers and camp counselors. The "caregiver" definition should be construed broadly and inclusively to encompass any person who at the time in question is entrusted with a degree of responsibility for the child. This specifically includes a caregiver who is a child such as a babysitter under age 18. 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, or (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, or (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 Appellant was a caregiver pursuant to Departmental regulation. 110 CMR 2.00 and Protective Intake Policy 86-015, revised 2/28/16

The Appellant contested the Department's decision to support an allegation of neglect of R. JR did not deny that she invited RB to her home and to attend Christmas picture taking with them. JR did not deny that she became angry with him and engaged in verbal fighting after she suspected he stole her cell phone. However the phone was found to be in her home when the police arrived with the DCF Emergency Response worker. Moreover R was found to be on JR's bed and although JR reported R sleeps in the crib, R's crib was full of clothing and other baby items with no room for R to have slept in it. Police saw the texts sent from JR's phone to RB threatening to hurt R. JR initially reported she did not send RB any texts then admitted she did send texts but they were out of anger. JR's home had a strong odor of marijuana when DCF and the police arrived at her home. The Appellant and RB had an extensive violent and tumultuous relationship with both parties having been arrested for assaulting the other, and protective orders being put in place. JR's actions posed substantial risk to R's safety and well-being. The documented pattern of violence and poor decision making by JR in R's presence created an unsafe environment for R. The Department's determination of neglect does not require evidence of actual injury. Lindsay v. Dep't of Soc. Servs., 439 Mass. 789 (2003).

The Department had reasonable cause to believe the allegations of neglect on behalf of R because the Appellant failed to provide minimally adequate care and her actions posed substantial risk to R's safety and well-being. In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29

Conclusion

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

This is the final administrative decision of the Department. If the Appellant wishes to appeal this

decision, he/she may do so by filing a complaint in the Superior Court for the county in which she/he lives, or within Suffolk County, 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.

Laureen Decas (dtd)
Laureen Decas
Administrative Hearing Officer

Date: 12/29/17

Darlene M. Tonucci
Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit