

**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)
)
 M.A.) **FAIR HEARING DECISION**
)
 FH # 2017-0010)

The Appellant in this Fair Hearing is the mother of the subject child who will be referred to as the Appellant or MA. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On November 4, 2016, the Department received a 51A alleging the neglect of child (N) by the Appellant. The Department conducted a response and, on December 20, 2016, the Department made the decision to support the allegation of neglect and the case remained open for an assessment. The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on February 23, 2017, at the DCF Lynn 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:

Ms. Lisa Henshall	Fair Hearing Officer
Ms. M.A.	Appellant (mother)
Ms. M.W.	Support for the mother
Ms. S.T.	DCF Area Program Manager (APM)

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 pursuant to DCF regulations. 110 CMR 10.26

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

For the Department:

Exhibit A Child Abuse/Neglect Report dated 11/04/16
Exhibit B Child Abuse/Neglect Investigation dated 12/20/16

Appellant:

Exhibit 1 Letter scheduling Fair Hearing and explaining the events of the reported incident

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 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) 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. The subject child of the Fair Hearing was (N), who was eight (8) years old at the time of the reported incident and turned nine (9) during the course of the response. (Exhibit A, p.1; Exhibit B, p.1)
2. The Appellant was the mother of the child; therefore, she was a caregiver pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16. (Exhibit A; Exhibit B; Testimony of the Appellant)
1. The family has prior history with the Department. There was unsupported response on June 11, 2016, which was regarding an unrelated caregiver. In August 2010, an investigation supported an allegation of neglect of the child by her father due to concerns of substance abuse and domestic violence. At the time of the Fair Hearing the Appellant still had an active restraining order on the father. (Exhibit B, pgs. 1 & 8; Testimony of the Appellant; Testimony of the APM)
2. The Department received a 51A report on November 4, 2016, pursuant to M.G.L. c. 119, §51A, alleging neglect of the child by the Appellant. There were concerns that the Appellant, who was admitted to the hospital on November 3, 2016, for a kidney infection had disclosed she had been on a three week alcohol "binge." The Appellant reportedly has a history of substance and alcohol abuse as well as a mental health diagnosis of Bipolar Disorder but was not in treatment at the time of the report. The Appellant reportedly refused referrals for mental health or substance abuse treatment. The report was screened in, pursuant to M.G.L. c. 119, §51B, and assigned for a

- response. (Exhibit A, pgs. 2 & 6; Testimony of the APM)
3. The Department indicated that the Appellant had disclosed that she had been drinking for three weeks and was getting “drunk” while the child was sleeping. The Appellant’s testimony at the Fair Hearing contradicts the information she provided during the response. (Exhibit B; Fair Hearing Record; Testimony of the Appellant)
 4. The Appellant disputed that she ever stated that she drank to the point of intoxication daily for three weeks. (Testimony of the Appellant)
 5. The Appellant acknowledged she was drunk on three (3) occasions in October of 2016 and the child was in the home asleep for one of these incidents. The other two occasions the child was not in the home. (Testimony of the Appellant)
 6. The Appellant testified that her definition of “binge” when she reported “binge” drinking was different than the actual definition. The Appellant indicated that it did not mean that she had been “drinking a lot.” (Testimony of the Appellant; Exhibit 1)
 7. The Appellant disputed that she drank alcohol for three weeks as indicated in the DCF response. (Testimony of the Appellant)

 8. The Appellant had numerous community supportive services in place at the time of the response. (Exhibit B; Testimony of the APM)
 9. The Social Worker E for the Community Service Agency that was working with the family confirmed that the Appellant was drinking alcohol during this time period and getting drunk. (Exhibit B, p. 6)
 10. The Appellant was diagnosed with post-traumatic stress disorder (PTSD) and Bipolar Disorder. (Testimony of the APM; Exhibit B, p. 3)
 11. The Appellant allowed a man named A [REDACTED] who was an “alcoholic” and homeless to move into her home for two weeks during this time. The two would drink (“party”) together. (Exhibit B, p. 4)
 12. The child’s feelings about A [REDACTED] were “not that good” and she spoke of A [REDACTED] and her mother fighting. (Exhibit B, p. 4)
 13. The child was fearful and anxious that the Department would take her away when the response worker spoke to her. (Exhibit B, p. 4; Testimony of the APM)
 14. The child was worried about her family being safe. (Exhibit B, p. 4)
 15. The child is diagnosed with PTSD, Oppositional Defiance Disorder (ODD), and Attention Deficit Hyperactivity Disorder (ADHD). She has “intense tantrums.” The child was psychiatrically hospitalized in February 2016 for making suicidal statements. (Exhibit B, p. 4)

16. The child is diagnosed with PTSD due to being strangled. (Fair Hearing Record)¹
 17. The Appellant did not receive a DCF parent information guide and was able to view it online. The response was due on November 29, 2017 but was not submitted until December 20, 2016. (Testimony of the Appellant; Testimony of the ACM; Exhibit B; Exhibit 1)
 18. At the end of its response, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department based this determination on the Appellant's disclosure that she had been drinking alcohol for three weeks while being the sole caretaker for the child and indicating she was depressed and overwhelmed. The Department argued that the Appellant's actions placed the child in danger as the mother was drinking daily for three weeks to the point of intoxication while the child was sleeping. The Department concluded this constituted neglect as defined by its regulation 110 CMR 2.00 (Exhibit B, pgs. 10-11; Testimony of the APM)
 19. The case remained open for an assessment at the conclusion of the response. (Exhibit B, p. 11; Testimony of the ACM)
 20. Based on the credible evidence, I find that the Department did have reasonable cause to believe that child (N) was neglected per the Department's definition and the Appellant's actions posed a substantial risk to the child's safety and well-being. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
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- a. The Appellant was drinking to the point of intoxication for three weeks while the child was asleep in the home;
 - b. The Appellant allowed a homeless man to move into the home to "party" with her;
 - c. The child had a significant trauma history and spoke of being worried for her family's safety and was psychiatrically hospitalized in February 2016, she was 8 years old;
 - d. A service provider acknowledged the Appellant had been drinking and reported to her that she had been getting drunk;
 - e. The Department did present evidence that the Appellant failed to provide the child with minimally adequate care and that the Appellant's actions did pose a risk to the child's safety and overall well-being. (Exhibit B; Fair Hearing Record; DCF protective intake policy #86-015 p. 28, revised February 28, 2016, Fair Hearing Record, See Analysis)

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.

- 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) 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

¹ On page 4 of Exhibit B the Department indicates that the Appellant has PTSD from being strangled. The Appellant clarified that this was incorrect it was the child who was strangled.

“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 the 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; G.L. c.119, s 51B

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

“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

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

Analysis

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I uphold the Department's neglect support decision.

The Appellant, the mother of the child, was a "caregiver," pursuant to Departmental regulation. 110 CMR 2.00

The Appellant contested the Department's decision to support the allegation of neglect on behalf of her child. The Appellant argued that the supported decision of neglect in this case should be reversed. The Appellant disputed that she was drinking for three weeks or that when she was drinking her daughter was home. The Appellant's definition of "binge" was different than the definition. The Appellant indicated that she got drunk once while the child was in the home sleeping but disputed all of the other evidence in the response with respect to her drinking during the three week time frame. The Appellant was understandable upset about the length of the response that went much longer than it's expected due date. I did not find the Appellant's arguments to be persuasive.

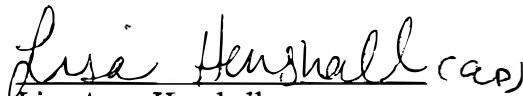
The Department argued that the Appellant was drinking to the point of intoxication on a "binge" for three weeks while her 8 year old child was in the home and she was the sole caregiver. In addition, the Appellant permitted a man (A [REDACTED]) to move into the home for two weeks during this time and the two "partied." The child, who has a significant trauma history, did not see this as a good thing and in general spoke of being worried for her family's safety. Therefore, the Department argued that the Appellant was neglectful and her actions during this time did pose a risk to the child's safety and overall well-being.


Based on a review of the evidence, presented in its totality, this Hearing Officer finds that there was reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulations. (See Findings)

Conclusion and Order

The Department's decision to support the 51A report for neglect of the child (N) by the Appellant is **AFFIRMED**.

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 within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.)


Lisa Anne Henshall
Fair Hearing Officer


Erica Pogon
Fair Hearing Supervisor

8/28/17
Date _____