

**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        )  
                                  )  
                  DD         )  
                                  )  
                  FH # 2017-0011    )  
                                  )  
                                  )

**FAIR HEARING DECISION**

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

**Procedural History**

On October 31, 2016, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect and physical abuse of S (hereinafter "S" or "the child") by her mother, DD. A response was conducted and on December 8, 2016, the Department made the decision to support the allegations of physical abuse and neglect of S by the Appellant. 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 March 22, 2017, at the DCF Cape Cod Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for two weeks to allow additional submissions of evidence. On April 5, 2017, the record on this matter closed, absent any additional submissions.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
DD	Appellant
TJ	Support
CT	Department Supervisor

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 (1) compact disc. 110 CMR 10.26

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

For the Department:

Exhibit A: 51A Report, dated 10/2/16

Exhibit B: 51B Report, completed 10/13/16

Appellant

Exhibit 1: [REDACTED] Probate Court Temporary Orders

Exhibit 2: Medical encounter form for DD

Exhibit 3: Letter of JM, LMHC

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. At the time of the filing of the 51A report, S was twelve (12) years old. She resided in [REDACTED] MA with her father, RD, and visited her mother, DD, in [REDACTED] MA regularly.
2. The Appellant is the mother of the child; therefore she was deemed a caregiver pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16
3. Since 2012, S resided with her father, RD. Prior, S resided with the Appellant. When the Appellant suffered an allergic reaction to Adderall and Lithium which showed itself with

mania, causing a psychiatric hospitalization, RD obtained custody of S and DD was granted visitation. (Exhibit 2, Testimony of DD)

4. DCF had no history of protective involvement with the family. Six (6) reports had been screened out by DCF regarding issues of the Appellant yelling, mental health issues, as well as, failure to follow through with counseling for her now adult daughter, M. (Fair Hearing Record)
5. On October 28, 2016, temporary orders were issued by the [REDACTED] Probate Court reinstating DD's parenting time, appointing an attorney for S, ordering neither parent to post about the court proceedings on social media, and ordering S to receive counseling in school. (Exhibit 1)
6. On October 31, 2016, the Department received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect and physical abuse of S by DD. According to the reporter, S was to visit with the Appellant on this day, but disclosed she was afraid to do so. S' parents had joint physical custody of S until approximately three (3) weeks ago, when RD obtained full physical custody; this changed back to joint physical custody on October 28, 2016 and S was afraid to go to the Appellant's home. S alleged approximately three (3) weeks ago the Appellant threw her against the door twice. It was alleged DD abused alcohol and had Bipolar Disorder. S reported not feeling safe going to the Appellant's home. This report was screened in for a response. (Exhibit A, p. 2)
7. On October 12, 2016, a 51A report was filed with the Department alleging neglect and physical abuse of S by her mother, DD. The reporter alleged DD had a history of mental health issues as a result RD obtained physical custody of S. DD went to court and obtained visitation. S reported she did not want to visit DD due to DD's yelling, screaming, hitting S and throwing her against walls. S did not and never had any injuries, but did not want to be around DD. RD was unaware of this; wanted visits to stop and contacted his attorney. This report was screened out due to no injuries on S; S lived with RD; and a court date was set the following week to stop visits. (Exhibit B, p. 3)
8. On November 8, 2016, S met with DCF Response Worker, JP (hereinafter "JP"), regarding the October, 2016, incident which precipitated the current 51A report. S reported she was at a visit with the Appellant. The Appellant wanted to call RD. S was sitting on the Appellant's bed doing her homework and she was told to leave the room. S said she was not leaving the room and wanted to hear what the Appellant was going to say to RD. According to S, the Appellant, "just lost it", and yelled at S and started to hit S on her arms and back with open hands "like slapping". At one point S was standing up and the Appellant pushed her; S hit the wall and the heating vent. S's thigh was red from where she hit the heater, the heater was not hot. S reported she tried slapping the Appellant back; S cried and yelled at the Appellant to stop. The Appellant yelled back at S and said things about RD; commenting about him being "super rich" and making "fun of his weight all the time". (Exhibit B, p. 4)
9. S did not want to go to the Appellant's home; but it was fine to just see the Appellant out in the community. S reported not wanting to be in a situation where she was alone with the

Appellant again; that she was scared to go back to the Appellant's house. S stated she was scared to go back to the Appellant's home and did not feel safe being alone with the Appellant. S did not want to cut the Appellant out of her life; but would see the Appellant only a couple times month. (Exhibit B, p.4)

10. S's pediatrician reported she was medically up-to-date and no concerns were noted. (Exhibit B, p. 5)
11. S's school reported S "is a great kid"; does well in school; and the school only had concerns as S reported the Appellant hit her and S did not want to go to the Appellant's home. (Exhibit B, p. 6)
12. The Appellant denied there was ever a time when she put her hands on S. The Appellant felt S was making things up because she wanted to live with RD<sup>1</sup>. (Exhibit B, p.6)
13. S felt terrified and scared, she called RD and he was at first saying to try to spend the night. The Appellant never hit her like that before; although S had seen the Appellant angry and she yell a lot. S had observed the Appellant hit her older sister, M several times. (Exhibit B, p.4)
14. On December 8, 2016, pursuant to M.G.L. c. 119, §51B, the Department supported the allegations of the neglect and the physical abuse of S by DD. The Department supported because S disclosed a physical altercation between she and the Appellant; that she was scared and fearful to be alone with the Appellant and as such did not want to be alone with the Appellant or go to visit the Appellant at her home on the day of the 51A report. The Department had reasonable cause to believe that the Appellant physical abused S; that her actions caused substantial risk of physical or emotional injury to S; and the Appellant neglected S as she failed to provide minimally adequate emotional stability and growth and her actions placed S in danger or posed substantial risk to the child's safety or well-being. (Exhibit B, p. 8)
15. DD provided documentation indicating her consistency in attending her mental health treatment on a bi-weekly basis; furthermore that her mood was stable. (Exhibit 3)
16. Based upon the totality of the evidence in this case, I find that the Department did not have reasonable cause to support an allegation of physical abuse of S by the Appellant for the following reasons:
  - a. A finding of physical abuse requires that the Department have reasonable cause to believe that a caregiver's actions caused or created a substantial risk of physical or emotional injury; 110 CMR 2.00
  - b. S disclosed to her father, RD, and the DCF Response Worker that the Appellant hit and slapped her and pushed her prior to this 51A report and as such RD obtained full physical custody; however, there was no corroborating evidence. There were no injuries observed.
  - c. The totality of the evidence did not support a finding of physical abuse as denied by Department policies and/or regulations. 110 CMR 2.00; DCF Protective

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<sup>1</sup> S was living with RD and had been for several years.

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

17. Therefore, the Department's decision to support the allegations of physical abuse of S by the Appellant was not made in compliance with its regulations and policy. 110 CMR 4.32; DCF Protective Intake Policy #96-015, rev. 2/28/16
18. In light of the totality of the evidence in this case, I find that the Department had reasonable cause to believe and to support an allegation of neglect on behalf of S by the Appellant because the Appellant failed to provide S, minimally adequate emotional stability and growth. The Department found that the Appellant's actions posed substantial risk to S's well-being. S was afraid to go to the Appellant's home, she did not want to be alone with the Appellant and feared that if she was another altercation could occur; S did not feel safe with the Appellant.
19. Therefore, the Department's decision to support the allegation of neglect of S by the Appellant was made in compliance with its regulations and policy. 110 CMR 4.32; DCF Protective Intake Policy #96-015, rev. 2/28/16

**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)

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §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 §51B. Id. at 64; M.G.L. c. 119, §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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

“Abuse” means (1) the non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse to a child; or (2) the victimization of a child through sexual exploitation or human trafficking, whether or not the person responsible is a caregiver. This definition is not dependent upon location. Abuse can occur while the child is in an out-of-home or in-home setting. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

“Physical injury” is defined as death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or soft tissue swelling or skin bruising depending on such factors as the child’s age, circumstances under which the injury occurred, and the number and location of bruises. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

A “caregiver” means a child’s (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child’s health or welfare; and (e) 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 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 DCF Protective Intake Policy #86-015, re. 2/28/16.

The Department supported allegations that the Appellant neglected and physically abused her daughter, S, during a verbal altercation which turned physical without injury. The Appellant contested the Department's decisions and argued S provoked the Appellant on purpose out of her desire to stay with her father, RD. The Appellant denied ever having struck S.

The Department found the Appellant physically abused S during a verbal incident at her home during a visit when the Appellant "lost it" and began screaming at, pushing, and hitting S. However, in this instance there was insufficient evidence to support the Department's finding of physical abuse by the Appellant. The Department relied primarily on S's statement; however there were no injuries and the record lacked corroborating evidence. Additionally, there was no indication the Appellant actions posed significant risk to S. Additional evidence admitted at the Fair Hearing indicated the Appellant was consistent in her mental health treatment and her mood was stable. The evidence did not amount to a "collection of facts, knowledge, or observations which tend to support or are consistent with the allegations that a substantial risk of injury is present," Cobble v. Department of Social Services, 430 Mass. 385, 394 (1999).

The Department further found the Appellant neglected S during the same subject incident; that the Appellant failed to take those actions necessary to provide S with emotional stability and growth. S disclosed to two (2) different mandated reporters, to her father, and to the DCF response social worker that she was scared during the reported altercation; did not want to be alone with her mother again; and did not feel safe with her. S spoke about her concerns with professionals at school, who reported those were the only concerns they had for S, who was described as a great kid. The Appellant acknowledged she and S engaged in a yelling match, thereby corroborating S's report of an altercation. Although the Appellant denied the physical aspects of the incident, she expressed how she felt S provoked her and admitted she was yelling. This Hearing Officer is duty bound to consider the totality of evidence, and whether there was sufficient evidence to permit a reasonable mind to accept the Department's decision that the Appellant neglected S. In order to support a finding of neglect, the Department must demonstrate that neglect *occurred* (emphasis added). The Department's collection of facts, knowledge and observations do support that neglect occurred. 110 CMR 4.32 S was afraid and scared to the point that she was no longer willing to visit with the Appellant alone, but only where visible in the community. 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 The record was absent any information that indicated S was not a reliable reporter relative to her feelings. Moreover, the Court has concluded that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789 (2003).

### Conclusion

The Department's decision to support the allegation of **physical abuse** by the Appellant was not made with a reasonable basis and therefore, is **REVERSED**.

The Department's decision to support the allegation 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, 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, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

Laureen Decas *(Signature)*

Laureen Decas  
Administrative Hearing Officer

Date: 4/24/18

Darlene M. Tonucci *(Signature)*

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

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

\_\_\_\_\_  
Linda S. Spears  
Commissioner