

**Executive Office of Health and Human Services  
Department of Children and Families  
Central Administrative Office  
600 Washington Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02111**

**Linda S. Spears, Commissioner**

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**IN THE MATTER OF: LB**

**Fair Hearing # 2017-0021**

**FAIR HEARING DECISION**

Appellant, LB, appealed the decision of the Department of Children and Families, pursuant to M. G.L. c.119, §51B, to support allegations of neglect of J and E.

**Procedural History**

On December 5, 2016, the Department of Children and Families (“the Department”) received a report, pursuant to M.G.L. c. 119, §51A, alleging physical abuse of J and E by their foster mother, LB (“Appellant”). On December 27, 2016, the Department decided to support the allegations of neglect, pursuant to M.G.L. c. 119, §51B, on behalf of J and E by Appellant.

The Department notified Appellant of its decision and of her right to appeal. Appellant made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing was held on June 2, 2017 at the Department’s Central Office in Boston, Massachusetts. In addition to the Hearing officer, the following persons appeared at the Fair Hearing:

LB	Appellant
JB	Witness/Husband of Appellant
TH	Department Investigator
IC	██████████ Program Service Coordinator

Also in attendance was JR, interpreter.

In accordance with 110 C.M.R. §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 digitally recorded. All witnesses were sworn in to testify under oath. The record closed upon conclusion of the oral evidence.

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

For the Department:

- Exhibit A Intake Report – Institutional Abuse
- Exhibit B Child Abuse/Neglect Non-Emergency Response
- Exhibit C Department entry letter
- Exhibit D Department support letter

For Appellant:

- Exhibit 1 Fair Hearing request and Department support letter
- Exhibit 2 Unemployment Assistance Hearing Appeal Results

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 C.M.R. § 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 investigation, 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. 110 C.M.R. §10.05

**Findings of Fact**

On the basis of my assessment of all the evidence, I make the following factual findings:

1. J, age eight at the time in question, was a child in the custody of the Department. [Exhibit B]
2. E, age five at the time in question, was a child in the custody of the Department. [Exhibit B]
3. J and E are unrelated. [Exhibit B]
4. At the time in question, Appellant was a foster parent for [REDACTED], a Department contracted agency. She had been a [REDACTED] foster parent for eleven years [Exhibit B; Testimony of Appellant]

5. In addition to Appellant, Appellant's husband and eighteen year old daughter, D, lived in Appellant's home. [Exhibit B; Testimony of Appellant; Testimony of JB]
6. In 2016, J and E were placed in Appellant's foster home. [Exhibit B, p.1]
7. As the foster parent for J and E, Appellant is deemed their caregiver pursuant to the Department's Protective Intake Policy. *See below.* [Exhibit B; Testimony of Appellant]
8. J and E both have significant trauma histories. J has witnessed severe domestic violence, has intervened on occasions where his mother and aunt were being assaulted, has been exposed to drug and gang activity, has been physically abused by his aunt, and has been an "accomplice" to his aunt robbing a laundromat. E was exposed to serious domestic violence and had some severe behavioral issues, including being violent when he did not get his own way. [Exhibit B, pp.7,10; Testimony of Investigator]
9. J had had a significant amount of disruption and change in his living situations during the year previous to his placement with Appellant. J had lived with his mother, then his guardian/aunt, and then in two foster homes. [Exhibit B, p.2]
10. J's care and protection attorney felt that J was "not the most accurate reporter." [Exhibit B, p.2]
11. Appellant's home was E's fifth foster placement in ten months. [Exhibit B, p.7]
12. Both boys were hyperactive and exhibited problematic behaviors in Appellant's home. [Testimony of Appellant; Exhibit B, pp.5-6]
13. J had struggles with E from the outset of his placement in Appellant's home. J wanted whatever E had and would try to take it away from E, even if it was the same as a toy that J already had. [Testimony of Appellant; Exhibit B, p.1]
14. Appellant felt that she had to protect E from J as J was bigger and stronger. [Testimony of Appellant]
15. In mid-November 2016, J reported to his individual therapist that he "really liked" Appellant's foster home. [Exhibit B, p.2]
16. On the Saturday before December 5, 2016, E went into D's room while she was doing homework, took everything out of her bag, screamed, and slammed doors. [Exhibit B, p.2]
17. By December 5, 2016, Appellant was considering having one of the children removed from her home due to their behaviors and constant fighting with each other. She did not know which boy she wanted removed as she cared about both of them and wanted both of them. On December 5, 2016, Appellant discussed this with E's adoption worker and with her [REDACTED] worker, IC. Appellant wanted to wait until after

Christmas to have one of the children removed as she did not want to disrupt their Christmas. [Testimony of Appellant; Testimony of [REDACTED] worker]

18. J's care and protection attorney hired an evaluator to assess the extent of J's trauma history and his needs. On December 5, 2016, J had his first meeting with the evaluator. J disclosed that: Appellant had slapped him on the butt and the back; he got hit a lot; Appellant had told him he was not allowed to tell anyone that he was getting hit; he would get in trouble; E was also hit. [Exhibit B, pp.5; Exhibit A]
19. J believed that adults could hit children as much as they wanted. [Exhibit B, pp.5,10]
20. Any form of physical discipline would be completely against any of the trauma evaluator's treatment recommendations for a youth with J's history. [Exhibit B, p.5]
21. On December 5, 2016, the Department received a report, pursuant to M.G.L., c.119, §51A, alleging physical abuse of J and E by Appellant. The Department initiated an investigation of the subject allegations. [Exhibit A]
22. On December 5, 2016, the Department removed E and J from Appellant's home and placed them in separate foster homes. [Exhibit A; Exhibit B]
23. On December 6, 2016, E's school counsellor spoke with E. E told her that Appellant would hit him and J in the arms. [Exhibit B, p.2]
24. On or about December 8, 2016, J had a situation at school during which he had to be restrained. J accused school staff of choking him during this restraint. It took J an hour to calm down. [Exhibit B, pp.3-4]
25. On December 9, 2016, J informed the Department's investigator that: he liked Appellant's foster home better than his new foster home because Appellant's home had video games; D had scratched his neck at Appellant's home; when he got in trouble at Appellant's home, Appellant hit him; Appellant had thrown him on the ground and thrown him in some trash; Appellant had hit him with an open hand on his head and it had hurt; Appellant had hit him on the butt over his clothes; E had also been hit; J had been locked in a closet and in the basement; E had been locked in the bathroom. [Exhibit B, p.4]
26. The investigator observed a small, old healing scratch on the inside of J's right hand which J reported Appellant had caused by hitting him in the hand. [Exhibit B, p.4]
27. On December 9, 2016, E informed the Department's investigator that: he did not like Appellant's home; when he did not follow directions at Appellant's home, Appellant hit him; Appellant hit him on his cheek with an open hand when E woke her up; Appellant also hit him on his cheek and arm and pinched his arm when he did not listen; Appellant locked him in the bathroom and he would turn on the light because he was scared. [Exhibit B, p.4]

28. J and E were allowed to watch violent movies at Appellant's home. J reported that he was not scared during any of these movies but E was. [Exhibit B, p.10]
29. The Department's investigator observed that the downstairs bathroom at Appellant's home did not have a manner by which to lock the door from the outside. The investigator did not observe the upstairs bathroom door. Appellant had recently moved to this home with her family and the two foster children, J and E. [Exhibit B, pp.2,6]
30. J scratched himself excessively at his new foster home. [Exhibit B, p.4]
31. In his two subsequent trauma evaluation sessions, J continued to maintain that he was hit at Appellant's home and that Appellant had told him not to tell anyone what happened in the home. J also reported to the evaluator that he had been hit by his aunt. [Exhibit B, p.10]
32. On December 27, 2016, the Department supported allegations of neglect of J and E by Appellant. The Department did not support allegations of physical abuse as the information gathered did not rise to the level of abuse. The Department supported for neglect as it believed Appellant was using physical discipline on and modeling violence for J and E and Appellant had told the children not to tell that they were being hit. The Department found these actions by Appellant to be contrary to any treatment recommendations for children with trauma histories and to undermine their emotional growth and stability. [Testimony of Investigator; Exhibit B, p.12]
33. Appellant denied ever physically disciplining J and/or E. [Exhibit B, p.6; Testimony of Appellant]
34. By weight of evidence and testimony I find the Department had reasonable cause to support the allegation of neglect of J and E by the Appellant.

### Applicable Standards and Analysis

Protective Intake Policy #86-015, 6/15/1986, as revised 2/28/2016

#### **Caregiver**

- (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.

### **Neglect**

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.

### **A "Support" finding means:**

#### ***Allegation(s)***

- 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.

### **Reasonable Cause to Believe**

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 the credibility of persons providing relevant information, would lead a reasonable person to conclude that a child has been abused or neglected.

"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 Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;.... In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 C.M.R. §10.05.

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department's or provider's decision was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party.... 110 C.M.R. §10.23.

In order to support allegations of neglect in the instant matter, the Department must have **reasonable cause to believe** that: 1) Appellant neglected J and E; **and** 2) the actions of Appellant placed J and E in danger or posed substantial risk to their safety or well-being. The evidence indicated that there were reasons to question the reliability of J's statements. For example, his attorney described him as "not the most accurate reporter;" and his new foster mother observed that J scratched himself excessively which put into question his account that Appellant had caused a scratch on his hand.

Nevertheless, both J and E independently reported being hit by Appellant. In his trauma evaluation sessions, J was able to distinguish between having been hit by Appellant and having been hit by his aunt. And each child independently reported that E had been locked in the bathroom. The evidence was unclear as to whether this had happened in Appellant's new home or in her previous home where the boys had also lived with her. It was reasonable to believe that Appellant had, in fact, hit both E and J during the time they had lived in her home. I did not credit Appellant's self-serving statements that she did not physically discipline the children. It was also reasonable to believe that Appellant had allowed J and E to watch violent movies (as J had been able to give specifics about the movies he had seen) and that Appellant, at times, put J in the basement and closet and E in the bathroom.

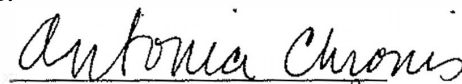
In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a trained social worker (110 CMR 10.05). Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's neglect support decision. Taking into consideration all of the evidence presented as well as the clinical expertise of the Department staff, the evidence was sufficient to rise to the level of "reasonable cause to believe" that neglect did occur.

"Reasonable cause" implies a relatively low standard of proof. Care and Protection of Robert, supra. Appellant's actions in hitting the foster children in her care, both of whom had significant trauma histories and behavioral issue, were sufficient for the Department to have reasonable cause to believe that Appellant was neglectful by failing to provide J and E with minimally adequate essential care, i.e. emotional stability and growth and/or safety. Furthermore, Appellant's actions posed a substantial risk to J and E's safety and well-being. The Department's decision was made in conformity with its regulations and policies and with a reasonable basis.

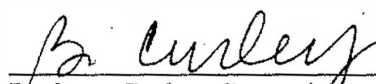
### Conclusion and Order

The Department's decision to support the allegations of neglect of J and E by Appellant was made in conformity with Department regulations and with a reasonable basis. Therefore, the Department's decision 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.

  
Antonia Chronis, Esq., *BC*  
Administrative Hearing Officer

October 2, 2017  
Date

  
Barbara Curley, Supervisor