

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
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Commissioner

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(  
( IN THE MATTER OF )  
( CG )  
( )  
( FH # 2017-0025 )  
( )

HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is CG. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of sexual abuse and neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On November 4, 2016 the Department received a 51A report from a mandated reporter alleging sexual abuse and neglect of Z by CG; the allegation was subsequently supported. The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on March 31, 2017 at the Department of Children and Families' Central Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

DH	Administrative Hearing Officer
DG	DCF Special Investigator
CG	Appellant

In accordance with 110 C.M.R. 10.03, the Administrative Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement or bias in this case.

The Fair Hearing was recorded on a digital voice recorder, pursuant to 110 CMR 10.26

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

For the Department:

Exhibit A: 51A Report  
Exhibit B: 51B Investigation  
Exhibit C E-mail from DA's Office

For the Appellant:

Exhibit 1 Letter of recommendation from AN  
Exhibit 2 Letter of recommendation from MM  
Exhibit 3 Letter of recommendation from JD  
Exhibit 4 Letter of recommendation from KB

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)

**Statement of the Issue**

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 this investigation is Z, age 5, who was placed at [REDACTED] (Exhibit A, p. 1)
2. The Appellant was CG who was a staff member at [REDACTED] (Exhibit A, p 3)
3. The Appellant was a caregiver to Z pursuant to Departmental policy. DCF Protective Intake Policy # 86-015 Rev. 2/28/16
4. On November 4, 2016, the Department received a 51A report alleging the sexual abuse of Z by the appellant. It was alleged that Z had stated to his mother "that CG lets me on his phone and touches my penis". His mother asked for clarification and Z stated that Chris touches my penis; he then proceeded to give a demonstration on how CG touched his penis by stroking himself up and down.( Exhibit A, p 2)

5. The Department assigned a Special Investigator to investigate the allegations on November 14, 2016. ( Exhibit B)
6. Throughout the response period, Z made consistent disclosures:
  - a. During a supervised visit with his mother, Z reported that CG touches his penis. Z demonstrated by moving his hands up and down over his jeans. (Exhibit B, p. 3 and p. 7)
  - b. Z asked his foster mother to tickle his penis. (Exhibit A, p. 4)
  - c. A SAIN Team was conducted at the [REDACTED] County Children's Advocacy Center in [REDACTED] on November 17, 2016. Z disclosed that CG the "stinky one" touched me. Z then pointed to his penis. Z also stated that he uses his penis to pee and CG touched my nuts with his finger. Z also stated that CG is at [REDACTED] in jail ([REDACTED]) Z stated that CG had touched him in his room and touched him all over his clothes. Z was shown a picture and was asked by interviewer where had CG touched him. Z pointed to the penis area then stated that it happened more than 1 time. At that time Z had shut down and refused to talk about other incidents. Z had become emotional and had stopped talking. (Exhibit B p 2,3)
  - d. On November 23, 2016 Z was interviewed again by the SAIN Team for a follow up. A [REDACTED] detective brought in a series photographs in for Z to view. Z recognized the picture of CG as the staff at [REDACTED] that did this to him. Z stated that staff CG used his finger to touch his penis. Z also stated that CG had touched him over his clothes. Z said he was in [REDACTED] when the incident took place. [REDACTED]. (Exhibit B p 4)
7. On December 5, 2016 several staff were interviewed from [REDACTED] and most reported no concerns with CG. There was one staff member who stated she has never witnessed CG acting inappropriately towards Z. however, she did think it was odd that CG would never ask her, or any staff, to watch the hallway to supervise or monitor when CG would go into a resident's room or assist a resident in the bathroom. (Exhibit B p 6)
8. Two staff members did report hearing CG state that he works at [REDACTED] because Z was there. (Exhibit B, p. 6-7)
9. On December 5, 2016 Z's mother, PG, was contacted during the investigation. She was asked to recount the events with her son and this reported incident. PG stated that she was putting ZB into his car seat and he said this guy CG touches my penis. Z then stated that CG comes into his room at night and lets me play with his phone. Z then said that CG touches me, but I can't touch him. PG then asked Z to demonstrate how CG touches him and "Z took his hands and moved them up and down over his jeans." (Exhibit B p 7)
10. On December 5, 2016, CG was interviewed by DCF response worker. CG stated he did allow Z to watch videos on his cell phone on several occasions. CG could not recall

which staff was present during these incidents. These incidents took place in the living room. CG reported that he would be sitting in a chair next to the couch. CG stated that he rarely would go into Z room, just maybe to escort him into the room. There would be 2 staff present and all escorts were documented. When the DCF response worker asked CG if he ever participated in escorting Z, CG stated no which contradicted his previous statement. CG denied all allegations that he had touched Z inappropriately. (Exhibit B p 7)( During FH testimony)

11. There is a concern that CG was allowing Z to use his personal cell phone. [REDACTED] does have a cell phone policy. There are concerns that staff were potentially disclosing confidential information. (Exhibit B p 5)
12. After a review of the evidence and for the following reasons, I find that the Department had reasonable cause to find that Z was sexually abused by the Appellant and that the Appellant's actions/inactions placed Z in danger or posed substantial risk to his safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
  - a. The Appellant was a caregiver, as defined by the Department's regulations.
  - b. Z's disclosures, as reported, were spontaneous, consistent and contained specific details regarding when, where, and how the abuse occurred.
  - c. There was no evidence to suggest that Z had reason to lie about the incident, that he was motivated to make false allegations against the Appellant, or that he was coached.
  - d. Z was hesitant to discuss the reported incident at the second SAIN interview. During the first SAIN interview, he became upset and shut down.
  - e. Details discussed by Z were corroborated; for example, his disclosure about the Appellant using his cell phone was corroborated by the Appellant and multiple staff. One staff member did report the Appellant would go into Z's room without another staff member present.
  - f. Z was a reliable reporter. Edward E. v. Dept. of Social Services, 42 Mass. App. Ct. 478, 480-81, 678 N.E.2d 163, 165 (1997)
13. After a review of the evidence and for the following reasons, I find that the Department had reasonable cause to find that Z was neglected by the Appellant and that Appellant's actions/inactions placed Z in danger or posed substantial risk to his safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
  - a. Z's emotional needs were not being met and the child would shut down and stop talking. Z was also upset after he had disclosed this information to his mother. (Fair Hearing Record)

#### Applicable Standards

A "Support" finding means:

- 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.

“Danger” A condition in which a caregiver’s actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future.

“Risk” The potential for future harm to a child.

“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.” 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

“Abuse” means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

“Sexual Abuse”

Any non-accidental act by a caregiver upon a child that constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caregiver and a child for whom the caregiver is responsible. 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

“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, (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 babysitting), a foster home, a group care facility, or any other comparable setting. As such "caregiver" includes (but is not limited to) school teachers, babysitters, 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 him/herself a child (i.e. a babysitter under age 18). Regulation 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, (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

For the reasons cited above and in the Findings of Fact, the Department's concerns were valid and to rise to the level of "reasonable cause" to believe that sexual abuse occurred in this case. Based upon the evidence in its entirety, this Fair Hearing Officer did not find Appellant's arguments persuasive in order to reverse the Department's support decision. The Court in Edward E. v. Dept. of Social Services, 42 Mass. App. Ct. 478, 480-81, 678 N.E.2d 163, 165 (1997), stated that the hearsay evidence in cases such as this one must have *indicia of reliability* and that determinations must be made *upon consideration of the entire record*. Z's reports of sexual abuse by Appellant were backed by significant *indicia of reliability* and that the Department had enough information at the time of its investigation to find that "reasonable cause" existed in this case. "Reasonable cause" is a low standard of proof unlike that in a criminal case. The facts and information presented in this matter are certainly enough to create a suspicion of sexual abuse pursuant to Care and Protection of Robert *supra*.

Despite the fact that there were no outside witnesses to the abuse, there are other indicators of reliability in this case. These include the child's consistent language when speaking of the abuse, his observed behavioral changes, and the absence of a plausible reason for him to lie. See Covell v. Department of Social Servs., 439 Mass. 766, 784 (2003).

The Appellant denied that he neglected or sexually abused Z. CG did disclose that he allowed Z to watch videos on his cell phone. This was against program policy. Z was interviewed 3 times. Two of the three times he was questioned he reported that CG had touched his penis and was able to use CG cell phone. Z had reported that these incidents took place more than once. Z never


wavered from his discloser. He was also able to pick CG from several photographs on the person who touched his penis while at [REDACTED].

In light of the above and considering all the evidence in the matter, the Department did have reasonable cause to believe that the Appellant did neglect and sexually abuse Z and placed the child in danger or posed substantial risk to the child's safety or well-being; Therefore the Department was in conformity with its regulations and policy when it determined that the Appellant had sexually abused and neglected Z.

### Conclusion and Order

The Departments decision to support the allegation of sexual abuse and neglect was made in conformity with Department regulation and policy and 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.



David Halloran  
Administrative Hearing Officer

10/16/17  
Date



Erica Pognon  
Fair Hearing Supervisor