

**Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
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Linda S. Spears, Commissioner

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**IN THE MATTER OF:
KF and MK

Fair Hearing # 2017-0026**

FAIR HEARING DECISION

Appellants, KF and MK, appeal the decision of the Department of Children and Families, pursuant to M. G.L. c.119, §51B, to support allegations of neglect of B against Appellant KF.

Procedural History

On November 18, 2016, the Department of Children and Families (“the Department”) received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of B by her mother, KF. On December 12, 2016, the Department decided to support the allegations of neglect, pursuant to M.G.L. c. 119, §51B, on behalf of B by KF.

Appellants KF and MK made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing was held on June 1, 2017 at the Department’s Coastal Area Office in Braintree, Massachusetts. In addition to the Hearing officer, the following persons appeared at the Fair Hearing:

LS Department Response Worker
JM Department Supervisor
MK Appellant/Father
KF Appellant/Mother
JW Attorney for Appellants
AS Witness/Paternal Grandmother of child

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 – 51A Report
- Exhibit B Child Abuse/Neglect Non-Emergency Response
- Exhibit C Area Clinical Review dictation entry
- Exhibit D Police Report

For Appellant:

- Exhibit 1 Fair Hearing requests and Department support letter
- Exhibit 2 E-mail
- Exhibit 3 Substance Abuse Evaluation

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. Appellant KF is the mother and Appellant MK is the father of one year old B. At the time in question, the family resided together in a single family home. Appellant MK's mother, AS, resided in an in law apartment over the garage of the home. [Exhibit A; Exhibit B]
2. As the mother of B, Appellant KF is deemed a caregiver pursuant to the Department's Protective Intake Policy. See below. [Exhibit B; Testimony of Appellant]
3. Appellant MK is also the father of three children from a previous relationship. [Exhibit B; Testimony of Appellant MK]
4. During the late evening of November 17, 2016/early morning of November 18, 2016, Appellants were returning home from Appellant KF's work event. They argued

about weekend plans with their children and continued the argument when they arrived home. [Exhibit B; Exhibit D; Testimony of Appellant KF; Testimony of Appellant MK]

5. Appellant KF had been drinking alcohol at the work event. There are discrepancies in the evidence as to how much alcohol she drank. [Exhibit B; Exhibit D]
6. While arguing in the home, Appellant KF physically assaulted Appellant MK and threw a candle in a glass jar at him. [Exhibit D]
7. At one point, B awoke due to Appellants' arguing. Appellant KF took B from her crib, brought her into Appellants' bedroom, and sat on Appellants' bed holding B in her arms. Appellant MK was also in/on the bed. [Testimony of Appellant MK; Testimony of KF]
8. Appellant KF attempted to assault Appellant MK on the bed. Appellant MK put out his arm to push Appellant KF away causing Appellant KF to fall off the bed with B in her arms. [Exhibit D]
9. Appellant KF put B back to sleep in her crib. [Testimony of Appellant KF]
10. Appellant KF threw Appellant MK's clothes down the stairs. [Testimony of Appellant KF]
11. At approximately midnight on November 18, 2016, Appellant MK went to get his mother, AS, hoping she could help calm the situation. [Exhibit B; Exhibit D; Testimony of Appellant MK; Testimony of AS]
12. AS got in between Appellants. Appellant KF grabbed AS by the arms and threatened to kill AS and Appellant MK. [Exhibit D; Testimony of AS]
13. At approximately 12:30 a.m. on November 18, 2016, Appellant MK called the police and reported that Appellant KF was very drunk and had been hitting and scratching him putting his mother and baby in fear. [Exhibit D]
14. The police responded to Appellants' home and took statements from Appellant MK, Appellant KF, and AS. The police observed visible scratch marks on Appellant MK's left arm. The police also observed a large amount of Appellant MK's clothing at the base of the stairs which Appellant KF had thrown there. The police determined that Appellant KF was the primary aggressor in the incident. They arrested Appellant KF charging her with assault and battery on a family or household member, assault and battery with a dangerous weapon, domestic assault and battery, and threats to commit a crime. [Exhibit D; Exhibit B, pp.2,4; Testimony of Appellant KF]
15. The police also requested an ambulance on the scene to evaluate B as Appellant KF reported that B had sustained a bump due to falling. Ambulance personnel arrived, checked on the welfare of B, and found no medical concerns. [Exhibit D; Testimony of Response Worker]

16. On November 18, 2016, the Department received a report, pursuant to M.G.L., c.119, §51A, alleging neglect of B by Appellant KF. The Department initiated a response to look into the allegations. [Exhibit A]
17. On December 1, 2016, the Department's response worker spoke with both Appellants and observed B to be a beautiful and healthy baby. The response worker found that Appellants minimized the events leading to Appellant KF's arrest and the Department's involvement with the family. The response worker found Appellants' initial statements as recorded in the police report to be more reliable as they were made at the time of the incident. [Exhibit B; Testimony of Response Worker]
18. The Department's response worker did not interview AS or the police who responded to Appellants' home. [Exhibit B; Testimony of Response Worker]
19. On December 12, 2016, the Department supported allegations of neglect of B by Appellant KF. The Department opened a case with the family for further assessment. [Testimony of Investigator; Exhibit B, p.5; Exhibit 1]
20. Appellants initiated and participated in couple's counselling subsequent to the Department's investigation. [Testimony of Appellant MK; Exhibit 2]
21. On February 3, 2017, Appellant KF underwent a substance abuse evaluation at the request of her attorney. The evaluator found no evidence of a substance abuse problem of any kind. The evaluator did not interview any of Appellant KF's family members or acquaintances as part of his evaluation. [Exhibit 3]
22. Upon conclusion of her assessment of the family, the Department's ongoing social worker recommended that the neglect support decision against Appellant KF be overturned. The Department held an Area Clinical Review to review the matter. The Area Clinical Review team, upon reviewing the information obtained during the investigation, the information gathered from the police, and the information gathered during the assessment, decided to uphold the Department's support decision. [Exhibit 2; Exhibit C]
23. At the time of the Fair Hearing, criminal charges against Appellant KF were still pending. [Testimony of Appellant KF]
24. I do not credit Appellant MK's statements to the Department's response worker and his testimony at the Fair Hearing as to the severity of the incident. I credit his verbal report to the police dispatcher and his verbal report and written statement to the responding police officers as those reports were made immediately after the events in question and matched the situation observed by the police officers, i.e. Appellant MK had scratches on his arm and his clothes were thrown at the bottom of the stairs. [Testimony of Appellant MK; Exhibit B; Exhibit D]
25. AS's Fair Hearing testimony, though somewhat vague and confusing, for the most part corroborated her written statement to the police. She agreed that Appellant KF

took hold of AS's arms in an effort to move them and that Appellant KF threatened to kill Appellant MK and AS.¹

26. I do not credit Appellant KF's denials relative to assaultive behavior toward Appellant MK and AS. Her denials are self-serving and are contradicted by the statements made by Appellant MK and AS to the police. [Exhibit D; Exhibit B; Testimony of Appellant KF]
27. By weight of all the evidence, including written documents and oral testimony, I find the Department had reasonable cause to support the allegation of neglect of B by Appellant KF. [Fair Hearing record]

Applicable Standards

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.

¹ AS did testify that she did not believe Appellant KF would actually kill her or Appellant MK.

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.

Analysis

In order to support allegations of neglect, the Department must have **reasonable cause to believe** that: 1) Appellant KF neglected B; **and** 2) the actions of Appellant KF placed B in danger or posed substantial risk to B’s safety or well-being. I find the most reliable statements relative to this matter were those given to the police by Appellant MK and by AS at the time of the police response. I do not credit Appellant KF’s self-serving statements that she was not physically assaultive toward Appellant MK and AS during the event in question. I also do not credit Appellant MK’s assertions to the Department’s response worker that the event was “exaggerated.” Appellant MK felt the need to wake up his mother at midnight to request her assistance in calming down the situation. When this did not work, he called the police. It is difficult to believe that Appellant MK would wake up his mother and call the police if the situation were calm. I do not credit the Fair Hearing testimony that Appellant MK sustained the scratches on his arm when Appellant KF was making an effort to stabilize herself. I find it reasonable to believe that Appellant KF was “enraged” and “out of control” as Appellant MK and AS reported to the police, that she was physically aggressive toward Appellant MK by hitting him, scratching him, and throwing a candle in a glass jar at him, and that she was physically aggressive toward AS and threatened to kill AS and Appellant MK. I also find it reasonable to believe that Appellant KF was physically aggressive toward Appellant MK while holding B in her arms and that, as a result, B fell. The police felt it necessary to contact an ambulance to have B medically cleared. Furthermore, the police found probable cause to arrest Appellant KF on multiple charges. Appellants had motive to minimize the situation

during the Department's response and at the Fair Hearing as the events of the evening in question resulted in Departmental involvement with the family and criminal charges against Appellant KF.

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). Appellants' attorney pointed out that the Department's response worker did not interview the responding police officers or AS during her investigation. Although this may have been contrary to Department policies and regulations, I find this to be harmless error. Appellants failed to prove that any information provided by those parties would have changed the Department's support decision. Appellants availed themselves of the Fair Hearing process. Appellants were able to have AS testify on their behalf. They could have subpoenaed the responding officers to testify at the Fair Hearing if they believed that would have helped their appeal. Appellants 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, I find that 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 KF's actions on the night in question were sufficient for the Department to have reasonable cause to believe that Appellant KF was neglectful by failing to provide B with minimally adequate essential care, i.e. emotional stability and growth and/or safety. Furthermore, Appellant KF's actions posed a substantial risk to B'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 B by Appellant KF 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 Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellants live 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.,
Administrative Hearing Officer

11-3-17
Date



Cristina Tedstone,
Deputy General Counsel