

**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**

Voice: (617) 748-2000  
FAX: (617) 261-7428

( )  
( IN THE MATTER OF )  
( S.T. & R.J. )  
( FH # 2017-0029 )  
( )

**FAIR HEARING DECISION**

The Appellants, S.T. and R.J., appeal the Department of Children and Families' ["DCF" or "the Department"] decision, to support for neglect of R, pursuant to M.G.L., c.119, §51A & §51B.

**Procedural History**

On December 6, 2016, the Department received reported allegations of neglect of [REDACTED] day-old R by the child's parents, the Appellants, which was screened in and assigned for an emergency 51B response to DCF response social worker, R.T. On December 13, 2016, following the 51B response, the Department supported and approved the allegations for neglect of R by the Appellants and opened the family's case for a comprehensive assessment [now called a Family Assessment Action Plan]. The Appellants learned of the decision and their right of appeal and filed separate requests for a Fair Hearing ["Hearing"] on January 9, 2017, pursuant to 110 CMR 10.06. The Appellants' requests were granted, consolidated, and a single Hearing held on April 11, 2017 at the Department's South Central Area Office in Whitinsville, MA. Present were the DCF Response Supervisor, E.K.; the Appellants; and, the Appellants' You, Inc. Positive Parenting Coach, C.L. All parties were sworn in and testified at the Hearing. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a CD. Admitted into evidence for the Department was the 51A Report of December 6, 2016 [Exhibit A] and the corresponding 51B Response [Exhibit B]. The Appellant made no submissions. The Hearing record was then closed.

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.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

### Standard of Review

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 Appellants. 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 Appellants. 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. [110 CMR 10.05] ; 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. Twenty seven year-old S.T. and thirty four year-old R.J. are the mother and father, respectively, of R, who was [REDACTED] days-old when the 51A Report was filed with DCF in MA on December 6, 2016. [Exhibit A; Exhibit B, p.1]
2. Father is married to forty eight year-old K.J. The couple have no children from their union. During the marriage, father had an affair with S.T. culminating in the birth of R at a hospital in Connecticut where mother lived at the time. [Exhibit A; Exhibit B, p.1]
3. Hospital staff filed a report with the Connecticut Department of Children, Youth, and Families [DCYF] on December 5, 2016, after mother gave birth to R on [REDACTED] 2016 by emergency c-section. The hospital filed because mother was late to prenatal care [16 weeks or fourth month], admitted to staff that she had suffered from severe postpartum depression from a previous birth, and assumed mother had used drugs because she had many contaminated urine screens and the baby was presenting, as if suffering from withdrawal symptoms. [Exhibit A; Exhibit B, pp.1 & 5]
4. As a result, DCYF initiated a family assessment, which ultimately discounted the above concerns. Mother did not know she was pregnant until she was 3.5 months along, thus explaining the lateness of her prenatal care. R was not suffering from withdrawal symptoms; he was eating and sleeping and not sneezing as originally reported. Mother denied using any drugs during her pregnancy. Mother's two urine toxicology screens, one on admission and one yesterday, were negative. Hospital staff took another look at mother's contaminated urine screens and determined that the contaminated urine screens were not necessarily "dirty" because of drugs; they "just were not clean". There could have been any contaminate in the urine, such as fecal matter and/or from the mother not wiping herself clean before providing a specimen. [Exhibit A]

5. As a result of these findings, DCYF planned to refer mother for community services upon discharge from the hospital. However, they then learned that mother was going to live with father and his wife in Massachusetts; that the wife was initially upset when father told her of the affair and pregnancy and that both were now excited and happy to have mother and the baby move in with them; that the wife was going to be the primary caretaker; and, of significant import, that father and his wife each had extensive DCF histories in Vermont whereby, altogether, they had lost four children to the state. This planned living arrangement was a concern for Connecticut DCYF and resulted in the filing of the 51A Report of December 6, 2016 with the MA Department of Children and Families. [Exhibit A]
6. In addition to the above information, the 51A document also references that R's mother has a history of anxiety and depression; was not taking medication or engaged in counseling at the relevant time; had given up a child for adoption in 2010, in MA, through Lutheran Family Services; and, had a closed child consumer case with DCF in MA, in 2004. Further, Father also had a closed child consumer case with DCF in MA, in 1984. [Exhibit A; Exhibit B, p.1; Testimony of Supervisor] Father was born in [REDACTED] so was only two at that time. [Exhibit B, p.1; Testimony of the Supervisor; Testimony of Father]
7. On December 7, 2016, DCF of MA learned that mother and R were discharged from the Connecticut hospital at 2:30 p.m., were picked up by Father, and all were heading to their home in Massachusetts. Father had purchased the home in June and had plenty of room for all as well as everything they needed for the baby. [Exhibit A, pp.8 & 6; Testimony of Father]
8. On December 7, 2016, at 4:32 p.m., the allegations in the 51A Report were screened in and assigned for an emergency response to DCF response social worker R.T. who, with the assistance of other staff, to include her supervisor, E.K., conducted a 51B response into the allegations of neglect of baby R. [Exhibit A, p.8; Exhibit B]
9. On December 7, 2016, following a case conference including a legal consult, a review of information from the 51A Report, and after having gathered information during the extensive screening process, to include contact with the Appellants and father's wife, and with Vermont about their case histories, the response social worker, along with a co-worker and the police, went to the Appellants' home in Massachusetts and removed R. from the home and placed the baby in foster care. [Exhibit B, pp.2-4 & 11] The emergency removal and DCF taking custody was based on the case histories of father and his wife, and because mother, in lieu of finding an alternative place to live, decided to live in their home with R. The baby was therefore believed to be at imminent risk of by going to this home. [Testimony of the Supervisor; Exhibit B, pp.3 & 11]
10. The removal was also prompted by concerns that mother had depression and was not in treatment and that the dynamic that had existed in Vermont between Father and his wife and K would be re-enacted with R's mother. [Testimony of the Supervisor]

11. The Appellants were cooperative during the removal process. [Exhibit B, p.11]
12. Vermont case histories for Father and his wife regarding the incidents and removal of their children from their care occurred in the early 2000s, between 2001 and 2003. [Exhibit B, p.2; Testimony of Supervisor]
13. The social worker in Vermont who knew and used to work with the family, confirmed on December 7, 2016 that father and his wife had a history with their agency; that there were significant concerns for both of their abilities to parent; and, significant concerns for their judgment. There was engagement in criminal and mischievous/threatening activities and they brought unsafe people, such as known sexual offenders and those who had harmed/neglected children in the past, around their children. [Exhibit B, p.1; Testimony of Supervisor]
14. Father had a child in 2001 while living in Vermont. Vermont DCF removed the child because father and his partner, K, who had some cognitive limitations and developmental disabilities, were involved in domestic violence incidents due to father's infidelity. Father was not ready to be a father, and he and K were arguing all the time. Father and his current wife, J.K., were on and off for years and father was in a relationship with her and K at the same time. Father's wife and he were emotionally, physically, and verbally abusive towards K per K's report. In addition, there were concerns around the unsafe people father allowed his child to be around. Father lost rights to his child and never regained custody. There is also information that father was involved with an incident and substantiated for "risk sex" and "risk other" on his four month-old son. [Exhibit A; Exhibit B, p.2; Testimony of the Supervisor]
15. Father informed the response social worker on December 12, 2016 that he gets pictures of his son, but does not have other contact. [Exhibit B, p.8]
16. Father consistently acknowledged past mistakes. [Testimony of the Supervisor; Testimony of Father]
17. The response social worker, R.T., obtained father's BRC [Background Record Check] and learned that father had a criminal record in MA, most recently in 2014 for larceny and possession of class B substance which were dismissed. [Exhibit B, p.3] When asked about this on December 7, 2016, father told the response social worker that he was in a car accident while driving his tractor trailer and had picked up his mother's medication, which was in the vehicle. He denied being under the influence during that incident, said the charges were dismissed, and although he drank and smoked marijuana when he was younger, he denied having any recent history of substance abuse addiction. [Exhibit B, p.3]
18. While living in Vermont, Father's wife had three children, who were removed by Vermont DCF, and never regained [consistent] custody of any of them. She allowed one of the children to be put up for adoption and the other two were placed with a relative, who assumed guardianship of them. One of the wife's partners at that time was a sexual offender, who sexually perpetrated one of her children. She allowed this partner back

around the child, after the child disclosed the sexual abuse. She failed to protect her children. There was a substantiated decision in 2003 for "risk other" on her eight month-old daughter. Her Vermont social worker found her difficult to work with. She never took responsibility or ownership for her actions; her decisions placed the children at risk, and, she failed to comply with recommended services. [Exhibit A; Exhibit B, p.2]

19. Following the removal of her children by Vermont, father's wife was diagnosed with PTSD [Post Traumatic Stress Disorder] and depression. She reported on December 12, 2016 being on disability for these diagnoses and taking medication. [Exhibit B, p.7]
20. Per a Vermont fax to DCF in MA, father's wife goes by three other names - K.G., K.R, and K.R-G. [Exhibit B, p.2] When questioned about this on December 12, 2016, the wife told the response worker that she had been married four times and had previously gone by these names as well as K.E., and is now K.J. [Exhibit B, p.8]
21. When questioned about her Vermont history on December 12, 2016, father's wife told the response social worker that she has a 24 year-old son, S, with whom she has contact. S has two children who are two and five months-old; however, she seldom sees them because S is on and off with their mother. She also has a twenty three year-old daughter, S, who lives in Vermont with her two young children, whom she sees randomly. She also has a fifteen year-old daughter who was adopted when she was two. She has phone contact with the adoptive mother and sends her daughter gifts. [Exhibit B, p.8]
22. Mother has known father and his wife for about twelve years and was aware that they had lost their children in Vermont. [Exhibit A]
23. On December 7, 2016, the response social worker viewed father's two floor home, to include mother and R's room on the first floor, which was clean and well organized, and father and his wife's bedroom upstairs. Mother had everything she needed for R including a car seat, diapers, wipes, and formula. [Exhibit B, p.4] There were no concerns with the condition of the home. [Testimony of the Supervisor]
24. On December 9, 2016, the Appellants and father's wife had a visit with R at their home supervised by the response social worker and on December 9, 2016, the response social worker accompanied them Appellants to R's first pediatric appointment. [Exhibit B, pp.5 & 6; Testimony of the Supervisor]
25. The pediatrician had no concerns and found that R was a healthy baby. [Exhibit B, p.6; Testimony of the Supervisor]
26. On December 12, 2016, a 72 hour hearing<sup>1</sup> was held at the Worcester Juvenile Court to address R's custody. Supervisor E.K. had filed the affidavit in court. Since DCF had no concerns about the current unfitness of the Appellants, the judge returned custody to the Appellants with stipulations. The stipulations encompassed that the care and protection

---

<sup>1</sup> See <https://malegislature.gov/Laws/GeneralLaws/Part1/TitleXVII/Chapter119/Section24>.

remain open until the next court date of March 1, 2017; that the Appellants cooperate with DCF and services put in place; that the Appellants cooperate with the court investigator and with CASA [Court Appointed Special Advocates], which the judge had put in place; that the Appellants ensure that R is up to date medically; that the Appellants cannot remove R from MA without the court's permission; that the Appellants comply with probation visits; and, father's wife supply to DCF a letter from her provider proving she is fit to care for R due to her being on disability for depression; that mother must be in therapy; and that all three adults will sign releases for DCF to obtain their Vermont files. [Exhibit B, pp.4 & 6-7; Testimony of the Supervisor]

27. On December 12, 2016, following the court hearing, the response social worker visited the home and spoke to all three adults. These conversation revealed, in part, that none of them use illegal substances; that all three get along well and there is no evidence of domestic violence, that the Appellants are not in a sexual relationship; that the wife will be taking care of R during the gap in the Appellants' work schedules; that mother will obtain therapy in Connecticut since she will need to become a legal resident of Massachusetts to receive Mass Health; that the Appellants signed a release for the pediatrician; and, that the wife had already contacted her provider to get the letter requested by the judge. During this visit, mother agreed with whatever DCF wanted to put in place for the family, after the response social worker conveyed her plan to put in a referral for early intervention and a parent aide. [Exhibit B, pp.7-8; Testimony of the Supervisor]
28. The Appellants were compliant and signed releases of information for their providers and the baby's providers. [Exhibit B, p.11]
29. On December 13, 2016, the response social worker received a fax from mother's primary care physician indicating, in part, that mother is presently prescribed 10 mgs of Vilazodone [anti-depressant] for her mood. [Exhibit B, p.8]
30. On December 13, 2016, the Department supported for neglect of R by the Appellants based on the Vermont case histories of father and his wife and on mother's history of mental health diagnoses for which she was back on medication. The response social worker and supervisor had discussed making a finding of a substantiated concern; however, the area program manager covering at that time did not agree with this. Management was very concerned that those past histories would translate into the baby's needs not being met and found that the Appellants were unable to provide R with minimally adequate care and were therefore neglectful. The Department was required to open the family's case for a comprehensive assessment because the care and protection was still open. [Testimony of the Supervisor; Exhibit B, pp.9-11]
31. On March 1, 2017, the care and protection was closed. Father's wife provided the letter and all stipulations were met. At the time of the Appellants' Hearing of April 11, 2017, Riley was four months old. [Testimony of Father]
32. At his Hearing of April 11, 2017, father continued to acknowledge his Vermont case

history. He said he was twenty years old at the time, on SSI, living with his parents, and not complying with anything. He grew out of this, left his parents' home, moved to Massachusetts, got his life straightened out, got a job as a truck driver, bought his own house, bettered himself, and was ready to be a parent. [Testimony of Father]

33. At her Hearing of April 11, 2017, mother did not dispute putting her child up for adoption in 2010. She said she was twenty one at the time and knew she could not take care of him herself. This was not an easy thing to do; she wanted him to have a better life so made this choice for him. [Testimony of Mother]
34. At her Hearing of April 11, 2017, mother reported seeing a therapist for two and one-half months. He told her she had only ten more visits to go before she was finished with therapy. Mother reported no longer being on medication. She stated that her therapist took her off her anti-depressant medication because reportedly he believed it was not doing anything for her. [Testimony of the Appellant]
35. At her Hearing of April 11, 2017, mother reported that early intervention [EI] came to the home, when R was a month old. Per EI, the baby had cognitive issues and he was not moving his head and not responding to voices. They came in a couple of weeks ago and said they had to work on him moving his head. They want to continue the visits and will check in every month, until DCF is out of their lives. [Testimony of Mother]
36. The Appellants have had a positive parenting coach, since December 2016, due to a referral made by the Department. [Testimony of Mother; Testimony of Parenting Coach] The initial parenting coach went out on maternity leave and the case was transferred to C.L. in late January or February [2017]. She has made weekly visits to the home for the last three months. She sees all three adults and R at the same time. She works on any parental gaps, on the service plan goals, and answers any questions they may have. She finds this a very loving, caring home with three parents, who put R's interests first. She has seen improvement in mother's growth; therapy is working. [Testimony of Parenting Coach]
37. The family's DCF case remains open to date. [Testimony of Mother]
38. Based on the totality of evidence in the record, the Hearing Officer reverses the Department's finding of neglect of R by the Appellants. *See* Analysis.

#### Analysis

A party contesting the Department's decision, to support the 51A Reports for neglect, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellants requested a Hearing, which was granted and held on April 11, 2017.

Policies, regulations, and case law applicable to this appeal include, but are not limited to, the following.

After completion of its 51B investigation, the Department shall make a determination as to

whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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 and supervisor's clinical base of knowledge. [110 CMR 4.32]

The 51A report under appeal is supported for neglect. "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

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 children in danger or pose substantial risk 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. One such example is neglect that has led to a serious physical or emotional injury. ... The person responsible is named on the Department's central registry. ... Department intervention is needed to safeguard children's safety and well-being by opening the case ... [Protective Intake Policy #86-015 (2/28/16)]

A substantiated concern finding means there was reasonable cause to believe that the child was neglected and the actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child(ren)'s safety or well-being. Examples include neglect that resulted in a minor injury and the circumstances that led to the injury are not likely to recur, but parental capacities need strengthening to avoid future abuse or neglect of the child; neglect that does not pose an imminent danger or risk to the health and safety of a child; and, educational neglect. ... Department intervention is needed to safeguard the child's safety and well-being by opening a new case. ... [Protective Intake Policy #86-015 (2/28/16)]

An unsupported finding means there is not reasonable cause to believe that a child(ren) was abused and/or neglected, or that the child(ren)'s safety or well-being is being compromised; or the person believed to be responsible for the abuse or neglect was not a caregiver, unless the abuse or neglect involves sexual exploitation or human trafficking where the caregiver distinction is not applied. [Protective Intake Policy #86-015 (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. [110 CMR 10.23]

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Appellants in the matter under appeal. See Findings #1-#38 and the below discussion.

Pursuant to the Department's policy, the Appellants were and are *caregivers* of now four month-old R as is father's wife. Protective Intake Policy #86-015 (2/28/16)

The Department supported for neglect of R by the Appellants on December 13, 2016, because of the Vermont case histories of father and his wife, and because the mother had a history of mental health diagnoses.

The Vermont case histories for father and his wife, although compelling and not under dispute, are fourteen years-old; and the evidence demonstrates that mother was back on her medication for her depression before the Department supported for neglect. Although the Department rightly removed R from the care of the Appellants and father's wife on December 7 2016, the judge, at a 72 hour held on December 12, 2016, returned custody to the Appellants because the Department had no concerns about the current unfitness of the Appellants. In making this decision, the judge set forth a number of stipulations, one of which encompassed keeping the care and protection open and another that mother engage in therapy. The Appellants have been cooperative with the Department throughout their involvement. They complied with all of the stipulations set forth by the judge. On March 1, 2017, the care and protection was closed. To date, the Department is still involved and services are in place to include early intervention, a positive parenting coach who visits the home, and mother is still in therapy. The positive parenting coach testified at Hearing that she finds this to be a very loving, caring home with three parents, who put R's interests first.

The response social worker and her supervisor had discussed making a finding of substantiated concern, instead of a support for neglect of R by the Appellants, but were overruled by their area program manager, who was covering at the time. Pursuant to the DCF protective intake policy, a substantiated concern means there is reasonable cause to believe that the child was neglected and the actions and inactions by the caregivers created the *potential* for neglect, but there is *no immediate danger* to the child's safety. The definition of substantiated concern also allows the Department to keep the Appellants' case open for services.

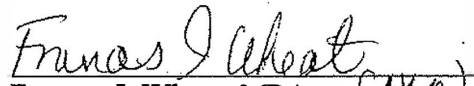
Based on the record as a whole, the Hearing Officer finds that the Department's decision of

December 13, 2016, to *support* for neglect of R by the Appellants, is not in compliance with its regulatory definition for neglect. The Hearing Officer finds no evidence to demonstrate that the Appellants failed to do anything for R. The Hearing Officer further finds that the Department did not comply with its protective intake policy, which specifies the conditions under which a support is made. The Hearing finds no evidence to demonstrate that the Appellants placed R in *danger* or posed *substantial* risk to his safety or well-being.

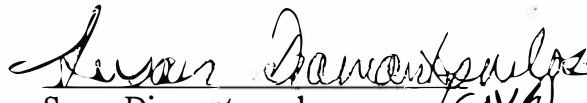
The Appellants met their burden of proof in this case. See 110 CMR 10.23.

**Order**

The Department's decision of December 13, 2016, to support and approve the 51A Report for neglect of R by the Appellants, is REVERSED.

  
\_\_\_\_\_  
Frances I. Wheat, MPA  
Administrative Hearing Officer

Date: 4-30-18

  
\_\_\_\_\_  
Susan Diamantopoulos  
Fair Hearing Supervisor

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

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