

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

Linda S. Spears, Commissioner

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IN THE MATTER OF: NA

Fair Hearing #20170032

FAIR HEARING DECISION

Appellant, NA, appeals the decision of the Department of Children and Families, pursuant to M. G.L. c.119, §51B, to support allegations of neglect on behalf of G.

Procedural History

On December 2, 2016, the Department of Children and Families ("Department") received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of G by a bus driver, NA ("Appellant"). On December 5, 2016, the Department received a second report, pursuant to M.G.L. c. 119, §51A, alleging neglect of G by Appellant. On December 27, 2016, the Department decided to support allegations of neglect on behalf of G, pursuant to M.G.L. c. 119, §51B, by Appellant.

The Department notified Appellant of its decision and of his 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 February 15, 2017 at the Department's Park Street Area Office in Dorchester, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

NA	Appellant
BT	Department Supervisor
MD	Department Response Worker
CF	Department Ongoing Social Worker

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

For the Department:

- Exhibit A Intake Report – 51A Report, 12/02/2016
- Exhibit B Intake Report – 51A Report, 12/05/2016
- Exhibit C Child Abuse/Neglect Non-Emergency Response

For Appellant:

- Exhibit 1 Fair Hearing request/Department support letter

The record closed upon conclusion of the oral evidence.

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; 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

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

1. At the time in question, Appellant was a van driver for the [REDACTED] company. He had been working for the company for approximately a year and a half transporting children to and from daycare and afterschool programs. He previously had worked eight years as a bus driver for other companies. [Exhibits A, B, and C]
2. G, a female child, was two years old at the time in question. She attended daycare Monday through Friday while her parents worked. Her father generally transported G

to and from daycare every day except for when he had to work late. G's parents had made arrangements with the daycare for the [REDACTED] company to pick up G from daycare and drop her off at a babysitter's home whenever father had to work late. [Exhibits A, B, and C]

3. NA was the van driver who transported G from daycare to her babysitter when needed. [Exhibit C, p.4; Testimony of Appellant]
4. As the van driver who transported G from daycare, Appellant is deemed a caregiver pursuant to the Department's Protective Intake Policy. *See* below. [Testimony of Appellant; Exhibits A, B, and C]
5. On December 1, 2016, G's parents were unable to pick up G from daycare. G's mother called Appellant at approximately 1 p.m. to request that he pick up G from daycare and bring her to the babysitter's home. [Exhibit C, p.3]
6. At approximately 3:15 p.m. on December 1, 2016, Appellant picked up G, as well as other children, from the daycare. He was driving a six passenger minivan. [Exhibit C, pp.3,4; Testimony of Appellant]
7. At approximately 3:45 p.m., G's mother received a call from G's babysitter who indicated that G had not yet arrived. G's mother placed a call to Appellant but the call went directly to voicemail. G's mother assumed Appellant was running late due to traffic. [Exhibit C, p.3]
8. At approximately 3:50 p.m., Appellant dropped off another child, K, at her home. K's mother said "Hi" to G who was awake and sitting in a seat behind Appellant. G was the only child in the minivan at the time. [Exhibit C, pp.3,4]
9. G's babysitter lived a few blocks away from K's home. [Exhibit C, p.3]
10. Appellant forgot to drop off G at her designated stop, the babysitter's home. [Exhibit C, p.4; Testimony of Appellant]
11. At approximately 4 p.m., the babysitter called G's mother again to inform her that G had not yet arrived. G's mother kept trying to call Appellant with no response. [Exhibit C, p.3]
12. After dropping off K, Appellant picked up another child from school and dropped him off at the [REDACTED]. Appellant then drove to his home. [Exhibit C, p.4]
13. Appellant failed to check the van when he arrived home and did not notice that G was still on the van. [Exhibit C, p.4]

14. At home, Appellant took off his shoes and was settling down to relax and eat when he received a call from G's mother at approximately 5:06 p.m. In speaking with G's mother, Appellant was unclear as to G's whereabouts. Appellant went to the minivan and located G. [Exhibit C; pp.3,4]
15. At approximately 5:25 p.m., Appellant called G's mother to say he was on his way to drop off G. [Exhibit C, p.3]
16. According to Appellant, G was alone in the minivan for approximately five to ten minutes. [Exhibit C, p.4]
17. At around almost 6 p.m., Appellant dropped off G to the babysitter. [Exhibit C, p.3]
18. At 7 p.m. when G's mother got off of work, she brought G to the hospital for medical clearance. G presented as acting normal and playful with no complaints of pain. She had no lacerations, abrasions, or signs of trauma. [Exhibit C, p.5]
19. On December 2, 2016, the Department received a report, pursuant to M.G.L. c. 119, §51A alleging the neglect of G by Appellant. On December 5, 2016, the Department received another report, pursuant to M.G.L. c. 119, §51A alleging the neglect of G by Appellant. The Department initiated a response to look into the allegations. [Exhibit A; Exhibit B]
20. Appellant was suspended from his job as a result of the events on December 1, 2016. [Exhibit C, p.4]
21. On December 27, 2016, pursuant to M.G.L. c. 119, §51B, the Department supported allegations of neglect on behalf of G against Appellant. [Exhibit C, p.6]
22. Prior to December 1, 2016, Appellant never had had a reported issue with transporting children. [Exhibit C, p.4; Testimony of Appellant]

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.

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" 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 and supervisor's clinical base of knowledge. Id.

"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 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.... 10 C.M.R. §10.23.

Analysis

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I uphold the Department's neglect support decision.

In order to support a finding of neglect, the Department must determine that there is reasonable cause to believe that Appellant neglected G *and* that the actions of Appellant placed G in danger or posed substantial risk to G's safety or well-being. Appellant does not dispute forgetting to drop off G at her babysitter's home and leaving her unattended

in his company minivan. Despite being left unattended in the minivan, G appeared healthy and unharmed. Even so, a determination of neglect does not require evidence of actual injury. See Lindsay v. Department of Social Services, 439 Mass. 789 (2003). G was two years old at the time and unable to care for herself or seek assistance.

Appellant's leaving G in the minivan on a December evening for, in his estimation, a period of five to ten minutes was sufficient for the Department to have reasonable cause to believe that Appellant was neglectful in that he failed to provide G with minimally adequate essential care, i.e. supervision and/or safety. Furthermore, Appellant's actions posed a substantial risk to G's safety and well-being. Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's neglect support decision. The Department's decision was made in conformity with its policies and with a reasonable basis. The Department had enough information at the time of its investigation to find "reasonable cause" existed to make the support decision of neglect. "Reasonable cause" implies a relatively low standard of proof. Care and Protection of Robert, supra.

Conclusion and Order

The Department's decision to support the allegations of neglect of G by Appellant, NA, 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, he 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.

8-30-17
Date

Antonia Chronis
Antonia Chronis,
Administrative Hearing Officer

Nancy S. Brody
Nancy S. Brody,
Supervisor, Fair Hearing Unit