

**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. A.)
)
FH # 2017 0039)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Mr. S.A. (hereinafter “the Appellant”). The Appellant appeals the Department of Children and Families’ (“the Department” or “DCF”) decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On December 2, 2016, the Department received a 51A report filed by a mandated reporter alleging physical abuse of S (“S” or “the child”) by the Appellant; the allegations were not supported by the Department. However, based on the information provided in the 51A report, the Department added and subsequently supported allegations of neglect of the child by the Appellant. (Pursuant to DCF Protective Intake Policy) 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 CMR 10.06.

The Fair Hearing was held on April 4, 2017 at the Department of Children and Families’ Greenfield Area Office. All witnesses were sworn in to testify under oath. The record closed at the end of the hearing.

The following persons appeared at the Fair Hearing:

| | |
|----------------|--------------------------------|
| Anastasia King | Administrative Hearing Officer |
| Mr. S.A. | Appellant |
| Ms. K.B. | DCF Supervisor |
| Ms. E.A. | DCF Response Worker |

In accordance with 110 CMR 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 pursuant to DCF regulations 110 CMR 10.26.
The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit 1: 51A Report
Exhibit 2: 51B Response

For the Appellant:

Exhibit A: Epicrisis Report
Exhibit B: Child's Food Diary
Exhibit C: Medical Records Overview
Exhibit C1: On Call Urgent Care Centers – School Physical, August 2, 2016
Exhibit C2: Urgent Care – Immigration Physical and PPD Test Form, August 11, 2016
Exhibit C3: Urgent Care – Screening for Respiratory Tuberculosis, August 14, 2016
Exhibit C4: Urgent Care – Immigration Physical Follow Up, August 15, 2016
Exhibit C5: Health Care Provider's Examination Report, August 10, 2016
Exhibit C6: Patient Dentistry Ledger
Exhibit C7: Dental History
Exhibit D: ██████ Behavioral Care Discharge Summary

Pursuant to 110 CMR 10.21, 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.

Issue To Be Decided

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 Appellant. 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 Appellant. 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 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 Fair Hearing is S ("S" or "the child"); a female child who was 13 years old at the time the 51A report was filed. (Exhibit 1, p.1)

2. On December 2, 2016, the Department received a 51A report filed by a mandated reporter alleging physical abuse of the child by the Appellant. According to the report, the child disclosed that the Appellant had struck her on the cheek, grabbed her by the throat, and pulled her hair. It was also reported that the child and the Appellant argued often and the child was afraid to go home. Allegations of neglect of the child by the Appellant were added by the Department based on reported concerns within the 51A report that the child's emotional needs were not being met regarding the child's eating disorder. (Exhibit 1, p.2; Exhibit 1, p.5; Testimony of RW)
3. The 51A report was screened in as an Emergency Response and assigned to DCF Response Worker, Ms. E.A., ("Response Worker" or "RW") to complete a 51B Response. (Exhibit 2, p.1)
4. The Appellant and Ms. S.A.R. ("SAR" or "the mother") are a married couple and the child's biological parents. (Testimony of Appellant). The Appellant is deemed a "caregiver" as defined by Departmental policy and regulation. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00.
5. The child was born in Germany and raised by her maternal grandmother, Ms. G.R., ("GR" or "the grandmother") in Germany until she was 13 years old. The child moved to the United States on June 29, 2016, to reside with the Appellant and the mother. (Exhibit 2, p.2; Testimony of Appellant)
6. The child received inpatient treatment from March 2, 2016, until June 6, 2016 at Saxon Hospital, Department of Child and Adolescent Psychiatry in Germany. The child's discharge diagnosis was listed as Bulimia Nervosa and Adjustment Disorder. (Exhibit A, p.1)
7. On August 2, 2016, a school physical was completed on the child. Her weight on that date was 89.4 lbs., and the child was listed as a "healthy female". (Exhibit C1, p.2)
8. On August 11, 2016, an immigration physical was completed on the child. Her weight was 88 lbs. The child's general appearance was described to be normal and the child appeared to be well nourished. (Exhibit C2, p.2)
9. On August 14, 2016, a screening for respiratory tuberculosis was completed on the child, and on August 15, 2016, the child was seen for a follow up of her immigration physical. During both visits the child's general appearance was listed as normal and the child appeared to be well nourished. (Exhibit C3, p.2; Exhibit C4, p.3)
10. On October 10, 2016, a Massachusetts School Health Record was completed and the child received a physical examination by her health care provider. Her weight on this date was 90.8 lbs. There were no concerns listed and the child was allowed to fully participate in the school's program, including physical education and competitive sports with no restrictions. (Exhibit C5, p.1; Exhibit C5, p.2)
11. The child was described by the school as being a stellar student, and although quiet, the school had no concerns regarding the child. (Exhibit 2, p.2)

12. On December 2, 2016, the RW met with the child at school who reported the following:
- She did not have a good relationship with the Appellant. The child reported that she and the Appellant fought almost daily and that the Appellant screamed at her a lot. (Exhibit 2, p.3; Testimony of RW)
 - The Appellant slapped her on the face and pulled her hair on one occasion on September 30, 2016. (Exhibit 2, p.3; Testimony of RW)
 - The child started to see a psychologist this past year and was hospitalized before moving to the United States, although could not remember specifically when. (Exhibit 2, p.3; Testimony of RW)
 - The child reported that she no longer had an eating disorder. (Exhibit 2, p.3; Testimony of RW)
 - The child spoke to the grandmother on Wednesdays and Sundays and the grandmother was aware of what was happening in the child's home. (Exhibit 2, p.3; Testimony of RW)
 - The child would like to return to Germany, but did not believe this would happen as her mother did not get along with the grandmother. (Exhibit 2, p.3; Testimony of RW)
 - The child did not want to return to the home. The child reported that she was afraid to go home because she did not know what would happen. The child reported that she was afraid that "they" would be mad at her and hit her. (Exhibit 2, p.3; Testimony of RW)
13. The RW did not observe the child to have any marks or bruises. (Exhibit 2, p.2; Testimony of RW)
14. On December 2, 2016, the RW spoke to the mandated reporter who confirmed the information in the 51A report and the child's disclosure to the reporter of having been treated for an eating disorder. The child further reported that she was not currently in treatment as the Appellant did not believe in counseling and that the Appellant was mean to her regarding her eating. (Exhibit 2, p.2)
15. The Department failed to provide independent, credible evidence to corroborate the child's statements. Any knowledge of the reported incident obtained from collateral contacts was information provided by the child. (Fair Hearing Record)
16. During the RW's unannounced visit to the Appellant's home on December 2, 2016, the Appellant denied the allegations made by the child and the child's version of the reported incident. The Appellant did not dispute verbally arguing with the child and acknowledged having placed his hands on the child. However, the Appellant denied that he had ever pulled the child's hair or choked her. The Appellant reported that he had made numerous attempts to assist the child with her eating disorder and although he wanted the child to attend counseling, the child refused. The Appellant showed the RW three links on his cellphone. One link was to an eating disorder hotline, the other links were to the ██████ Clinic and a dietician. The Appellant also reported to the FW that he would move out of the home if necessary. (Exhibit 2, p.5; Testimony of RW)

17. On December 2, 2016, following the RW's interviews with the child, the Appellant, and the mother, a decision was made by the Department to create an emergency service plan which would include the Appellant and mother making and following through with appointments with the child's pediatrician and the [REDACTED] Clinic, as well as refraining from any physical confrontations with the child. (Exhibit 2, p.5; Testimony of RW)
18. Despite the implementation of the emergency service plan, the child refused to return to the home. The RW asked the Appellant and the mother if they would be in agreement to sign a Voluntary Placement Agreement ("VPA"). Although initially agreeing to this, the Appellant asked the time frame and consequences if the VPA was not signed. The RW explained that the VPA would be for at least three months, and by refusing to sign the VPA, the Department would assume emergency custody of the child. The RW further explained that a Care and Protection Petition would be filed by the Department and a Temporary Custody Hearing in Juvenile Court would be held at which time both sides would present their case and the judge would ultimately decide. The Appellant stated that he would prefer that a Care and Protection Petition be filed by the Department. (Exhibit 2, p.6)
19. Because the child's refused to return to her home and the Appellant and mother refused to sign a VPA, the Department assumed emergency custody of the child on December 2, 2016. (Exhibit 2, p.6; Testimony of RW)
20. On December 22, 2016, approximately one week after the completion of the 51B response, the RW, along with a German translator, spoke to the grandmother on the telephone. The grandmother reported that the child's eating disorder began approximately two years before and that the child was hospitalized in Germany for three months. When the child left the hospital she had not fully recovered from her eating disorder and was pale and unhealthy. The mother was also present in the hospital. The grandmother reported that she did not have a good relationship with the mother and did not speak to the Appellant. (Exhibit 2, p.18; Testimony of RW)
21. Although the child reported to the RW that the grandmother was aware of what was happening in the child's home, during the RW's telephone conversation with the grandmother, the grandmother reported that the child had never told her anything that was going on in the home. The grandmother also asked that the child be told that she loved her and would love to hear from her. (Exhibit 2, p.18)
22. After obtaining temporary custody of the child, the Department ensured that an intake was completed at [REDACTED] Behavioral Health. An evaluation was completed to assess the best services to treat the child's eating disorder. (Exhibit 2, p.16)
23. On January 2, 2017, the child attended the Intensive Outpatient Program at [REDACTED] Behavioral Care for one day and electively discharged from the program on January 9, 2017. (Exhibit D, p.1)

24. On December 14, 2016 pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the child by the Appellant. The Department's determination was based on the following:
- The child had an eating disorder and was not in treatment. (Exhibit 2, p.15; Testimony of RW)
 - The child reported that she did not want to return home because she was scared. (Exhibit 2, p.15; Testimony of RW)
 - The child reported that the Appellant screamed at her and called her names and obscenities. (Exhibit 2, p.15; Testimony of RW)
25. Allegations of physical abuse of the child by the Appellant were not supported. The Department determined that the allegations made by the child regarding the reported incidences did not rise to the level of physical abuse. (Exhibit 2, p.15; Testimony of RW)
26. After consideration of all the evidence provided, this Hearing Officer finds that the Department did not have reasonable cause to believe that the Appellant failed to provide the subject child with minimally adequate care, and that the Appellant's actions or inactions placed the child in danger or posed substantial risk to her safety or well-being as required by the Department's intake policy when supporting for neglect. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)
27. Therefore, this Hearing Officer further finds that the Appellant's actions did not constitute neglect as defined in its regulations, and its decision was not in compliance with its policy or regulations. (110 CMR 2.00 & 4.32) (See, "Analysis")

Analysis

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred **and** that 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. DCF Protective Intake Policy #86-015, rev. 2/28/16

"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. (110 CMR 4.32(2)) 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))

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A." Care and Protection of Robert, 408 Mass. 52, 63 (1990)

This same reasonable cause standard of proof applies to decisions to support allegations under s. 51B. Id. at 64; M.G.L. c. 119, s. 51B "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. Id. at 64

Caregiver is defined as:

- (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. 110 CMR 2.00

"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.

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

The Department concluded that there was sufficient evidence to support allegations of neglect of the child by the Appellant. However, this conclusion was not substantiated by the evidence presented. The Department failed to provide independent, credible evidence to corroborate the child's statements. Any knowledge of the reported incident obtained from collateral contacts was information provided by the child. Although the child reported that the Appellant did not believe in counseling, during the RW's unannounced visit to the home, the Appellant showed the RW three links on his phone of supportive services for the child. In addition, since the child's arrival to the United States, the child

had been seen on numerous occasions by medical providers who reported no concerns regarding the child's weight or appearance. No evidence was presented that the Appellant prevented the child from receiving the appropriate care to address her eating disorder. On the contrary, despite the Department's effort to ensure an evaluation was completed to assess the best services to treat the child's eating disorder, the child electively discharged from an intensive outpatient program after one day of attendance. Therefore, despite the Department's determination, the evidence presented was insufficient to demonstrate that the Appellant failed to provide the child with minimally adequate care and that the Appellant's actions or inactions placed the child in danger or posed a substantial risk to her safety or well-being.

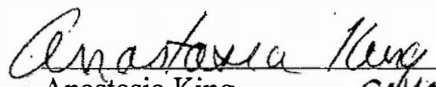
Based on the totality of the evidence, for reasons cited above, and in the detailed Findings of Fact, the evidence was insufficient to support the Department's determination that the Appellant's actions rose to the level necessary to support the allegations of neglect. A Hearing Officer's decision must be supported by substantial evidence; there must be substantial evidence supporting the Hearing Officer's conclusion that the Department had reasonable cause to believe that neglect occurred in this instance. (Wilson v. Dep't of Soc. Servs., 65 Mass. App. Ct. 739, 745-746 (2006))

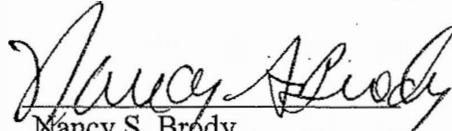
The Appellant has shown by a preponderance of the evidence that the Department acted without reasonable basis or in a reasonable manner, and resulted in substantial prejudice to the Appellant.

Conclusion

The Department's decision to support the allegation of **neglect** of the child by the Appellant was not made with a reasonable basis and therefore, **REVERSED**.

Date: 3-21-18


Anastasia King
Administrative Hearing Officer


Nancy S. Brody
Supervisor, Fair Hearing Unit

Date: _____

Linda S. Spears,
Commissioner