

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN & FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**LINDA S. SPEARS,
COMMISSIONER**

**Voice: (617) 748-2000
Fax: (617) 261-7428**

IN THE MATTER OF)
)
)

G. C.)
)
)

FH # 2017 0047)
)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Mr. GC ("the Appellant"). The Appellant appeals the Department of Children and Families' ("the Department" or "DCF") decision to support a report of neglect pursuant to Mass. Gen. L., c. 119, sec. 51A. Notice of the Department's decision was sent to the Appellant and he, through counsel, filed a timely appeal with the Fair Hearing Office on January 11, 2017.

The Fair Hearing was held on March 28, 2017, at the DCF VanWart Area Office. The hearing record remained open until April 11, 2017, for receipt of the Appellant's Memorandum Regarding Fair Hearing. The following persons appeared at the Fair Hearing:

LAH, Esquire
GC
ML, Esquire
MS
LT

Administrative Hearing Officer
Appellant
Counsel for Appellant
Mother of Subject Children
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 regulation. 110 CMR 10.26.

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

For the Department:

Exhibit 1: 12/7/16 51A Report
Exhibit 2: 12/29/16 51B Report

For the Appellant:

Exhibit A: 4/4/17 Appellant's Memorandum Regarding Fair Hearing

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 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 of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject children of this hearing are the female child, "A" (15 years old), and the male child, "J" (16 years old).¹ (Exhibit 1, p.1.) A is a special education student. (*Id.* at p.3.) J is autistic. (*Id.*)
2. The Appellant is the live-in partner of the biological mother of the children, Ms. MS ("the mother"). (Exhibit 1, pp.1 and 3.)
3. On December 7, 2016, the Department received a 51A report pursuant to M.G.L. c. 119, s. 51A, alleging the neglect of both children by the Appellant due to an incident of physical violence between the couple in the home when the children were present. The child A reported the events of the incident to the reporter. (Exhibit 1, pp.1 and 3.)
4. The Department screened-in the 51A report as a non-emergency response. (Exhibit 1, p.7.)
5. On the previous night (December 6th), the Appellant (whom the children call "Pop") had been out drinking with friends. The Appellant does not drink a lot. When he

¹ These were the children's ages at the time of the subject 51A filing. (Exhibit 1.)

arrived home, the Appellant and the mother got into an argument and the Appellant slapped the mother. When this occurred, J started "punching" and/or "slapping" the Appellant. The Appellant did not thereafter hit or retaliate against J. The Appellant's older daughter who was spending the night at the family's home told the children to go to their rooms. (Exhibit 1, p.3; Exhibit 2, p.5.)

6. The evidence is contradictory with respect to whether the Appellant slapped the mother (as reportedly witnessed by A) (see, above), or whether it was purely a verbal argument that escalated. (See, Findings below.)
7. The DCF Response Worker ("RW") interviewed each child separately at their high school. (Exhibit 2, p.2.)
8. A was consistent in her statement to the Reporter and to the DCF RW that this was the first time she had witnessed a physical incident between her mother and the Appellant. (Exhibit 1, p.3; Exhibit 2, p.3.) During her DCF interview, A would not elaborate on the subject incident stating, "...I don't feel comfortable talking. Stuff happens. They are good now." (Exhibit 2, p.3.) She regretted talking to the reporter about the incident. A refused to report to the RW the exact details of the incident. A did not give any eye contact to the RW and bowed her head while speaking to him. A denied that she and J are physically disciplined. (Id. at pp.2 and 3.)
9. J described the Appellant as "big and nice." He and the Appellant have a very good relationship. A and J have privileges taken away for discipline; he also denied they are physically disciplined. J was in his bedroom when he heard his mother and the Appellant arguing. He ran out of his room when "he thought he heard the boyfriend hitting his mother" and went after the Appellant and hit him. The Appellant did not retaliate against him but went upstairs. The morning after the incident, the Appellant apologized to them for arguing with the mother in their presence. J corroborated A's reporting that this was the first incident of this type between his mother and the Appellant. (Exhibit 2, pp.2—3.)
10. The mother, interviewed separately from the Appellant, reported that the couple has a very good relationship. She acknowledged that on the night of the incident they had a disagreement "that got very loud" because the Appellant had gone out drinking with his friends and spent money when she was the only breadwinner in the family at the time. She corroborated that the children had never seen or heard them argue like that before; they usually give each other the silent treatment. The mother acknowledged that J ran out of his room thinking that the Appellant had hit her, but she assured him it was only an argument. (Exhibit 2, p.4.)
11. The Appellant gave the same account of the incident as the mother. He also corroborated that they had never in nine years of being together had a loud argument like the subject altercation. He acknowledged the mother was angry with him for spending money that was meant for bills. He corroborated that he apologized to the children thereafter. (Exhibit 2, p.5.)

12. The Appellant's older daughter was staying at the home on the night in question. She insisted it was purely a verbal argument between the Appellant and the mother, and she had never heard them argue like that before. (Exhibit 2, p.5.)
13. DCF confirmed that there had been no police responses to the family's home. (Exhibit 2, p.2.)
14. School staff reported that the subject incident was the first one to come to the attention of the school. Both children were getting good grades. (Exhibit 2, p.2.)
15. Per the children's pediatrician, they were up-to-date medically and there were no concerns. (Exhibit 2, p.7.)
16. The Department acknowledged there was no physical injury to the children and no observable behavioral indicators that the children were emotionally harmed, but for J being concerned that his mother had been hit by the Appellant. (Testimony of LT.)
17. The Department acknowledged there were no clinical indicators that the mother is an "abused person." (Testimony of LT.)
18. The Appellant, mother and the children have a DCF history; however that history is not related to the issue of domestic violence. In June, 2013, the Department supported the Appellant for sexual abuse of A. He was arrested and charged with sexual assault of a child. The Appellant was found not guilty at trial. The mother had agreed with DCF to keep the Appellant out of the home during the family's 2013 open clinical case. (Exhibit 1, pp.6—7; Exhibit 2, pp.1; 3—4.). In August, 2016, after the Appellant's trial concluded, the mother allowed the Appellant to move back into the family home. Although the Appellant's living in the home was of concern at the time of the subject DCF response, it was ultimately not a reason for the current support decisions. (See, Exhibit 2, pp.6—7.)
19. On December 29, 2016, the Department supported the aforementioned report in accordance with M.G.L. c. 119, s. 51B for neglect on behalf of A and J by the Appellant and opened a clinical case for the family based solely upon the agency's concerns with respect to the one-time incident of domestic violence as reported by A.² (Exhibit 2, pp.6 and 7; Testimony of LT.)
20. The Department was of the opinion that "[b]ased on the mother's past minimization of concerns [of sexual abuse of A by the Appellant] it is not unlikely she is minimizing what occurred by saying it was only verbal" in this instance. (Exhibit 2, p.7.)

² The DCF Supervisor spoke with the mother regarding the agency's past concerns of sexual abuse of A by the Appellant, however specifically informed the mother that another DCF case was opening specifically "for the concerns of [Domestic Violence]." (Exhibit 2, p.7.)

21. Although the Appellant was present at the hearing, he did not testify and rested on his statements given to DCF at the time of the response. (See, hearing record.)
22. Although present at the hearing, the mother did not testify and rested on her statements given to DCF at the time of the response. (See, hearing record.)
23. I find the Department did not have reasonable cause to believe that the Appellant failed to provide minimally adequate care to the children and I further find that there was no evidence that the Appellant's actions placed the children in danger or posed a substantial risk to their safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16. (See, Analysis.)

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 of human trafficking." 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).

"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 s. 51A. Id. at 63. 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.

"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. 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. 110 CMR 10.23.

Analysis

As the live-in partner of the children's mother, the Appellant is deemed a "caregiver" pursuant to Protective Intake Policy #86-015.

The Department's decision that the Appellant neglected the children was based solely upon the agency's opinion that due to the Appellant engaging in a one-time, physical altercation with the mother with the children present in the home, that the Appellant failed to provide minimally adequate emotional stability and growth to the children and there was "risk of harm" to them. The evidence does not support DCF's contention.

The Department understandably supports individuals for neglect when the caregiver fails to provide minimally adequate care to children in situations of ongoing domestic violence in the presence of children. The definition of domestic violence found in the Department's policy is "A pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. *Domestic violence is not defined by a single incident of violence or only by violent acts.*" Protective Intake Policy #86-015. (Emphasis added.) In addition, our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well-being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979).

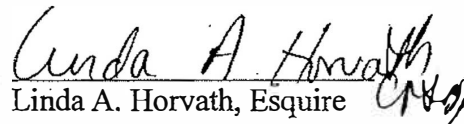
The facts of this matter do not fit within the Department's definition of "domestic violence" above as there is no sustained pattern of violence or coercive control in the Appellant's relationship with the mother. There is no evidence that A contrived the information that the Appellant slapped the mother, or that she would have reason to lie that the physical act occurred. Even so, the subject incident was a single incident of loud arguing and the Appellant slapping the mother, neither of which the children had ever been witness to before. Noteworthy is that A and J made very positive statements about the Appellant and their home life with him otherwise.

As such, not only is there a lack of evidence that the Appellant failed to provide the children with minimally adequate care in any pertinent aspect of the definition of neglect, there is also a lack of evidence that any action by the Appellant placed the children in danger or posed a substantial risk to the children's safety or well-being. Both of these aspects of a support finding for neglect are lacking in this case.³

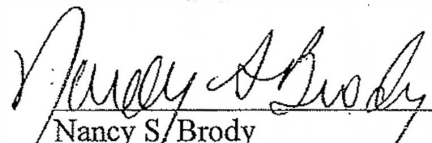
Conclusion

The Department's decision to support the 51A report of December 7, 2016, for neglect by the Appellant on behalf of A is **REVERSED**.

The Department's decision to support the 51A report of December 7, 2016, for neglect by the Appellant on behalf of J is **REVERSED**.


Linda A. Horvath, Esquire
Administrative Hearing Officer

Date: 3-21-18


Nancy S. Brody
Supervisor, Fair Hearing Unit

Date: _____

Linda S. Spears,
Commissioner

³ Such evidence, that the children were in danger or the Appellant's actions posed a substantial risk to the children's safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the children were neglected, but that there is a lower level of risk to the children, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the children's safety or well-being. (See, DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29.) However, the Department did not make a finding of "concern" in this matter.