

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF SOCIAL SERVICES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET, 6<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02111**

Linda S. Spears  
Commissioner

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

**IN THE MATTER OF**

**DC**

**#2017-0049**

**FAIR HEARING DECISION**

DC appealed the Department of Children Families' (hereinafter "DCF" or "the Department") decision to support allegations of physical abuse pursuant to G.L. c. 119, §§51A and B.

**Procedural History**

On March 17, 2001, the Department received two 51A reports alleging physical abuse of J by her mother, DC, and her father, JB. The Department screened-in the reports for an emergency investigation and, on March 19, 2001, the Department made the decision that the allegations of physical abuse of J by her parents were supported.

DC did not receive any notice of the Department's decision. She did not become aware of the decision until January 6, 2017, after she underwent a background record check by the [REDACTED] and was notified that her background, specifically prior DCF findings of abuse (March 19, 2001) and neglect (August 7, 2013), disqualify her from being eligible to work for any [REDACTED] licensed program.

On January 11, 2017, DC made a request for a fair hearing to appeal the Department's March 19, 2001, decision. Her request was granted and a hearing was held on March 29, 2017, in the DCF Hyde Park Area Office. DC was present and testified at the hearing. No one from the Department appeared, however, the 51A and B reports in question were submitted by the Department. (Exhibits A, B and C).

DC submitted the following exhibits at the hearing.

Exhibit 1: Letter from [REDACTED] notifying DC she was ineligible to work for a [REDACTED] licensed program, dated January 6, 2017.

Exhibit 2: ██████████ ██████████ ██████████ Memorandum of Decision and Order on Plaintiff's Motion for Judgment on the Pleadings, dated January 2, 2004.

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

### **Issue to be Decided**

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 CMR 10.05

### **Findings of Fact**

1. DC (hereinafter "mother") and JB (hereinafter "father") are the parents of J (d.o.b. ██████████). (Exhibit A, pp. 1-2).
2. The family first became involved with the Department in January 2001, when J was 15 years old. At that time, school staff noted that J was being moody and displaying some bizarre behaviors. The school called mother in for a meeting which the guidance counselor and J attended. At that meeting, J told her school guidance counselor that a few days earlier her mother hit her with a belt after she stayed out all night. J also made comments about wanting to hurt herself and/or her parents. She was evaluated and hospitalized for suicidal and homicidal ideation. The Department received a 51A report alleging abuse by mother. The Department initiated an investigation. Mother denied hitting J with a belt. J reported that mother hit her on the arm three times and then she hit her face by accident causing a small red mark. No one, including the investigator observed a red mark on J. The Department made the decision that the allegation of physical abuse was supported and opened a case for the family.<sup>1</sup> (Exhibit 2; Exhibit C, pp. 2, 3).
3. Following J's hospitalization, treatment recommendations included medication and outpatient therapy. (Exhibit C, p. 3).

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<sup>1</sup> Mother appealed the Department's January 2001, decision. The decision was upheld after a fair hearing, however, it was reversed on appeal by the superior court. (Exhibit 2).

4. During the week prior to March 17, 2001, J had been staying with her maternal grandmother in the apartment below mother and father's in order to help her get ready for her upcoming surgery. On March 17, 2001, mother observed J with a boy and she was concerned about her sneaking him into maternal grandmother's apartment. Mother told J that she had to stay upstairs at home that night and she told her to come upstairs. J refused to go upstairs. Mother went downstairs to get her. Mother took her by the arm. J started flinging her arms and hitting mother. Father saw this and went downstairs to intervene. Father grabbed both of them and they all fell over, stumbling down several steps. J started calling mother a bitch and a whore. She began saying that she wanted to kill mother and father and she wanted to cut her wrist. Mother called the police. (Exhibit A, p. 3; Exhibit C, pp. 1-2; Testimony of mother).
5. Police responded to the home and spoke with family members. Mother and father reported what had occurred and requested that J be evaluated. Police called EMS to the home. J told EMTs that her parents physically assaulted her. J said that she was hit over the head with a broom; that father held her down and mother punched her in the face. EMTs observed a hematoma on the left side of J's forehead, some scratches on her forehead and neck and abrasions on her knee. EMTs transported J to the hospital for an evaluation. (Exhibit A, p. 3).
6. Before J was taken to the hospital, she kept asking for her purse. Mother and father did not give it to her. After she left, they looked in her purse and found a knife. (Exhibit C, pp. 2, 3).
7. When J was being evaluated, she told hospital staff that she was assaulted by both parents. She said her mother told her to come upstairs. Her mother grabbed her, hit her with a broom and pushed her down. Her father pulled her hair and held her down while her mother punched her in the face. J was noted to have a small bump with scratches on her forehead and an abrasion on her knee. (Exhibit B, p. 3; Exhibit C, p. 2).
8. On March 17, 2001, the Department received two 51A reports alleging physical abuse of J by her parents. The Department screened-in the reports for an emergency investigation. (Exhibits A and B).
9. The Department response workers went to the home and spoke with mother and father. They described the reported incident consistent with the above finding. They denied physically abusing J and stated that any injuries she had were caused accidentally when father intervened and they all fell. (Exhibit C, pp. 1-2).
10. The Department response workers met with J at the hospital. J did not want to talk with response workers, she had "a major attitude," and she "sucked her teeth" throughout the interview. She reported that her mother told her to get upstairs, but she didn't go. Her mother came downstairs. Her mother grabbed her, threw her and hit her with a broom. Her father pulled her hair and held her down while mother punched her in the face. J initially said this was the first time mother hit her. When

asked about the prior incident, J then said that this was the second time that mother hit her. J acknowledged that she is sexually active. She denied using drugs or alcohol. She told response workers that, if she goes home, she will hurt/beat her parents and if she had gotten the knife from her purse, she would have "stuck" them. (Exhibit C, p. 3).

11. Response workers observed a cut and a scratch above J's left eye. (Exhibit C, p. 3).
12. J was evaluated by a [REDACTED] Team worker who determined that J required hospitalized for homicidal ideation. (Exhibit C, p. 3).
13. On March 19, 2001, the Department made the decision that the allegations of physical abuse of J by mother and father were supported. (Exhibit C, pp. 4-5).
14. Mother testified at the hearing. She denied that she hit J as alleged or the father held her down or pulled her hair. (Testimony of mother). I find mother's testimony to be credible.

### 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 caretaker occurred.

"'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 C.M.R. 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.

As J's parents, mother and father are her caretakers under Department regulations. 110 CMR 2.00(5).

Physical abuse is the non-accidental commission of any act by a caretaker upon a child which causes, or creates a substantial risk of physical injury. 110 CMR 2.00(1).

The Department regulations define "physical injury" as follows.

- a) death; or
- b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such non-trivial injury; or

- c) soft tissue swelling or skin bruising depending upon such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises; or
- d) addiction to drug at birth;
- e) failure to thrive.

See 110 CMR 2.00(47).

The Department determined that mother and father physically abused J based upon her report that mother hit her with a broom and punched her in the face while father pulled her hair and held her down.

Mother denies that she or father acted as alleged. She maintains that J began swinging at her when she tried to get her to go upstairs. Father intervened and they all accidentally fell which caused the bump and scratches on J's forehead and abrasion on her knee. Mother argues that the Department should not rely on J's statement because she and father have no history of being physically abusive and J had mental health and behavioral issues at the time.

The evidence shows that prior to the January 2001, report, the family had no history of involvement with the Department. In January 2001, the school contacted mother and asked her to meet due to their concerns about J who was noted to be moody and displaying "bizarre behavior." It was during that meeting, for the first time J made an allegation of abuse by mother. According to J she stayed out all night which mother confirmed. J reported that mother had hit her with a belt and she made comments about wanting to hurt herself. Although it was initially reported that mother admitting hitting her with a belt, she denied doing so when she spoke to the Department investigator. J partially recanted saying that mother hit her face by accident causing a small red mark. No one reported seeing any injury on J. J was evaluated and determined to be in need of hospitalization and outpatient treatment afterward. Although the Department found the allegation of physical abuse was supported, that decision was later reversed.

A little over a month later, J was refusing to return upstairs to mother and father's home after staying with her grandmother downstairs for a week. Mother was concerned because she saw J with a boy earlier and she was afraid J would sneak him into grandmother's home. This was a legitimate concern since J acknowledged being sexually active. Mother went downstairs to get J. When she took her arm, J began swinging at mother and calling her a bitch and a whore. They were apparently on the stairs. When father saw what was happening, he went down to intervene. He grabbed them presumably to separate them and they ended up falling. J began saying she wanted to kill them and hurt herself. Mother appropriately called the police. When the police arrived, mother and father described what happened, but J reported that mother and father had physically abused her by hitting her with a broom and punching her in the face. She was noted to have a hematoma and scratches on her forehead and an abrasion on her knee. The police apparently did not believe her and no one was arrested. J was transported to the hospital by EMS.

Before J left she kept asking for her purse. Her parents did not give it to her, but later found that the purse contained a knife.

When J was being evaluated and later when she was spoken to by Department investigators, she again reported that mother had hit her with a broom and punched her while father held her down. She added that father also pulled her hair. The medical staff noted a small bump on her forehead and some scratches. The Department investigators described the bump as a cut. There were no photographs submitted and there is no evidence that any photograph was taken.

It is notable that when Department investigators interviewed J, she had "an attitude" and did not want to speak to them. She sucked her teeth throughout the interview. She again expressed her desire to hurt her parents and said that, if she had had the knife she would have "stuck" them. She was hospitalized due to homicidal ideation.

There were no subsequent 51A reports filed prior to J turning 18.

Given mother's credible testimony as well as J's apparent behavioral and mental health issues at the time, her obviously defiant attitude, the lack of any credible previous reports that the parents were abusive, the lack of any subsequent reports and the circumstances (that J knew she was in trouble) in which she made both reports, I find that her reports are most likely unreliable and that any injury observed on her was caused accidentally when father intervened when J attacked mother.

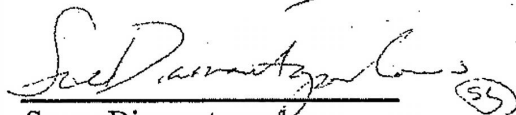
Considering all of the evidence, I find no reasonable cause to believe that mother and father acted as alleged by J and, therefore, they did not physically abuse J under Department regulations.

### Conclusion and Order

The Department's decision to support allegations of physical abuse of J by mother and father was made without a reasonable basis and therefore, the Department's decision is REVERSED.

5/8/2017  
Date

  
Anne L. Dale Nialetz,  
Administrative Hearing Officer

  
Susan Diamantopoulos  
Fair Hearing Supervisor

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Date

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Linda S. Spears  
Commissioner