

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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LINDA S. SPEARS
Commissioner

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IN THE MATTER OF

JD

2017-0056

Fair Hearing Decision

The Appellant in this Fair Hearing is JD. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of his children, M and S pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On November 10, 2016, the Department received a 51A report was filed by a mandated reporter. The allegation was screened in for a non-emergency response and upon the conclusion of the Department's response, the allegation of neglect of the children by the Appellant was supported by the Department. The Appellant made a request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was scheduled to be held on March 7, 2017, at the Department of Children and Families' Area Office in Chelsea, MA. In attendance were: Appellant JD; Response Worker VL; Response Supervisor EH; and Fair Hearing Officer Carmen Colon. The record officially closed on this date.

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

For the Department:

Exhibit A: 51A Intake Report of November 10, 2016

Exhibit B: 51B Child Abuse/ Neglect None Emergency Response of December 6, 2016

For the Appellant:

No Documentary Evidence was provided by Appellant

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. (110 CMR 10.21)

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 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 parents(s)/ caregiver(s) placed the child(ren) in danger or pose substantial risk to 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 review of all the evidence, I make the following factual findings:

1. The reported children in this matter are M (10 y.o) and S (8 y.o). The children resided with their parents, JD and MD. (Exhibit B)
2. Appellant JD is the children's father. As the father of the reported children, JD is deemed a caregiver pursuant to Departmental policy. Protective Intake Policy # 86-015 Rev. 2/28/16
3. The family has a history with the Department. In a previous incident of June 2016, police responded to the home due to arguing between the parents. The argument escalated requiring police assistance. (Exhibit A, p. 5, Exhibit B, p. 1)
4. On November 11, 2016, the Department received a 51A report alleging the neglect of M and S by Appellant. The mandated reporter expressed concerns for the children after S disclosed being exposed to the parents ongoing fighting and witnessing the two "punch each other". S stated that she felt "scared, nervous and sad". (Exhibit A, p.3)
5. On November 17, 2016, DCF RSW interviewed MD and the reported children. During this interview, MD disclosed the following:
 - a. She and JD are in an "on an off again" relationship and that children do hear them arguing.
 - b. Arguments between the two are over finances, father's drinking as he does become aggressive when drunk. Father has a past A&B charge for assaulting mother
 - c. MD disclosed a history of sexual and physical assault by Appellant all occurring in the home.(Exhibit B, p. 2-3)
6. DCF Response Social Worker also interviewed the children separately on this date. S disclosed having been exposed to ongoing fighting between her parents and shared it was over Appellant drinking "beer". S continued in her disclosure and stated she did not feel "safe" when her parents

argued and reported that on November 16, 2016, she witnessed her mother slapping the Appellant in the face. S's accounts of ongoing arguments were corroborated by M who reported that the two argue when Appellant arrives to the home. M also was aware of mother slapping Appellant and stated she "feared" for her mother when this happens. (Exhibit B, p.3)

7. On December 1, 2016, the Appellant met with DCF Response Social Worker to discuss reported concerns. He acknowledged the fighting between himself and MD and also that his daughters were aware of it. Father was not found to be reliable by the DCF Response Social Worker in his reports of how often the police had responded to the home or how often he and MD engaged in a physical altercation. Appellant provided a generic statement of "maybe once" without acknowledging negative effects witnessing parental violence has on the children. (Exhibit B, p. 5)
8. On December 6, 2016, the Department supported the allegation of neglect of M and S by the Appellant due to Appellant's ongoing "emotional, physical and mental abuse towards mother... causing mother to utilize physical alternatives to protect herself and the children". (Exhibit B, p.9)
9. After review of the documentation and testimony provided at the Fair Hearing, I find that the Department had reasonable cause to support the allegation of neglect of M and S by Appellant for the following reasons:

a) The children were able to disclose having been exposed to arguments between their parents and being aware of physical altercations. In addition, both children were able to speak to Appellant's drinking and his behavior in the home corroborating MD's statements around his volatility while under the influence of alcohol. Neither child had a motive to make false disclosures and did not appear to be influenced by their mother. Children were explicit in expressing their worry for their own and their mother's safety when Appellant arrives to the family home. (Fair Hearing Record)

b) The ongoing arguments and altercations have begun to have an impact on the children as they both described feeling "scared" and "sad" over Appellant's and MD's relationship.

Applicable Standards and Analysis

In order for the Department to "Support" an allegation of neglect, the Department must find that there is reasonable cause to believe that the child(ren) was abused and/or neglected ; *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 Police #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." 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 §51A” Care and Protection of Robert, 408 Mass. 52, 63-64 (1990) Id. at 63. This same reasonable cause standard of proof applies to decisions to support allegations under § 51B. Id. at 64; M.G.L. c. 119, § 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

“Neglect” is defined as failure by a caretaker, 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. Protective Intake Policy #86-015 Rev. 2/28/16

“Caregiver” means a child's: (1) a child's parent, stepparent, guardian or any household member entrusted with the responsibility for a child's health or welfare; or, (2) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under age 18). DCF 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

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 (1996). Children who witness domestic violence, especially during important developmental stages, often have serious psychological problems. Adoption of Ramon, 41 Mass App. Ct. 709, 714 (1996)

After review of the evidence provided, it is undisputed that the Appellant and MD have a volatile relationship which has consisted of ongoing arguments, physical and sexual assault of MD by the Appellant, all occurring in the family home. The reported children in the home were consistent in disclosing the arguments, could identify precipitating factors (Appellant's drinking and money issues) and the effect it was having on them.

The children were able to go in to accounts of mother hitting father, being in fear for their safety and the safety of their mother as well as feeling "scared" and "sad" when these events take place.

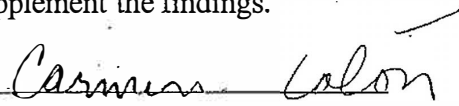
During the response period, Appellant was not able to provide an explanation for his reported actions or acknowledge the negative impact his behavior in the home was having on his children which was concerning given the detailed disclosures made by the children in this matter.

Due to the concerns expressed by the mandated reporter, the consistent and detailed accounts provided by M and S along with mother's disclosure of ongoing abuse by Appellant, the Department had reasonable cause to believe that the Appellant, had failed to provide his daughters with minimally adequate care and emotional stability, thereby neglecting the children under Departmental policy as they were being exposed to ongoing arguments and incidents of violence. Protective Intake Policy #86-015 Rev. 2/28/16

Conclusion and Order

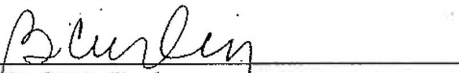
In conclusion, the Department's decision to support the 51A report of neglect of M and S by the Appellant is **AFFIRMED**

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or in Suffolk County, 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 reserve the right to supplement the findings.



Carmen Colón
Fair Hearing Officer

March 27, 2018
Date


Barbara Curley
Supervisor, Fair Hearing Unit