



The Fair Hearing was recorded on one compact disk.

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

For the Department:

Exhibit A: 51A Report, dated 10/18/16

Exhibit B: 51B Report, completed 11/29/16

Appellant

Exhibit 1: Letter from LH to FHO

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 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 whether the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed 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. At the time of the filing of the 51A report, A was nine (9) years old. She resided in [REDACTED], with her mother, LH, and her stepfather, JH. (Exhibit A)
2. The Appellant is the mother of the subject child; therefore she was a caregiver pursuant to Departmental regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. The family had a history with the Department and Probate Court dating back to 2012. Concerns for A involved LH coaching/telling A she was the victim of sexual abuse by her father, LM. Five (5) investigative responses were unsupported and two were screened out relative to concerns of sexual abuse. (Exhibit B, p.1)

4. On October 18, 2016, the ██████████ Probate Court issued Sua Sponte an order giving custody of A to the Department. The reason for the order was LH's false allegations of sexual abuse by LM and LH's refusal to allow LM his court ordered parenting time for over one year. (Exhibit A)
5. On October 18, 2016, the Department received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect of A by her mother, LH, and her father, LM. According to the reporter, LH and LM had been unwilling to work together and had been involved in long, contentious disagreements about visitation and custody. Despite repeated attempts by the court to facilitate LM's parenting time, the Appellant refused to grant LM, father time. Appellant made false allegations of sexual abuse of A by LM. This report was screened in for an emergency response. (Exhibit A)
6. A's school had concerns of hygiene issues and tardiness. A was often late to school, presented with bathing issues, disheveled clothing and dirty hair. (Exhibit B, p.2)
7. A was placed in foster care as a result of the Probate Court's order. A's foster mother noted the clothing A was provided from the Appellant was small, dirty, and inappropriate. (Exhibit B, p.5)
8. A was not involved in a therapeutic relationship at the time of the 51A report. A had an upcoming intake appointment to meet a counselor. (Fair Hearing Record)
9. On November 29, 2016, pursuant to M.G.L. c. 119, §51B, and based on the evidence gathered during its response, the Department supported the allegation of neglect of A by LH due to her failure to follow court orders to allow visits between A and LM; repeated false accusations of sexual abuse of LM; and stopping A from having a relationship with her father, LM, which A had a right to. (Exhibit B, p.13)
10. LH alleged she attempted to encourage A to visit with her father as ordered by the court, to no avail, as A would not get out of her car. Within one month of DCF receiving custody of A, she visited LM and reported she enjoyed her visit and presented as happy and engaged throughout the visit. (Exhibit 1, Exhibit B, p.8)
11. After consideration of the relevant evidence, I find the Department's decision to support the allegation of neglect by the Appellant was based on reasonable cause and made in compliance with its regulations. The Appellant failed to provide A with minimally adequate emotional stability and growth. Her actions and inactions posed substantial risk to A's well-being.

#### **Applicable Standards**

A "support" finding of abuse or neglect means that there is reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed 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).

“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 §51A” 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

“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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

“Caregiver” means (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. 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, or (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, or (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 and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed

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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

### Analysis

It is undisputed that Appellant was a caregiver pursuant to Departmental policies and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant, via counsel, contested the Department's determination that she neglected A. The Appellant argued she did not neglect A; that A was well cared for by her but rather that she failed to comply with a court order, which did not constitute neglect. The Appellant argued she managed A's medical condition; got her to private school regularly, and there were no reports of neglect from mandated reporters. The record does not support the Appellants argument.

A presented with Encopresis, for which she was followed by her pediatrician and Children's Hospital Boston, which is undisputed. A also presented with therapeutic needs, which were not provided for by the Appellant. In addition, concerns relative to hygiene and clothing of A were discovered during the response. The Appellant argued she tried to comply with the court order regarding parenting time between A and her father but A refused to get out of the car approximately four (4) times. The record lacked any evidence to support the Appellant's claim that she did not hinder A's relationship/visitation with LM; however there was evidence from the court that the Appellant made false allegations of sexual abuse and prevented A from having a relationship with her father, LM.

As provided for in the regulations quoted above, the Investigator relied on available documentation, observable behavioral indicators and her clinical knowledge to support the decision of neglect of A. Based on a review of the evidence presented, in its totality, this Hearing Officer finds that the Department had reasonable cause to believe that A was neglected while in the care of the Appellant, as defined by Departmental regulations. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 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 § 51B." Id. At 64; G.L. c.119, s 51B The Department's determination of neglect does not require evidence of actual injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003)

### Conclusion

The Department's decision to support the allegations of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

This is the final administrative decision of the Department. If the 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 within 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 reserves the right to supplement the findings.

  
Lauren Decas  
Administrative Hearing Officer

Date: 1/2/18

  
Darlene M. Tonucci, Esq.  
Supervisor, Fair Hearing Unit