

**THE COMMONWEALTH OF MASSACHUSETTS
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

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IN THE MATTER OF

SM

2017-0063

Fair Hearing Decision

The Appellant in this Fair Hearing is SM. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of her sons, X and I pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On October 12, 2016, the Department received the first of four 51A reports concerning reported children I and X. Reports alleged physical abuse and neglect of the children by Appellant and her then live in boyfriend HB. The Appellant was named in the two allegations filed on December 9, 2016. All allegations were filed by mandated reporters who had concerns for the children's safety. The Department concluded its non-emergency response on December 27, 2016 and supported the allegation of neglect of X and I by the Appellant. The Appellant made a request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was scheduled held on March 23, 2017, at the Department of Children and Families' Area Office in Lowell, MA. The record officially closed upon conclusion of the Fair Hearing.

The following persons appeared at the Fair Hearing:

Carmen Colón	Fair Hearing Officer
DM	DCF Response Social Worker
TS	DCF Response Supervisor
SM	Appellant

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

For the Department:

Exhibit A: 51A Intake Report of October 12, 2016
Exhibit B: 51A Intake Report of December 9, 2016 (12:32pm)

Exhibit C: 51A Intake Report of December 9, 2016 (4:43pm)
Exhibit D: 51A Intake Report of December 13, 2016
Exhibit E: 51B Child Abuse/ Neglect None Emergency Response of December 27, 2017

For the Appellant:

Exhibit 1: Psychoeducation Report for I of February 2017

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)

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 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 X and I, twins age 12 years old. Both boys resided with their mother, SM and her then live in partner HB (Exhibits A-D)
2. The Appellant in this case is the children's mother, SM. As the mother of the reported children, SM, is deemed a caregiver pursuant to Departmental policy. Protective Intake Policy # 86-015 Rev. 2/28/16
3. On October 12, 2016, the Department received the first of four 51A reports involving I and his brother X. The reports were filed between the dates of October 12, 2016 – December 13, 2016. Out of the four reports filed, the Appellant was identified as a perpetrator on two 51A reports filed December 9, 2016 both of which alleged the Appellant had abused and neglected her children. All reports were filed by mandated reporters (Exhibits A-D)
4. During the initial filing I was psychiatrically hospitalized as he had threatened to burn down the school. I had disclosed not feeling safe at home and being hit by stepfather. During the response, more allegations surfaced, around HB's behavior. I was described to be truthful by reporters and the relationship between I and X was strained. (Exhibit C)

5. During the response period, DCF RSW conducted visits to Appellant's home and interviewed Appellant, X and HB. All three denied all allegations in full. X in specific stated that I was "making up" what was reported and that nothing was happening at home in the present time. X at a separate interview with DCF RSW talked about past events involving HB and stated that although he and his brother had wanted to act against HB it had been in the past. (Exhibit E, p.3,7)
6. I was hospitalized and upon release was also interviewed by DCF RSW separate from his family on December 13, 2016. During this interview, I disclosed the following :
 - a. he had a plan to burn the family home
 - b. he and his brother X were hit by HB and his mother was aware of it
 - c. I had engaged self-injurious behavior as he was burning himself when "pissed off"
 - d. I had expressed wanting to harm HB in the past to school staff
 - e. HB drank every day, acted stupid and threw things and punched holes in walls
 - f. HB tried to "toughen up" the boys by hitting them with a closed fist in the ribs
 - g. Despite I's history of fire setting there were matches in the home
 (DCF Testimony, Exhibit E , p. 6)
7. I find I a credible reporter.
8. In October of 2016, I had been referred to outpatient mental health services and upon conclusion of the DCF response in December, he had yet to be in treatment leading to a second hospitalization in December. (Exhibit E, DCF Testimony)
9. On December 27, 2016, the Department supported the allegations of neglect of I and X by the Appellant and concluded its response. (Exhibit B, p.1, 11)
10. After review of the documentation and testimony provided by the Appellant and DCF, I find that the Department had reasonable cause to support the allegation of neglect of all the children by Appellant for the following reasons:
 - a) I and X both resided with their mother and her live in boyfriend, HB. Serious concerns were expressed to DCF by collaterals regarding the boys' safety in the home with HB .
 - b) I's emotional stability had been impacted enough to the point where youth had engaged in self injury and expressed his plans to cause harm to HB by burning the family home.
 - c) I and X though not in agreement of timeframe of events, were clear that the aggression in the home by HB towards them had taken place for an extended period of time and had gone unaddressed by Appellant. As such, the Appellant failed to provide the children with a minimally adequate care ... emotional stability. 110 CMR 2.00 , Protective Intake Policy #86-015 Rev. 2/28/16).

Applicable Standards

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(dren) 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 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." 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). 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

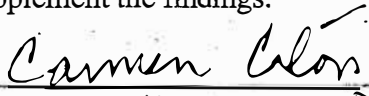
The matter in question at this Fair Hearing is whether or not the Appellant took at least minimal action to provide food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care based upon the information obtained during the Department's response period which began in October 2016 and ended in December 2016. During this period, the Department met with the children, collaterals involved with the children in question and with Appellant. The Appellant argued at the Fair Hearing that I was not abused at any time by her then live in partner and that after her son's second psychiatric hospitalization she did comply with the Department's proposed safety plan and she and the children moved out of HB's home.

I described HB as bullying, punching and hitting him and his twin brother, X, though neither boy had any physical injuries noted during the response. The Appellant was aware of HB's maltreatment of her sons but did not intercede to protect them. I was diagnosed with PTSD and engaged in self-injury via burning himself. He became preoccupied with the thought of setting fire to the family home as a form of harming HB. X during the time of the response did not deny to presence of abuse, he just stated that the abuse was not happening during the time of the response. X engaged in conversations with his brother about wanting take "revenge" on HB. DCF had reasonable cause to believe that long term maltreatment of the boys by HB occurred. In addition, I, who had higher mental health and behavioral needs than his brother had been in need of intensive services since discharge in October 2016 and upon conclusion of the DCF response in December, Appellant had not aggressively pursued community based mental health services identified by treating by hospital as necessary to I remaining safe in the community.

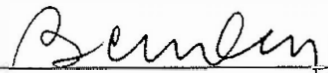
Conclusion and Order

In conclusion, the Department's decision to support the 51A report of neglect of I and X 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 *BC*

May 30, 2018
Date


Barbara Curley, Supervisor
Fair Hearing Unit