

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

**Linda S. Spears
Commissioner**

**Voice: 617-748-2000
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IN THE MATTER OF)	
)	
LG & VG)	FAIR HEARING DECISION
)	
FH # 20170067)	
)	

The Appellant in this Fair Hearing was LG and VG. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of physical abuse pursuant to M.G.L. c. 119, §§51A and B, and the Department's decision under 110 CMR §7.113B their license to provide foster/adoptive care.

Procedural History

The Appellants adopted E in January 2010 and were providing pre-adoptive care to another child, H. On November 21, 2016, the Department received a 51A report filed by a non-mandated reporter alleging the physical abuse of E by LG. On November 22, 2016 the Department received a second 51A report by a mandated reporter alleging the physical abuse of E by LG. An investigation was conducted and on January 3, 2017, the Department made the decision to support the allegation of neglect and physical abuse of E. On January 23, 2017 H was removed from the Appellants' foster/pre-adoptive home. On January 27, 2017 the Department made a decision to revoke the Appellants' license to provide unrestricted foster/pre-adoptive care. The Department notified the Appellants of their right to appeal its decisions.

The Appellants made a timely request for a Fair Hearing under 110 CMR §10.06. The hearing was held on March 23, 2017, at the DCF Fall River Area Office, in Fall River, MA. All witnesses were sworn in to testify under oath. The record remained open until April 14, 2017 to allow the Appellants time to submit additional documentary evidence.

The following persons appeared at the Fair Hearing:

Jorge Ferreira	Fair Hearing Officer
MN	Interpreter
LG	Appellant

VG
AR
NH
GS

Appellant
Department Special Investigator
Department Family Resource Worker
Witness

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 Department regulations 110 CMR §10.26.

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

For the Department:

Exhibit A Child Abuse/Neglect Institutional Abuse Report dated 11/21/16
Exhibit B Child Abuse/Neglect Institutional Abuse Report dated 11/22/16
Exhibit C Child Abuse/Neglect Non-Emergency Response completed 01/03/17 & Photo of Subject Child, E
Exhibit D DCF Family Resource Limited Reassessment Completed 02/02/2017

For the Appellant:

Exhibit 1 DCF Removal Letter dated 01/23/2017
Exhibit 2 Appellants' Request for a Hearing and Brief Explanation of Incident
Exhibit 3 [REDACTED] Letter/Appellants' Involvement in [REDACTED]
[REDACTED]
Exhibit 4 [REDACTED] - Letter from E's Individual Therapist
Exhibit 5 Letter from VG's Therapist- [REDACTED]
Exhibit 6 [REDACTED] Letter from Therapeutic Mentor
Exhibit 7 Character Reference Letters

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

Issues to be Decided

The first 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 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

The second and last issue for resolution is whether the Department's decision to revoke the Appellant's license to be a foster/adoptive resource is in conformity with the Department's policies and/or regulations and, if not, whether any regulatory violation resulted in substantial prejudice to Appellant. 110 CMR §10.05

Findings of Fact

On the basis of the evidence, I make the following factual findings:

1. At the time of the filing of the subject 51A reports, E was eight years old. He resided with his adoptive parents, LG and VG, his foster sister, H and a cousin, GS, age twenty, in [REDACTED], MA. Another adoptive sister, R, age twelve, was residing in a group home when the report was filed. (Exhibit A; Exhibit B; Exhibit C)
2. The Appellants were the adoptive parents of the subject child; therefore the Appellants were "caregivers" pursuant to Departmental regulation and policy. 110 CMR §2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
3. Both E and R were adopted by the Appellants and have active adoption subsidy cases. H was in the process of being adopted by the Appellants when the 51A reports were filed. There have been past allegations of neglect and physical abuse of R by the Appellants. In March 2015 a report for the physical abuse and neglect of R by the Appellants was unsupported by LG acknowledged that he slapped R in the back of her head as well her face, reporting that he was frustrated with her behavior. In October 2015 a report was supported for the physical abuse R by LG and VG and neglect by both Appellants was supported. The Appellants acknowledged utilizing physical discipline of R due to her behavior. The children disclosed that R had her ears pulled and was hit/punched in the face out of frustration. In July 2016 an application for voluntary services was filed on behalf of R due to her behavior, including running from home. A Child Requiring Assistance (petition) was later filed in Juvenile Court in for the child, R, to have judicial oversight. (Exhibit A, p. 5; Exhibit B, p. 8; Exhibit C)
4. The Appellants had been providing unrestricted foster care for eleven years. There was never an issue with the children until R found out that she was adopted in 2008. (Testimony of the DCF Family Resource Worker)
5. On November 21, 2016 and November 22, 2016, the Department received two reports pursuant to M.G.L. c. 119, §51A, alleging the physical abuse of E by the Appellant LG. The reports were filed by a non-mandated and a mandated reporter, respectively. According to the reporters, VG had left for a retreat in New Jersey, leaving the subject child and H with LG and GS. It is alleged by both reporters that E had difficulties sleeping, having nightmares and kept going into the bedroom of Appellant LG, his adoptive father. LG became frustrated with E behavior and crying, resulting in hitting E with a slipper. The subject child was observed to have bruising under the left eye and the upper lid under the eyebrow was also red and marked. The area was observed to be swollen. A restraining order was filed by VG and

LG was required to leave the home. (Exhibit A, p. 3; Exhibit B, p. 2; Exhibit C)

6. The 51A reports were screened in and assigned for a non-emergency response, pursuant to MGL c.119, §51B. The allegation of neglect and physical abuse of E by Appellant LG, was supported on January 3, 2017. The allegations were supported because the Department had reasonable cause to believe the subject child was hit in the face by LG, leaving a clear mark, which was still visible a week later when the Department's Special Investigator interviewed. Appellant LG hit E and has a history of hitting his children. The Appellant LG was found to have failed to provide minimally adequate care as E was emotionally distraught following the incident and feeling scared by LG's actions. Subsequently, LG was found to have neglected E by the Department. (Exhibit C, p. 10)

7. The subject child disclosed to the DCF Special Investigator that during the incident, he had called his father, LG, five times because he was having a nightmare. On the 5th time LG lost his patience, took a sandal and hit him. The child was observed to have a reddish mark under his eye and shaped like the letter U. (Exhibit C, p. 3; Testimony of the DCF Special Investigator)

8. The child further disclosed that LG was holding the sandal and hitting him. His mother, VG, was out of state in New Jersey. He added that VG also physically disciplines H by spanking her. (Exhibit C, p. 3)

9. E reported that LG was "dangerous" to him and GS felt that LG has no patience with E. When LG found about the incident, she became angry and sad. She argued with LG who left the home. E disclosed that VG "hated" LG at the time. E also disclosed being afraid of his father at times when he loses his patience, especially during the incident. While he did not disclose fear of his mother, he did report that when he misbehaves she grabs his face. (Exhibit C)

10. When interviewed, VG expressed concern with the implications of LG's action on the household and the placement of H. VG asked LG to leave and obtained a Stay Away and Do Not Abuse Order from the court. (Exhibit C, p. 4)

11. VG denied using any physical discipline on the children and related that LG was very remorseful following the incident. (Exhibit C)

12. During the interview, VG became defensive and escalated as she was concerned that the Department would be removing the foster child, H, who she had cared for since H was an infant. Appellant VG was encouraged to reach out to the Family Resource Worker and engage in therapeutic services to address the current issue. (Exhibit C)

13. When interviewed, R disclosed that this incident was the 3rd time that LG hit E. She recalled how hard LG hit her brother when he got mad, describing an incident where LG grabbed E by the neck and put him against the wall. She reported that she had nightmares over concerns about her father hitting her brother. (Exhibit C, p. 5)

14. When contacted, the Family Resource Supervisor related that Appellant VG filed the restraining order in order to be seen favorably as opposed to cultivating safety, adding also that Appellant VG went eighty-six consecutive days without visiting her daughter, R, in her group home. (Exhibit C, p. 6)

15. Appellant LG reported that the subject child woke him up five to six times and at the 6th time he began to become violent and was throwing things in the room. The Appellant LG reported that he intervened to stop him. LG attempted to hit E in the bottom but he jumped and struck him in the face. He acknowledged that he lost control and that it affected him a lot. However, he denied having hit E in the past. (Exhibit C, pp. 6-7; Testimony of the Appellant LG)

16. During the hearing, the Appellants opined that the Department acted unprofessionally given that they had been foster parents for eleven years and that they knew the struggles they had with R and that she was not credible as she had lied in the past. (Exhibit 2; Testimony of the Appellants)

17. GS was asleep when the incident occurred and did not witness the altercation. She woke up to E crying and brought him to her room. GS has lived for six years with the Appellants and has never had any concerns over the treatment of the children. (Testimony of the Witness)

18. E's therapeutic mentor related that E disclosed the incident a week later. He noted that he still observed a mark under E's eye, including a discoloration. (Exhibit C, p. 8)

19. The Appellants have since engaged in a spectrum of therapeutic services to address issues related to this instant matter under appeal; including therapy for VG, intensive family therapy and therapeutic mentorship for E. (Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6)

20. The Appellants were described as spiritual and loving parents that want the best for the children they adopted. The Appellants were known as individuals that opened their home to the most vulnerable children in need. (Exhibit 7)

21. In response to the 51A reports; and following a clinical meeting on December 20, 2016 at the DCF area office, it was decided to remove H from the Appellants' pre-adoptive placement. The Appellants were provided with written notice confirming H's removal on January 23, 2017. (Exhibit C, p. 7; Exhibit 1)

22. The Department completed a Limited Reassessment on February 2, 2017, as required by its regulations. 110 CMR 7.113A (a)(d), 7.116 The Reassessment documented the Department's concerns regarding the Appellants use of physical discipline and injury to E and another 51A report that was filed on January 20, 2017 regarding the sexual abuse of E. (Exhibit D, p. 3)

23. The Department also had ongoing concerns regarding how the Appellants were addressing familial issues with E and their lack of commitment towards R and how this might also impact the foster child H. The use of physical discipline on a foster child and equal concern was VG's decision to drop the restraining order against LG, as this placed the children at risk. (Testimony of the Family Resource Worker)

24. The Reassessment resulted in the recommendation that H not return to the Appellants' placement; such recommendation was made with a reasonable clinical basis and in accordance with 110 CMR 7.113(1)(c)(5).

25. The Appellant was an unrestricted foster home/pre-adoptive home for H and after the completion of

the Reassessment; the Department convened an area clinical team and made a decision to revoke the Appellant's license to provide substitute care. (Exhibit D; Testimony of the Family Resource Worker)

26. After review of the credible evidence presented by both parties, I find that the Appellant LG failed to provide E with minimally adequate care by hitting him in the face and causing a visible injury. The Department's decision to support the allegation of neglect and physical abuse of E by the Appellant was based on reasonable cause and made in compliance with its regulations. (110 CMR §2.00, 4.32; *DCF Protective Intake Policy #86-015, rev. 2/28/16*):

27. I further find that the Department's decision to revoke the Appellants' license to provide foster/pre-adoptive care was made in compliance with its regulations. 110 CMR §7.113 (a); 110 CMR §7.113 (b); 110 CMR §7.104

Applicable Standards

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.

Caregiver

- (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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. *Protective Intake Policy No. 86-015 (rev. 02/28/2016)*

Neglect is 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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (*Id.*)

Abuse means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under

the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. (*Id.*)

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (*Id.*)

Danger is a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. (*Id.*)

A Substantiated Concern means:

- There is reasonable cause to believe that the child was neglected; and
- The actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the children(ren)'s safety or well-being. (*Id.*)

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party; . . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR §10.05

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; or (e) if the challenged decision is a listing on the alleged perpetrators list, that there is not substantial evidence indicating the person is responsible for the abuse or neglect of a child. 110 CMR §10.23

110 CMR §7.101: Out-of-Home Placements

(1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety of the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:

(d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or adoptive parents to meet those needs;

"When considering a kinship or child-specific placement, the Department shall require that the relative or extended family member or individual chosen . . . meet the Department's requirements, as set forth at 110 CMR 7.104 and 7.105." 110 CMR 7.101(6)

110 CMR 7.104: Standards for Approval as Foster/Pre-Adoptive Parent

In order to be approved as a foster/pre-adoptive parent, a foster/pre-adoptive parent applicant must meet the following requirements:

(1) A foster/pre-adoptive parent applicant must demonstrate, to the satisfaction of the Department the ability:

(a) to assure that a child placed in his or her care with experience a safe, supportive, nurturing and stable family environment which is free from abuse or neglect;...

(d) to promote the physical, mental, and emotional well-being of a child placed in his or her care;

...

7.108: Kinship or Child-Specific Placements

...(d) When the child(ren) for whom the kinship or other child specific family was licensed leaves the placement, the kinship or other child specific family shall cease to be licensed. In these circumstances, there shall be no right to appeal the fact that the family is no longer licensed. However, depending upon the reason for the child(ren)'s departure from the placement and as more fully set forth in 110 CMR 7.116, there may be a right to appeal the fact of the child(ren)'s departure from the placement.

7.113: Reassessment and License Renewal of Foster/Pre-Adoptive Parents and Foster/Pre-Adoptive Homes

...(1)(c) Within ten days of completing the re-assessment, the Department shall reach one of the following decisions, shall notify the foster/pre-adoptive parents and shall enter a copy of the notification in the foster/pre-adoptive parent file:

...5. The foster/pre-adoptive parent and/or foster/pre-adoptive home will not be reapproved, and all foster children residing in the home shall be removed.

...(4) Whenever the Department has revoked or not renewed a license for a licensed foster/pre-adoptive parent(s), as a result of an annual or limited re-assessment, the Department shall remove all children from the foster/pre-adoptive home, unless the Department determines that it is in the child(ren)'s best interest to remain in the foster/preadoptive home. ...

7.113A: Limited Reassessments

...(1) The Department shall conduct a limited reassessment whenever the Department

(a) investigates and supports a report of abuse or neglect under G.L. c. 119, § 51B and the foster/pre-adoptive parent or other household member is identified as responsible for abuse or neglect;
... or

(d) removes a foster/pre-adoptive child from the foster/pre-adoptive home on an emergency basis.

Analysis

It was uncontested that the Appellant was a caregiver pursuant to the Department's regulations and policy. 110 CMR §2.00; *Protective Intake Policy No. 86-015 (rev. 02/28/2016)*

The Appellants disputed the Department's decision that E was neglected and physically abused by Appellant LG. They argued that while the incident occurred that it was isolated and that LG had never previously hit E. Appellant LG acknowledged that he lost control because E became unmanageable and he had to intervene so that he would not ruin the bedroom, reporting that he was trying to hit him in the bottom but that he jumped up, striking him in the face by accident. Appellant LG denied any previous incidents and discredited R disclosure and concerns because she is known to lie. Finally, the Appellants felt that the Department were unprofessional and that they have been foster parents for eleven years, having opened their home to children in need as attested by the various letters of support and adopting both R and E. Additionally, the Appellants argued that they have been proactive and have engaged in various therapeutic services to help them as a family, including their relationship with E and R. The allegations have caused great damage to their family and they feel that they have been substantially prejudiced by the Department.

This Hearing Officer is not persuaded by the Appellants' argument. The Department was able to show substantial evidence, including a photo that Appellant VG had originally provided, that E was neglected and physically abused. Both R and E consistently disclosed LG having difficulties when angry and targeting E by hitting him. R was able to recall in detail how LG physically disciplined E and having nightmares. E also disclosed of past incidents. Past 51A reports also implicate LG neglecting and physically abusing R, which contradicts the Appellants' statement that this was isolated. Appellant LG hit E with a sandal, leaving a clear mark that was still visible by the DCF Special Investigator and his therapeutic mentor. LG admitted that he hit E, a purposeful hit, not accidental, causing a physical injury. For these reasons I find that Appellant LG physically abused E (*see definition*) and failed to provide E with minimally adequate care and his actions created a danger and or a substantial risk to the child's safety or well-being and therefore neglected E. 110 CMR §2.00; *Protective Intake Policy No. 86-015 (rev. 02/28/2016)*

A foster/pre-adoptive parent must demonstrate, to the Department's satisfaction, the ability to assure a safe, supportive, nurturing and stable environment for a child in their care. The Limited Reassessment conducted by the Department considered the supported allegations that the Appellant LG neglected and physically abused E and placed the remaining foster child, H, in danger; both were clinical considerations used when assessing the decision to revoke the Appellants' license to provide foster/pre-adoptive care. The Department had justifiable concerns regarding the treatment of children in their home as supported by 51A reports and the children's disclosures. A review of all the information presented demonstrated that the Department's determination was made with a reasonable clinical basis.

All Department placement decisions ultimately must be made in the best interests of a child. The Department must take into consideration the individual needs of the child in question as well as the capacity of a foster parent to meet those needs. *See* 110 C.M.R. §7.101 (1)(d). A key element in the success of a foster child thriving in an identified foster home is the ability of the pre-adoptive parent and the Department to work constructively together. It is of critical importance in the Department's work with families that the agency and the foster parent have an open and honest exchange of information so

that *collective* decisions in the best interest of the child are made. That being said, it is the Department that has custody of the child and unequivocally has the primary responsibility for every aspect of the child's life until she/he is returned home, legally adopted or becomes an adult.

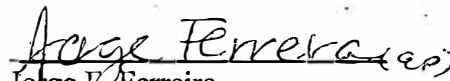
The Appellant presented no evidence that questioned the clinical experience and judgment of the Department staff involved in the instant matter and/or no compelling reason to find that the Department acted unreasonably and/or abused its discretion in making its decision. Based on the evidence, it was reasonable for the Department to revoke their license to provide substitute care.

Conclusion and Order


The Department's decision to support the 51A reports of **neglect** and **physical abuse** of E by the Appellant LG is **AFFIRMED**.

The Department's decision to revoke the Appellants' license to provide foster/pre-adoptive care was made in conformity with Department regulations and with a reasonable basis. Therefore, the Department's decision 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 Suffolk County, or in the county in which she lives, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Jorge R. Ferreira
Administrative Hearing Officer

12/28/17
Date


Erica Pogon
Fair Hearing Unit Supervisor