

**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

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

(
(IN THE MATTER OF)
(DS)
(
(FH # 2017-0071)
(

HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is DS (hereinafter "DS" or the "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect pursuant to MGL, c. 119, §§ 51A and B.

On December 25, 2016 the Department received two (2) 51A reports from a mandated reporter alleging neglect of N (hereinafter "N" or the "child") by DS. The allegation was subsequently supported. The Department informed the Appellant of its decision and of her right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06

The Fair Hearing was held on March 28, 2017 at the Department of Children and Families' Lowell Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

DH	Administrative Hearing Officer
DS	Appellant
MC	Lawyer for Appellant
BP	DCF Supervisor

In accordance with 110 C.M.R. 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 on a digital voice recorder, pursuant to 110 CMR 10.26

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

For the Department:

Exhibit A: 51A Report
Exhibit B: 51B Report

Exhibit C: 51B Investigation

For the Appellant:

None

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 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

Findings of Fact

1. The subject child in this investigation is N, who was nine (9) years old during the 51B investigation. (Exhibit A, p 1)
2. The Appellant, DS, is the biological mother and therefore was a caregiver pursuant to Department regulation and policy. (Exhibit A, p.1; Exhibit B, p. 1; Exhibit C, p. 1; DCF Protective Intake Policy # 86-015, rev . 2/28/16; 110 CMR 2.00)
3. On December 25, 2016 two (2) 51A reports were screened in pursuant MGL. c 119 51A alleging neglect of N by the Appellant. The report alleged that the Appellant was arrested for drunk driving and N was in the car without a seat belt on. Both reports were screened in and emergency response worker was assigned to investigate pursuant to MGL c. 119, 51B. (Exhibit A, p. 1)
4. On December 25, 2016 at 4:45 AM, the Appellant was interviewed at the [REDACTED] Police station by the Emergency Response Worker (hereinafter "ERW"). The Appellant was hard to wake up by the police for the ERW interview her. The Appellant, in her jail cell, seemed to be under the influence of alcohol because her eyes were glossy. The Appellant told ERW that she did not know of anyone to be a caregiver to her son. The Appellant said that her son's father lives in [REDACTED]. ERW told the appellant if she did not have a caregiver for N then he would have to come into state custody. The Appellant said "take him". The Appellant was

uncooperative with ERW. [REDACTED] Police said that the Appellant would be held until Tuesday. (Exhibit C, p. 3)

5. On December 25, 2016 at 5:35 AM, ERW interviewed N at [REDACTED] N said that he and the Appellant were at his aunt's house for a party. N said that the Appellant drank a lot of wine at the party. They went to leave the party and his mother was drunk. N reported that his aunts tried to get his mother to stay but she refused. N reported that he fell asleep in the car and woke up in the hospital. N said that his mom often gets drunk and falls down. N also reported that when this happens, it makes him feel scared. (Exhibit C, p. 3)
6. At the hearing, the Appellant denied that she was under the influence of alcohol while driving her son home from a gathering. The Appellant testified that N was in the back seat sleeping and he was fine. She reported that she was not far from her home when she was pulled over by the police. The Appellant also denied that she has a problem with alcohol. The Appellant did not provide evidence that she did not neglect N during the time of this incident. Therefore, I do not find the Appellant persuasive in her testimony or in evidence. (Testimony of Appellant)
7. At the end of the response the Department supported the allegations of neglect of N by the Appellant were supported. The Department supported for neglect for the following reasons:
 - a. The Appellant was under the influence of alcohol while driving her son who did not have a seat belt on in the back seat.
 - b. The Appellant was arrested and held at [REDACTED] Police Dept. The Appellant was unable to care for N since she was arrested. The Appellant did not give the response worker any information on other caregivers for N. Therefore the Department took custody of N.
 - c. N reported that the Appellant was drunk at a party earlier in the night.
8. Based on the totality of the testimony and evidence I find the Department did follow policies and regulations during the 51B investigation. (To support for neglect the Department must show that the actions or inactions by the caregiver place the child (ren) in danger and pose a substantial risk to the to the child's safety or well-being).
9. Based on the totality of the testimony and evidence I find the Department did follow policies and regulations during the 51B investigation. To support for neglect the Department must show that the actions or inactions by the caregiver place the child (ren) in danger and pose a substantial risk to the to the child's safety or well-being. Protective Intake Policy #86-015, rev. 2/28/16.

Applicable Standards

A "Support" finding means: "There is reasonable cause to believe that a 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; or the person was responsible for the child(ren) being a victim of sexual exploitation of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16.

“Danger” is defined as 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. DCF Protective Intake Policy #86-015, rev. 2/28/16

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Police, (rev. 2/28/2016)

“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)

“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

Caregiver is

- (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.

“Neglect” is the 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. DCF Protective Intake Policy #86-015, rev. 2/28/16

“Substantial Risk of Injury” is defined as: “A situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child.” 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 and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed a 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 the Appellant was a caregiver pursuant to Department regulation and policy, 110 CMR 2.00; DCF Protective Intake Policy # 86-015 rev 2/28/16

On December 25, 2016 two (2) 51A's were filed and subsequently supported for neglect of N by the Appellant. The Appellant was arrested for driving while intoxicated and N was in the car without being secured by seat belt. When N was interviewed he told the Department that the Appellant had been drinking alcohol at a party.

N told the Department that the Appellant was drinking wine while at a party before they were pulled over by the [REDACTED] Police. Once the Appellant was arrested, the Appellant did not cooperate in identifying a caregiver for N. Therefore, the Department took Care and Protective Custody of N. During the hearing, the Appellant denied that she was intoxicated and did not feel that N was neglected in anyway. This hearing officer did not find the Appellant's testimony persuasive. The Appellant was intoxicated while driving her car and N was in the back seat without a seat belt on him; The Appellant was impaired placing her son at risk. The Appellant's actions posed danger and substantial risk to N's safety and well-being.

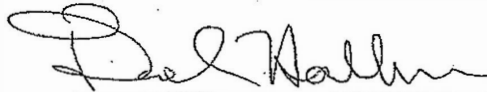
A determination of neglect does not require evidence of actual injury to the child. Lindsay v Dept. of Soc. Servs., 439 Mass. 789, 794-795 (2003). If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing physical or emotional injury.

Based on the evidence in its totality, the Department had sufficient evidence to show that Appellant neglected N. The Appellant was arrested for driving while intoxicated and N was in the car at the time without a seat belt. N also told the Department that the Appellant had been drinking alcohol at a party before getting into the car. Therefore considering all the evidence and the circumstances the Department did have reasonable cause to believe that neglect occurred in this case and the decision to support the allegation of neglect was in conformity with its policies and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev 2/28/16

Conclusion and Order

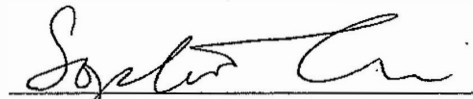
The Department decision to support for neglect of N by the Appellant is **AFFIRMED**.

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 Superior Court for the county in which she lives or within Suffolk County within 30 days of the receipt of this decision. (See MGL c. 30A 14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



David Halloran
Administrative Hearing Officer

4/9/2018
Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit