

**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
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(FH # 2017-0075
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HEARING DECISION

Procedural History

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

On December 12, 2016 the Department received a 51A report from a mandated reporter alleging neglect of T (hereinafter "T" or "the child") by RC. The Department completed its investigation and made the decision to support the allegation. The Department notified the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was held on March 22, 2017 at the Department of Children and Families' Arlington Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

Nicholas Holahan
DK
DS
TC
RC
MG
PS

Administrative Hearing Officer
DCF Response Worker
Witness, sister of PS
Therapist
Appellant
Appellant's attorney
Mother of reported child

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 and transferred to one (1) compact disc, 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 Response

For the Appellant:

Exhibit 1: Screenshots of criteria used by probate courts to determine custody of a child.

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) 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

Findings of Fact

1. RC was the father of T. PS was the mother of T. At the time of the 51A report, T was two (2) months old. At the time of the 51A report, RC and PS maintained separate residences. I find that RC was a caregiver of T, in accordance with the regulations and policies that govern these proceedings. (110 CMR 2.00; DCF Protective Intake Policy #86-015, Rev. 2/28/16; Exhibit A pp.1-2, Exhibit B pp.1-3, Testimony of DK)

2. On December 12, 2016 a 51A was filed by a mandated reporter alleging neglect of T by the Appellant. T was in the NICU from October 26-31, 2016. PS disclosed to the mandated reporter, ongoing domestic violence between herself and the Appellant during this time. The Appellant blamed PS for T's trouble breastfeeding. The Appellant alleged PS had post-partum depression; however the mandated reporter refuted this and stated that what was going on was normal. The report indicated that the Appellant would not allow PS to talk and was very controlling of the situation. PS disclosed to the reporter that the Appellant had assaulted her during her pregnancy with T. After T left the NICU, PS called the mandated reporter and stated that she was scared for her life and her family's life. Since they had returned home the Appellant assaulted her twice, once while she was changing T's diaper. PS told the mandated reporter that the Appellant had tried to strangle her, while accusing her of shaking the baby. PS worked on a safety plan with the mandated reporter that included filing a 209A restraining order against the Appellant. These statements were confirmed by the DCF 51A screener who contacted PS directly. PS also told the 51A screener that she does not have money to support herself. (Exhibit A pp.2-5; Testimony of DK)
3. The Department Response Worker contacted the mandated reporter, who confirmed PS's disclosures regarding being a victim of domestic violence perpetrated by the Appellant. (Exhibit B p.1; Testimony of DK)
4. On the evening of December 12, 2016, PS obtained a 209A, restraining order, against the Appellant. PS was subsequently held in jail.¹ (Exhibit B pp.2-3; Testimony of DK, Testimony of PS)
5. When interviewed by the DCF Response Worker, PS stated the Appellant had always supported her and wanted her to achieve the best she can. PS never felt fearful of the Appellant. PS told the Response Worker that she felt forced to get the 209A restraining order. PS told the Response Worker she felt the Appellant is safe with her and T. PS provided no details of two (2) incidents wherein the Appellant was physical with her. (Exhibit B pp.2-3; Testimony of DK)
6. The DCF Response Worker testified after reviewing all of the information he had obtained, he did not believe the statements PS provided to him during their interview were reliable or credible. He testified that among the reasons for his disbelief were the differences between the severities of the initial statements PS made versus the statements she provided to directly to him; this led him to doubt her recantations. I credit the Response Worker's assessment of PS's statements. (Testimony of DK)
7. PS testified that at the time of the 51A report she was suffering from post-partum depression. PS did not provide this information to the Response Worker during the time of the 51B Response. (Exhibit B; Testimony of PS; Testimony of DK)

¹ It is unknown why the Appellant was held in jail. The record is absent these details.

8. DS testified that PS told her, she had made up the allegations of domestic violence in order to make sure the Appellant did not obtain custody of T. DS testified that she told her sister to be truthful with the Response Worker. (Exhibit B pp.2-3; Testimony of DS)
9. PS testified she suffered from post-partum depression after T's birth. Due to this condition, PS had been concerned that the Appellant was going to take T away from her. As a result, she made up the accounts of domestic violence. (Exhibit 1, Testimony of PS) I do not credit PS's statements retracting her initial disclosures. Her initial statements were spontaneous and made to mandated reporters; they were unsolicited and detailed. PS called the same reporters and made additional statements weeks later about additional incidents of violence. After the 51A report is filed, PS recanted her initial statements to the response worker. I find that the statements PS made in October and her later statement in December, 2016 corroborated the initial statements and to be more reliable than the recantation after the 51A report was filed. (Exhibit 1)
10. The DCF Response Worker testified to the commonality of victims of domestic violence to recant their initial disclosures as such the Department determined that PS recantations were not reliable. (Testimony of DK)
11. TC testified Appellant's counsel referred both the Appellant and PS to him for counseling. He saw both the Appellant and PS together three (3) times and separately, once with PS alone and the Appellant two times. TC was not concerned about domestic violence between the Appellant and PS. TC testified the Appellant's presentation may have been dramatic, due to his underlying diagnosis of adjustment disorder with anxiety. TC testified that PS suffered from peri-partum depression brought on by previous miscarriages, her citizenship status and financial stressors. He did not comment on the specific events involving the 51A and subsequent 51B, however testified that he would not characterize the Appellant as a "batterer". He also testified that he does not believe PS is being controlled by the Appellant. (Testimony of TC)
12. In light of the totality of the evidence in this case, I find that the Department did have reasonable cause to support the allegation of neglect.
 - a. A determination of neglect does not require evidence of actual injury to the child. Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 794-795 (2003).
 - b. The Department had sufficient evidence to support a finding that the Appellant neglected T under Department policies and regulations. PS disclosed to a mandated reporter on more than once occasion and to a DCF screener that she was a victim of domestic violence perpetrated by the Appellant. PS stated that one of the incidents of domestic violence occurred while she was changing T's diaper. PS stated that the Appellant had strangled her, while blaming her for shaking T. PS obtained a restraining order from the Appellant.

- c. The Appellant failed to provide D with minimally adequate care and his actions placed the child in danger or posed substantial risk to the child's safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16
13. The Department's decision to support the allegation of neglect was made in conformity with its regulations and policies. 110 CMR 2.00, 4.32(110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16) Despite the Appellant's denial, I find it was reasonable for the Department to credit PS's initial report of domestic violence prior to her recantation.

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 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

"Caregiver" means a child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or 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

"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. 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 Appellant, (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 Appellant; 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; DCF Protective Intake Policy #86-015, Rev. 2/28/16

Analysis

The Appellant denied and disputed the Department's support finding. Notwithstanding Appellant's denial, in this case, PS told a mandated reporter and a DCF screener that she was a victim of domestic violence perpetrated by the Appellant. She provided details of several incidents, including one that occurred while she was attempting to change her infant's diaper. PS initially told mandated reporters of incidents of domestic violence in October, 2016 and contacted the same mandated reporter in December, 2016 to report additional instances of fear and abuse. The DCF Response Worker confirmed these initial disclosures with the mandated reporter. However, during the DCF Response Worker's subsequent interview of PS, her account of the domestic violence portrayed less danger to herself and to her child and she recanted her initial statements. Further, PS's account changed again by the time of the Fair Hearing, wherein she completely denied that any domestic violence had occurred and testified that she had lied to the mandated reporters and to the Court when she filed for a 209A restraining order.


As noted above, I credit the Department's Response Worker in his assessment of PS's initial statements regarding domestic violence. As the court held in Arnove v. Dep't of Soc. Servs., 43 Mass. App. Ct. 33, 34 (1997), due weight must be given to the experience and specialized competence of the agency. Moreover, Courts have found that witnessing verbal and physical conflict constitutes failure to provide children with minimally adequate emotional stability and growth. John D. v. Department of Social Services, 51 Mass.App. 125 (2001). Even with no indication or evidence that a child has been injured, either physically or emotionally by the witnessed violence, the state need not

wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979).


Conclusion and Order

The Department's decision to support the allegation of neglect of T by the Appellant is hereby **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he 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 reserves the right to supplement the findings.


Nicholas Holahan
Administrative Hearing Officer

11/3/18
Date


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