

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
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(IN THE MATTER OF)
(MG)
()
(FH # 2017-0091)
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HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is MG. The Appellant appeals 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 28, 2016 the Department received a 51A report from a mandated reporter alleging neglect of H ("Child") by MG; 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 C.M.R. 10.06

The Fair Hearing was held on April 20, 2017 at the Department of Children and Families' Central Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
MG	Appellant
ER	Appellant's Attorney
JG	Appellant's husband
JN	DCF Response Worker

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 Response
Exhibit C: Email printout

For the Appellant:

Exhibit 1: Printout of Docket 1373CR [REDACTED]

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. 110 CMR 10.05.

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05.

Findings of Fact

1. MG is the maternal grandmother of H. MG was also a foster parent with the Department of Children Families for over a decade. (Exhibit A p.1-2, Testimony of JN, Testimony of Appellant)
2. SG is the mother of H. In January of 2013, SG and her boyfriend MJ were charged with statutory rape of a child. H was not the victim of this criminal charge. (Exhibit A p.2, Exhibit B p.2-3, Testimony of JN, Testimony of Appellant)
3. At the time she was charged SG gave custody of H to the Appellant through a probate court temporary custody order. The custody order had a ninety day duration. When the Appellant initially took custody of H, the Department told her that she should not

allow SG to have contact with H. (Exhibit B p.1-3, Testimony of JN, Testimony of Appellant)

4. At the end of ninety days, SG told the Appellant that H could be returned to her and that the criminal charges had been dismissed. (Exhibit B p.1-3, Testimony of JN, Testimony of Appellant)
5. The criminal charges against SG had not been dismissed at the end of by the end of the probate custody order in 2013, and were still pending at the time of the instant 51B Response in 2016. (Exhibit B p.2, Testimony of JN)

6. At the Fair Hearing, the DCF Response Worker testified that in December of 2016, he was investigating a separate matter regarding the Appellant. He was informed that H was a regular visitor to the Appellant's household. As a result, he obtained information regarding H's status with the Department and the previous probate custody order. This led to the filing of the instant 51A Report. I find that H had been residing with her mother and visiting the Appellant for approximately two and a half years without any 51A being filed. (Exhibit A p.2, Testimony of JN, Testimony of Appellant)
7. At the Fair Hearing, the DCF Response Worker testified that the support decision was based on the assertion that the Appellant should have notified that she was returning H to her mother's care. (Testimony of JN)
8. At the Fair Hearing, the Appellant testified that she had not checked with the criminal court regarding the status of SG's criminal charges. The Appellant testified that she was never contacted by the Department's ongoing social worker assigned to MG. (Exhibit B p.3-4, Testimony of Appellant)
9. At the Fair Hearing, the Appellant testified that as a foster parent with the Department, she had regular contact with her DCF Family Resource Worker, JC. In 2013, the Appellant informed JC that she had returned H to SG's care. She also testified that she was not contacted by a DCF ongoing social worker in regards to H, her parents, or the custody status. I find that by informing JC of her actions, the Appellant provided the Department with notice that she had returned H to her mother's care. (Exhibit B p.3-4, Testimony of JN, Testimony of Appellant).
10. I find that there is not reasonable cause to believe that the Appellant neglected H for the following reasons:
 - a. MG obtained custody of her granddaughter through a temporary probate court order.
 - b. MG was told by her daughter that the criminal matter had been resolved, and that H could return to her residence.
 - c. MG informed her DCF Family Resource worker that she had returned H to her daughter's care.

- d. After the temporary court order expired, MG was not contacted by any representative of the Department and told that she should either retain custody or make other arrangements.
- e. There is no evidence that H was not provided with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care while she resided with her mother and regularly visited the Appellant.

Applicable Standards and Analysis

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." 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.

"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." Care and Protection of Robert, 408 Mass. 52, 63 (1990) 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". A caregiver is 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.

"Neglect". 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 failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition.

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.

In this case, the Department is relying on events that happened three years ago, and has not provided any contemporaneous evidence in regards to the actual care that H was receiving at the time of the 51A. There is no evidence that Appellant provided less than minimally adequate care to H. Rather the Department rests its decision on the assertion that the Appellant should have given notice that she had returned H to her mother's care. However, the Department acknowledges that the Appellant informed her Family Resource Worker about H's return to SG. A Family Resource worker is employed by the Department in order to monitor the Department's foster homes. The Appellant reasonably relied on her contact with JC to be sufficient notice in terms of her actions in regards to H.

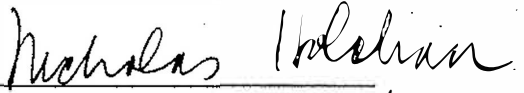
Additionally, SG lied to the Appellant and told her the criminal case had been resolved. While the Department contends that the Appellant should have verified this before returning H, it does not provide sufficient evidence to demonstrate that SG had lied to the Appellant before.

Undoubtedly Appellant was responsible for assessing H's safety when making a decision about H returning to her mom. No evidence was presented that in 2013 when choosing to close the case without an assessment, and at a time when Appellant only had 90 day custody, the investigator had discussion with Appellant about how to make safe decisions for H in the context of the seriousness of the charges facing H's parents as opposed to the warning that DCF may remove H if Appellant allowed visits let H go home or without informing DCF.

Further, H was residing with SG and regularly visiting with the Appellant for over two and a half years without any reported incident or concern. There is no evidence that any 51A was filed regarding the care given to H during this time. Hence there is no evidence of any immediate substantial risk to H's safety or well-being.

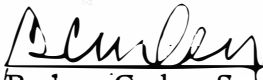
Conclusion and Order

The Department's decision to support the allegation of neglect of H by the Appellant is hereby REVERSED.



Nicholas Holahan BC
Administrative Hearing Officer

March 27, 2018
Date



Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner