

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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(
(IN THE MATTER OF)
(R.G & P.G.)
(FH #2017-0093)
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HEARING DECISION

Procedural History

The Appellants, R. G. and her husband, P.G., appeal the decision of the Department of Children and Families [hereinafter "the Department" or "DCF"], to support for neglect of three children, J, A, and R, pursuant to M.G.L., c.119, §§51A & 51B.

The Department received a 51A Report containing allegations of neglect of the three children by the Appellants, their mother and stepfather, in connection with an incident that occurred at the family home on December 1, 2016. The allegations were screened in and assigned for a 51B response to response social worker, K.D. Following the 51B response, the Department supported for neglect of the three children by the Appellants due to their failure to provide the children with minimally adequate emotional stability and growth, when on December 1st they were exposed to stepfather's drinking, arguing between the Appellants about the drinking, and mother's cutting behavior. The neglect finding was supported on December 20, 2016, approved on December 21, 2016, and the case opened for assessment and was in process to date. The Department notified the Appellants of the decision and their right of appeal by letter dated December 21, 2016. The Appellants filed a request for Fair Hearing ["Hearing"] on January 23, 2017 [mother] and on April 4, 2017 [stepfather]¹, pursuant to 110 CMR 10.06. The Appellants' request for Hearing was granted, consolidated, and held on April 4, 2017 at the Department's South Central Area Office in Whitinsville, MA. Present were DCF Supervisor, S.G., the DCF Response Social Worker, K.D., and the Appellants. The parties were sworn in and testified. The proceeding was recorded pursuant to 110 CMR 10.26 and downloaded to a CD. Admitted into evidence for the Department was the DCF 51A Report of December 2, 2016 [Exhibit A] and the corresponding 51B Response Supported/Approved on December 20/21, 2016 [Exhibit B]. The Appellants made no submissions. The Hearing record was closed at adjournment.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

¹ The stepfather came with mother to her scheduled Hearing of April 4, 2017. At that time, a decision was made to add stepfather as an Appellant. The Department had no objections. Stepfather's written request done that day was placed in the already established administrative record.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

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, 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, 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 Appellants, R.G. and her husband, P.G., are the working parents and the mother and stepfather, respectively, of twelve year-old J, eleven year-old A, and eight year-old R. Mother has court ordered sole legal and physical custody of the children. The family members are intact and live on one side of the duplex and maternal grandmother on the other side. Mother was at 34 weeks gestation with her fourth child when the allegations of December 2, 2016 were filed with the Department. [Exhibit A; Exhibit B; Testimony of the Response Social Worker]
2. Mother suffers from Bi Polar Disorder, Depression, and PTSD [Post Traumatic Stress Disorder]. [Testimony of Mother]
3. In 2010, mother overdosed on maternal grandmother's prescription psychiatric medication in an attempt to kill herself and did not follow up with outpatient mental health treatment following a brief hospitalization. Previous to this, mother had a breakdown and attempted to cut. The Department was granted custody of the three children because of mother's lack of follow through with treatment and her display of depressive and self-injurious behaviors. Yet mother regained custody of the children at a contested 72 hour hearing. DCF eventually closed her case in 2011. [Exhibit A; Exhibit B, p.1]
4. Mother does not dispute past DCF involvement or cutting herself six years prior (2010) and being hospitalized. [Exhibit A, p.3] She self reported cutting herself to cope with stress or when feeling overwhelmed, since she was fifteen, and cut herself about every other year. [Exhibit B, p.3-4]

5. Mother had not been in any counseling or mental health treatment for 1.5 to 2 years, prior to the incident under review. [Exhibit B, p.3] She claimed the move to her new home disrupted the process [Testimony of Mother]; however, she earlier told the response social worker that she had been in counseling but her therapist left the agency and she did not want to start all over again with a new therapist, rehashing her history every time a therapist leaves an agency. [Exhibit B, p.3]
6. More recently, for about the last four months, mother experienced the stressors of getting married, buying and moving into a new home, being pregnant with a fourth child and planning a baby shower, losing her [REDACTED], experiencing financial issues, working, handling the issues around J's academic difficulties, and of course caring for all three children. Mother was also dealing with the fall out of her niece having assaulted maternal grandmother and stepfather perseverating on this issue, which stressed her. In addition, mother had stopped her [REDACTED] and [REDACTED] at the beginning of her pregnancy, neither of which were safe for the fetus. She had also ingested a lower dosage of [REDACTED] than what her doctor had prescribed because she was concerned it would harm the baby and impede breastfeeding. In addition, mother was experiencing anxiety attacks three times a week on or about the time of the December 1, 2016 incident. [Exhibit A; Exhibit B]
7. Stepfather is an alcoholic. He attended outpatient treatment for substance abuse three years prior to the incident of December 1, 2016 and was involved with [REDACTED] in the past, which he found helpful. More recently, he started drinking again; having one or two beers when he went out to dinner or socially. About every six to seven months, he would drink a half pint of hard alcohol to get away, and become intoxicated. When he drinks like that, he tries to hide it, but mother can tell when he is drunk because he becomes more affectionate. [Exhibit B, pp.2 & 4; Testimony of Stepfather]
8. On December 1, 2016, mother told stepfather that she had a difficult day and just wanted to come home to relax, but when mother returned home from work, she could tell that stepfather had been drinking and was drunk and the two got into an argument. She had wanted to take some space and go to a hotel, leaving her children with stepfather and maternal grandmother, but they did not want her to leave. Maternal grandmother called her and told her she was abandoning her children so she went back into the house with the intention of taking the children with her, but again felt pressure from both to stay. Feeling overwhelmed, Mother did eventually go upstairs to the bathroom and cut her wrists. Mother then went to the hospital where three cuts were seen on her left forearm, two of which required a total of seventeen stitches. [Exhibit A, p.3; Exhibit B, pp.3-4 & 6; Testimony of Mother; Testimony of the Response Social Worker]
9. Although mother reported that maternal grandmother drove her to the hospital and stepfather, by then reportedly sober, stayed with the children [Testimony of Mother; Exhibit A, p.7], eight year-old R contradicted this when she told the response social worker that stepfather and maternal grandmother stayed with them, when mother left the home. [Exhibit B, p.6]

10. This was the worst argument the Appellants have been involved in during their six year marriage. It was a turning point. [Exhibit B; Testimony of Mother]
11. All three children were present in the home when the Appellants were arguing and heard and/or saw it. Although none of the children saw their stepfather drinking, Mother told the children during the incident that stepfather was an alcoholic and he had been drinking. [Exhibit B; Testimony of Mother] Stepfather did not dispute ingesting alcohol, but explained that he never drinks when he is at the home, only elsewhere. [Testimony of Stepfather]
12. All three children were interviewed separately and privately by the response social worker at their home on December 8, 2016; [Exhibit B; Testimony of the Response Social Worker]
13. Twelve year J was aware that mother has some depression and that she cuts, because she had talked with him about this before the incident occurred. [Exhibit B]
14. J knew that mother wanted to take some space on December 1st, but felt pressured to remain at the home. Although he did not see his stepfather drink, he heard his mother yelling at his stepfather saying that he was an alcoholic. J reported that he was in the living room and heard the yelling by mother coming from upstairs. He heard her scream and went upstairs to see if she was alright. He saw her and mother told him she had cut herself. [Exhibit B, pp.4 & 6]
15. Mother testified that J worries about her, that the child saw her in the bedroom with a towel wrapped around her arm with blood coming from it, and, that she told him she was going to the hospital. [Testimony of Mother]
16. Eleven year-old A was aware that mother wanted to take space, but was pressured to stay at the home. Although he did not see stepfather drink, he was aware that mother had figured out that stepfather was an alcoholic; meaning that he drank too much. A was aware that his mother went to the hospital, but did not know why. A spoke of the Appellants getting along, but arguing sometimes. When they argue, he has stayed in his bedroom in the past. [Exhibit B, pp.5-6]
17. Eight year-old R said that the Appellants get along good, but sometimes argue. On December 1st, she was in the living room and the Appellants were in their bedroom and she could hear them yelling. She did not know if stepfather drank beer or alcohol; she did not know much about what beer and alcohol were. R was aware that her mother had to go to the hospital, but did not know why. When asked how she felt about the argument, R stated that she was sad, worried, and missed her mother. [Exhibit B, pp.6-7]
18. The Appellants are now both in treatment. [Testimony of the Appellants]
19. After a review of the evidence and for the following reasons, I find that the Department did have reasonable cause to find that A, J and R were neglected by the Appellants and further, that the Appellants actions did pose a substantial risk to their safety and well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

Analysis

A party contesting the Department's decision, to support a 51A Report for neglect, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellants requested a Hearing, which was granted and held on April 4, 2017.

Regulations and case law applicable to this appeal include, but are not limited to, the following:

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has *reasonable cause to believe* that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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 and supervisor's clinical base of knowledge. [110 CMR 4.32]

"[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 "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

The 51A report under appeal is supported for neglect. Neglect means 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. This definition is not dependent upon location, i.e., neglect can occur while the child is in out-of-home or in-home setting. [110-CMR 2.00]

The Court has also held that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789 (2003).

Caretaker means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child's health or welfare, and (e) 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 baby-sitting), a foster home, a group care facility, or any other comparable setting. As such, "caretaker" includes (but is not

limited to) school teachers, baby-sitters, 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 baby-sitter. [110 CMR 2.00]

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]

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter under appeal. See Findings #1 to #19 and the below discussion.

The Appellants were *caretakers* of twelve year-old J, eleven year-old A, and eight year-old R, consistent with that term defined herein and at 110 CMR 2.00.

Based on the record as a whole and giving due weight to the clinical judgment of Department social workers, the Hearing Officer finds that the Department had "reasonable cause to believe" that the Appellants failed to provide the three children with minimally emotional stability and growth on December 1, 2016, and that their actions posed a substantial risk to the children's well being; the Appellants were therefore neglectful. Reasonable cause to believe" is a relatively low threshold. See Care and Protection of Robert. The Appellants were honest and forthright about stepfather's drinking, the ensuing argument, and mother's cutting behavior during the 51B response and at their Hearing of April 4, 2017. Prior to this incident, Stepfather had started drinking again, although an alcoholic, and mother, although she self reported a diagnosis of Bi Polar Disorder, Depression, and PTSD and had stopped all her psychiatric medications, except a low dose of [REDACTED] due to her pregnancy, and was experiencing considerable stressors, was not in therapy for support throughout this process to include December 1, 2016. Although this particular incident was the worst the Appellants had been involved in, this was not the first time that mother had a breakdown and cut herself, a fact she did not dispute. The emotional stability and well-being of all the children were impacted in one fashion or another on December 1, 2016, notably the oldest child, J. All the children heard the argument and/or saw it and were aware that stepfather had been drinking because mother told them. Only J had direct knowledge of his mother's cutting behavior, but the other two children -- eleven year-old A and eight year-old R - were aware that mother had gone to the hospital, although not why. The court has held that the Department's determination of neglect does not require evidence of actual injury to a child. Lindsay v. Department of Social Services, 439 Mass. 789 (2003)

The Department did not support on any other issue, as it pertained to the Appellants' care of the children. Therefore, the Hearing Officer focused solely on the unfolding events of December 1, 2016, and history which created a pattern of Appellants' similar behaviors.

Although the Appellants have since sought treatment and care for the children, the Hearing Officer, held to this incident, finds that the Appellants failed to meet their burden of proof. [110 CMR 10.23]

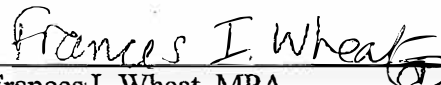
Orders

1. The Department's decision of December 20, 2016, to support the 51A Report for neglect of J by the Appellants, is AFFIRMED.


2. The Department's decision of December 20, 2016, to support the 51A Report for neglect of A by the Appellants, is AFFIRMED.

3. The Department's decision of December 20, 2016, to support the 51A Report for neglect of R by the Appellants, is AFFIRMED.

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which they live, or in Suffolk County within thirty (30) days of the receipt of the decision. [See, M.G.L., c. 30A §14].


Frances I. Wheat, MPA
Administrative Hearing Officer

Date: 1-19-18


Susan Diamantopoulos
Fair Hearing Supervisor