

**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)
(RK)
(
(FH # 2017-0095)
(

HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is RK. 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 21, 2016 the Department received a 51A report from a mandated reporter alleging neglect of M ("Child") by RK. On December 26, 2016 the Department received an additional 51A report with similar allegations. Both of these 51A's were incorporated into a single 51B Response. The allegation of neglect was subsequently supported. The Department informed 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 9, 2017 at the Department of Children and Families' Framingham Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
RK	Appellant
MD	DCF Supervisor
JT	Appellant's Pastor
VY	Witness

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 # [REDACTED]
Exhibit B: 51A Report # [REDACTED]
Exhibit B: 51B Response # [REDACTED]

For the Appellant:

Exhibit 1: Folder of photos of Appellant's family

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. RK is the father of M. At the time of the instant 51A Reports, M was nine years old. M has Giant Axonal Neuropathy (GAN), a progressive, degenerative neurological disease. M has limited mobility and is wheelchair bound. M also has some cognitive delays. I find that RK is a caregiver for M in accordance with the policies and regulations that govern these proceedings. (Exhibit A p.1-2, Exhibit B p.1-2, Exhibit C p.1, Testimony of MD, Testimony of Appellant)
2. UK is the mother of M. At the time of the instant 51A Reports, RK and UK were married and living together. (Exhibit A p.1-2, Exhibit B p.1-2, Exhibit C p.1, Testimony of MD, Testimony of Appellant)

3. M had an older sister who also had GAN. This sister passed away at age sixteen from GAN related causes on [REDACTED]. (Exhibit A p.2, Exhibit C p.1-3, Testimony of MD, Testimony of Appellant)
4. On December 21, 2016 UK disclosed to a mandated reporter that RK had been physically and emotionally abusive to her. She stated that some of this abuse occurred with M present. UK stated that M would shout out, "Don't do that". UK told the reporter that RK had hit her on the face the previous Monday. The initial 51A was filed from UK's disclosures. (Exhibit A p.2-3)
5. During the course of the 51B Response, UK filed for a 209A Restraining Order from the Appellant which was subsequently extended for two years by the court. Exhibit C p.6, Testimony of MD)
6. During the course of the 51B Response, UK told the Response Worker that during the most recent incident, the Appellant "...pushed her down and beat her head with two fists. She reported that he also kicked her in the stomach and kneed her in the stomach. She reported that he said maybe the next time if he did it she would get it in the head. UK reported that the physical abuse was getting 'progressively worse'". (Exhibit C p.3)
7. During the course of the 51B Response, M told the Response Worker that her father is violent and hits her mother. She reported that her mother would sleep better tonight going somewhere that her father didn't know where they were. M told the Response Worker that she loves her father, but does not want her mother to cry anymore. (Exhibit C p.3)
8. Several collaterals contacted during the course of the 51B Response expressed concern that if M was stressed by domestic violence, it could impact her GAN condition. (Exhibit C p.3-8)
9. At the Fair Hearing, RK testified that he had brought his family to the United States from India in order to provide his children with better healthcare for their GAN and related conditions. He also sought employment with a particular company based on its commitment to children's charities. He testified that he is active in working with charities that support handicapped children and their families. (Testimony of Appellant)
10. At the Fair Hearing, RK testified that after the death of their older daughter, UK became depressed and he had to take over most of the chores to take care of the family. (Testimony of Appellant)
11. At the Fair Hearing, RK denied committing any abuse to UK or the children. He stated UK is depressed, and is likely taking advantage of this country's policy

towards victims of domestic violence in order to obtain a Green Card. (Testimony of Appellant)

12. At the Fair Hearing, both of the Appellant's witnesses testified that they had never seen RK being abusive to either his wife or daughter. They both testified that they did not believe RK was lying and that they have always known him to be truthful. (Testimony of JT, Testimony of VY)

13. I find that there is reasonable cause to believe that RK neglected M for the following reasons:

- a. UK made consistent disclosures to mandated reporters and to the Department's Response Worker that RK had been physically abusive to her.
- b. M told the DCF Response Worker that her father is violent and hits her mother. She reported that her mother would sleep better tonight going somewhere that her father didn't know where they were.
- c. A reviewing court extended UK's restraining order for two years.
- d. Collaterals expressed concern over the impact domestic violence could have on M due to her GAN diagnosis.

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." 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.

Analysis

In this case, the Department has reasonably relied upon the statements of UK and M about the ongoing domestic violence that the Appellant was perpetuating. UK and M gave clear, unsolicited accounts of recent incidents to mandated reporters and to the DCF Response Worker. A court granted and then extended a 209A Restraining Order to UK on domestic violence grounds.

The Appellant attempts to counter these facts by testifying at length in regards to his care for M and his other deceased children. He also testified that he was involved with other charities for children with disabilities. However, his engagement in these activities does not preclude him from perpetrating violence against his wife behind closed doors. While the Appellant's witnesses testified to his character, they did not testify to what observances they had made regarding the Appellant's marital state. Neither witness

provided any testimony that would directly contradict or undermine the facts the Department relied upon to support its finding.

Further, the Appellant's simple denial of any domestic violence without any explanation for his daughter's observations is insufficient to provide the foundation for reversing the Department's decision. The Appellant attempts to bolster his argument with speculation that his wife is using the domestic violence to seek a Green Card, but he provides no corroborative evidence to support this theory.

While I considered the Appellant's exhibit of family pictures, I did not find that it provided any evidence in regards to the allegations reviewed in this Fair Hearing.

While the above analysis alone would be sufficient for a support decision, M's diagnosis of GAN adds to the potential safety risk posed by the Appellant's actions. The involved collaterals noted that M's condition could be adversely affected by stress, and it is clear from her statements that M was concerned about her mother's welfare. Therefore, the Appellant's actions of domestic violence have posed a substantial risk to M's safety and well-being. Our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well-being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass., 590, 595 (1996)

Conclusion and Order

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

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she 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 (CR#)
Nicholas Holahan
Administrative Hearing Officer

2-28-18
Date

Susan Diamantopoulos (CR#)
Susan Diamantopoulos
Fair Hearing Supervisor