

**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)
(S.H.)
(FH #2017-0102)
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HEARING DECISION

Procedural History

The Appellant, S.H., appeals the decision of the Department of Children and Families [hereinafter "the Department" or "DCF"], to support for neglect of her daughter, N, pursuant to M.G.L., c.119, §§51A & 51B.

On December 24, 2016, the Department received a 51A Report through the hotline containing allegations of neglect of N by the Appellant, her mother. The 51A Report was screened in for a 51B emergency response and assigned to emergency response social workers, L.F. [principal] and L.A. On December 26, 2016, following the 51B response, the Department supported the allegations of neglect because the Appellant was not responsive to N, who was being evaluated at the hospital and therefore failed to provide the child with minimally adequate supervision, emotional stability and growth, and medical care. The neglect finding was approved by supervisor on December 27, 2016 and the family's case opened to ensure that the Appellant adequately met her child's mental health needs. The Department notified the Appellant of the decision and her right of appeal by letter dated January 11, 2017. The Appellant filed a timely request for Fair Hearing ["Hearing"] on January 26, 2017, pursuant to 110 CMR 10.06 & 10.08. The Appellant's request for Hearing was granted and held on March 29, 2017 at the Department's Dimock Street Area Office in Roxbury, MA. Present was the DCF On-Call Hotline Supervisor, K.C.; the DCF Emergency Response Social Worker, L.F.; the DCF Social Work Intern, K.V., who was observing only; and, the Appellant. The response social worker and Appellant 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 24, 2016 [Exhibit A] and the corresponding 51B Response Supported on December 27, 2016 [Exhibit B]. Admitted into evidence for the Appellant is the Appellant's Request for Appeal and Associated DCF Notice to the Appellant of the Neglect Finding [Exhibit 1]. 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.

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 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. [110 CMR 10.05]

Findings of Fact

1. The forty one year-old Appellant is the mother of sixteen year-old K; eleven year-old reported child, N; eight year-old A; and, three year-old J. All four children have different fathers, who do not live in the home. The Appellant and the children live in the apartment together. [Exhibit A; Exhibit B]
2. The family has had lengthy DCF involvement. Their DCF case was last opened on May 18, 2016, when physical abuse of K by the Appellant was supported, and closed recently, on December 20, 2016. [Exhibit B, pp.1-2 & 5; Exhibit A, p.3]
3. At the relevant time, N had no mental health diagnosis and was not prescribed psychiatric medication. [Exhibit B, p.3]
4. On December 23, 2016, the Appellant called the [REDACTED] team stating that N "was being argumentative and made a threat to harm the family". A few hours later [REDACTED] personnel called the Appellant and informed her that the agency was extremely busy and was triaging services, and told her to call back if the child's negative behavior continued. The Appellant did not call back; N was not evaluated by the team at this time. [Exhibit B, p.4; Testimony of the Response Social Worker; Testimony of the Appellant]
5. The Appellant testified that the child was unsafe. [Testimony of the Appellant]
6. That night, the Appellant dialed 911. When the police officers arrived at the home, the Appellant spoke to the officer(s) and told them that N was acting out of control and was unsafe. The Appellant made a decision that it would be best to call an ambulance to

transport N to [REDACTED], which the police did. Exhibit 1, p.1; Testimony of the Appellant]

7. On December 23, 2016 at 10:00 p.m., N was transported by ambulance to the hospital. She was cleared by the medical team, but had not been seen by a crisis team because the Appellant had not come to the hospital to give consent. [Exhibit A, p.2; Exhibit B, p.3]
8. When the child was admitted, Nurse L.M. called the Appellant and told her it was inappropriate to send N in the ambulance alone and leave the child unattended in the emergency room. She asked the Appellant about the behaviors the child had been exhibiting, but she would not repeat what she had already told the police and EMS. The nurse also told the Appellant that she would need to consent/be present, if N required a psychiatric evaluation. [Exhibit B, p.3] The Appellant said she would come to the hospital. [Exhibit A, p.2]
9. The Appellant did not dispute speaking with the nurse, who said it was important she get to the hospital to be with N. [Testimony of the Appellant]
10. On December 24, 2016 at 1:27 a.m. the nurse made another attempt to reach the Appellant, but this and other calls went straight to voice mail. [Exhibit A, p.2; Exhibit B, p.3]
11. On December 24, 2016, at 1:35 a.m., the Department's hotline system received a 51A Report alleging neglect of N by the Appellant. According to the EMT report, N was argumentative, defiant, and making threats against the Appellant and family members. The child was seen by the medical team at the hospital and there was nothing wrong with her. The child was not fearful of returning home and denied making a threat. The reporter did not know what the child was threatening to do. The child had not been seen by the crisis team because the Appellant had not come to the hospital. The reporter spoke with the Appellant two and one-half hours prior and she said she would come, but she still had not shown up. Another attempt was made to contact the Appellant at 1:27 a.m. but it went to voice mail. [Exhibit A, p.2]
12. On December 24, 2016, on or around 3:20 a.m., the response social worker assigned to the report spoke to the Appellant at her home. The Appellant said she had fallen asleep after N was taken to the hospital by ambulance. The police had just left her home, when the response social worker arrived. They had arrived for a well check and woke her up. The response social worker told the Appellant to go to the hospital so that N could be evaluated. The Appellant told the response social worker that she was now ready to go to the hospital. [Exhibit B, pp.2-3 & 6]
13. On December 24, 2016, on or around 4:00 a.m. the response social worker went to the hospital and interviewed N, who was alone in a room in the emergency department. The child stated that she argued with the Appellant but did not remember what it was about. However, the argument made her angry and she made a comment that she would "kill the whole family". N stated she had no plan to hurt/kill her family members; she made this

comment out of anger. The child reported being safe in her home and just wanted to go home. N presented as a well, soft spoken, calm child during the interview. [Exhibit B, pp.3-4; Testimony of the Response Social Worker]

14. On December 24, 2016, at 4:19 or 4:20 a.m., the Appellant arrived at the ER and spoke with the psychiatrist, who felt there was no need to send her to [REDACTED]. [Exhibit B, pp.3 & 6; Testimony of the Appellant]
15. N did not require psychiatric evaluation. She was not behaving erratically, only made comments to kill her family out of anger, and was not experiencing suicidal and homicidal ideation. The child was discharged to the Appellant and the family referred for a scheduled [REDACTED] evaluation on December 27, 2016 and the Appellant given multiple community resources. [Exhibit B, p.4; Exhibit 1]
16. On December 26, 2016, the Department supported for neglect of N by the Appellant because the child was transported alone to the hospital, remained alone in the emergency room, and the Appellant did not respond to the hospital contacts and was not responsive to N. The Appellant therefore failed to provide N with minimally adequate supervision, medical care, and emotional stability and neglect. [Exhibit B, pp.2 & 6; Testimony of the Response Social Worker]
17. The Appellant testified at Hearing that the police and EMTs, when they responded to her home, told her, when she could make it, to come and meet them at the hospital. The Appellant assumed that she did not need to be present for the psych evaluation. It was going to be a long process and it wasn't like they said jump in the ambulance and let's go right now and rush over there. The Appellant had three other children in the house and she fell asleep for one hour, which is why she did not answer the phone. It was Christmas Eve and she was tired. [Testimony of the Appellant]
18. The response social worker was unable, through no fault of her own, to interview the non-reported children during the 51B response, but was able to view them. [Exhibit B]
19. The Appellant was vague about what happened with N that evening, when called by the nurse when the child was admitted and also later, when speaking with the response social worker during a home visit. [Exhibit B]
20. The Department opened the family's case for an assessment to ensure that the child's mental health needs were met, that the Appellant was willing to put into place supportive services for N, and notably because the Appellant had a long DCF history and her case had only just recently closed. The Department assessment risk level was high. [Exhibit B, p.6; Testimony of the Appellant]
21. After the aforementioned incident occurred, the Appellant ended up putting N at [REDACTED] for an official psych evaluation. The child remained there for ten days and is currently on medication. N also has an [REDACTED] worker and an outpatient therapist, and

the Appellant had a family partner. The Appellant also signed releases. [Testimony of the Appellant]

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 Appellant requested a Hearing, which was granted and held on March 29, 2017.

Regulations, policies, 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]

The 51A report under appeal is supported for neglect.

Neglect" is defined as 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. **110 CMR 2.00 & Protective Intake Policy #86-015 [2/28/16]**

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 children 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. One such example is neglect that has led to a serious physical or emotional injury. **Protective Intake Policy #86-015 [2/28/16]**

A substantiated concern finding means there was reasonable cause to believe that the child was neglected and the actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child(ren)'s safety or well-being. Examples

include neglect that resulted in a minor injury and the circumstances that led to the injury are not likely to recur, but parental capacities need strengthening to avoid future abuse or neglect of the child; neglect that does not pose an imminent danger or risk to the health and safety of a child; and, educational neglect. **Protective Intake Policy #86-015 [2/28/16]**

An unsupported finding means there is not reasonable cause to believe that a child(ren) was abused and/or neglected, or that the child(ren's) safety or well-being is being compromised; or the person believed to be responsible for the abuse or neglect was not a caregiver, unless the abuse or neglect involves sexual exploitation or human trafficking where the caregiver distinction is not applied. **Protective Intake Policy #86-015 [2/28/16]**

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 Appellant in the matter under appeal. See Findings #1 to #21 and the below discussion.

The Appellant is a *caretaker* of her eleven year-old daughter, N, as defined above and at 110 CMR 2.00.

Based on the record as a whole, the Hearing Officer finds the Appellant erred in judgement in not responding more quickly to the hospital to address N's mental health needs, but was not neglectful. The Appellant took the initiative and called the [REDACTED] team for help with N's behaviors at the home. The [REDACTED] team could not respond because they were too busy, so the Appellant appropriately called the police and the child was taken to the hospital by ambulance on December 23, 2016 at 10 p.m. N was not alone in the ambulance; there was an EMT or EMTs

present. The eleven year-old child remained in a room in the emergency department, until the Appellant arrived on December 24, 2016 at 4:19 or 4:20 a.m. A hospital nurse was involved with the child in the Appellant's absence as she called the Appellant to ask her to come and give parental consent for a crisis evaluation, and made a number of calls thereafter to the Appellant. The Appellant did arrive and speak with the psychiatrist. The child was not in need of a [REDACTED] bed and was discharged home. There is no evidence the child was injured, physically or emotionally. The child's medical needs were met at that point in time. There were adults around this eleven year-old child during the time the child left the home in an ambulance and the time it took the Appellant to arrive at the hospital. The Department rightfully opened the family's case. Supportive services are now in place. The Appellant met her burden of proof. [110 CMR 10.23]

A substantiated concern finding means there was reasonable cause to believe that the child was neglected and the actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child(ren)'s safety or well-being. The Department could have made a finding of substantiated concern in this case, in lieu of a supported finding.

Order

1. The Department's decision of December 26, 2016, approved on December 27, 2016, to support the 51A Report for neglect of N by the Appellant, is REVERSED.

Date: _____

6-22-18

Frances I. Wheat
Frances I. Wheat, MPA
Administrative Hearing Officer (CPB)

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor (CPB)

Date: _____

Linda S. Spears
Commissioner