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 Spears
Commissioner

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IN THE MATTER OF)
)
) **FAIR HEARING DECISION**
KS)
FH #2017-0104)
)

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

Procedural History

On December 21, 2016, the Department received a 51A report alleging neglect of M (hereinafter "M" or "the child") by the Appellant. The Department conducted a response and, on January 13, 2017, the Department made the decision to support the allegation of neglect of M by the Appellant. The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on March 7, 2017 at the DCF Brockton Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the Fair Hearing to afford the Appellant and the Department the opportunity to submit additional information. Additional documentation was submitted by the Department. The information was reviewed, entered as evidence and considered by the Hearing Officer in the decision making of the instant case. The record closed on March 22, 2016.

The following persons appeared at the Fair Hearing:

Carmen Temme	Fair Hearing Officer
KS	Appellant
MR	Witness for Appellant/Live in boyfriend
NC	Department Response Social Worker
IR	Department Supervisor

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

The Fair Hearing was recorded pursuant to DCF regulations. 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:
Exhibit A DCF Intake Report/51A Report, dated 12/21/2016
Exhibit B DCF Child Abuse/Neglect Non-Emergency Response, completed 1/13/2017
Exhibit C [redacted] Police Incident Report dated 9/9/2016

For the Appellant:
Exhibit 1 Appellant's Correspondence requesting Fair Hearing, dated 1/21/2017

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. 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) 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 subject child of this Fair Hearing was M; at the time of the instant case, M was four (4) years old. (Exhibit A, p.1; Exhibit B, p.1; Testimony NC; Testimony Appellant)

2. The Appellant is the child's mother and primary caretaker; therefore, she is deemed a caregiver pursuant to Departmental regulation and policy. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/2016)

3. The Appellant had a significant history with the Department as a child consumer due to her mother's "significant" substance abuse. (Exhibit B, p.1) Since the Appellant was age fifteen (15) she has been on psychiatric medications. (Testimony Appellant, Exhibit B, p.4) As a fifteen (15) year old child, the Appellant was raped; this pregnancy was aborted. At the time of the subject 51A report, the Appellant reported that she was diagnosed with Post Traumatic Stress Disorder, Attention Deficit Hyperactivity Disorder, Panic Disorder, Anxiety and Depression. (Exhibit B, p.4)

4. In 1998, the Appellant gave birth to her oldest daughter D (hereinafter "D"). In 2001, D's paternal grandparents PA and CA obtained guardianship of D. On or about August 2005, the Appellant signed an open adoption agreement regarding her second child N while residing in Ga. (Exhibit AB, p.2) A third child H was also adopted by a family member. (Exhibit B, p.4)

5. The Appellant admittedly has an extensive addiction history, referring to herself as the "worst of the worst." (Testimony Appellant) She identified her drug of choice to be heroin; the Appellant and her mother used heroin together. [1] Both the Appellant and her mother were incarcerated in 2010 for selling drugs. The Appellant's mother overdosed on drugs and died after being bailed from jail in October 2010. The Appellant entered a twelve (12) month substance abuse treatment program following her incarceration. According to the Appellant she has been clean since 2012. The Appellant stated that Suboxone "saved" her life. (Exhibit B, p.3)

6. While residing in [redacted], the Appellant's psychiatrist prescribed the Appellant Suboxone, Prozac, and Alprazolam. Approximately three (3) months prior to her move to Massachusetts, the Appellant's psychiatrist added Adderall to the Appellant's medication regime. (Testimony Appellant)

7. In August 2016, the Appellant, her live in boyfriend MR (hereinafter "MR") who the child referred to as her father and the child moved from [redacted] to Massachusetts. (Testimony Appellant) Prior to this, the Appellant had resided in [redacted] for twelve (12) years. (Exhibit B, p.3; Testimony Appellant) The Appellant, MR and the child went to live with the Appellant's grandfather KB (hereinafter "KB") (Exhibit B, p.3; Testimony Appellant)

8. The Appellant engaged with a new psychiatrist Dr. A (hereinafter "Dr. A) in Massachusetts; the Appellant reportedly reviewed her mental health and substance abuse history with Dr. A. According to the Appellant, Dr. A replaced the Prozac with Cymbalta and increased the dosage and frequency of the Adderall medication; there were no noted changes to the Alprazolam medication. (Exhibit B, p.3; Testimony Appellant) The record does not reflect that the Department spoke with Dr. A during the course of its 51A response. (Exhibit B) The Appellant's Suboxone medication was dispensed through [redacted] (Exhibit B, p.3; Testimony Appellant)

[1] Department records reflect that in 2004, the Appellant and her mother admitted to being high on crack cocaine. (Exhibit B, p.1)

9. On September 9, 2016, the [redacted] responded to the home of KB after receiving a phone call from KB reporting that MR had "threatened" the Appellant and M. The corresponding police report reflected that MR reported that he and the Appellant had a "minor verbal argument regarding money."[2] KB overheard this argument while on the phone with the Appellant. According to MR, KB was attempting to kick him out of the home. The Appellant informed the responding police officer that the night prior she learned that MR spent a large portion of his government assistance check and did not have enough money to pay KB and KB wanted him out. The police report does not reflect that the child was present (Exhibit C); the child was reportedly in daycare. (Testimony Appellant; Testimony MR)

10. On September 23, 2016, M was seen for her yearly physical. While noting that M was underweight, M had always been on the "smaller side." The Appellant did report concerns with M's "regression, tantrums and a stressful home environment." There was no further clarification regarding the Appellant's aforementioned concerns. (Exhibit B, p.7)

11. According to the Appellant, after a couple of months of taking the increased dosage of Adderall, she noticed that she started to forget things; "luckily" she was not alone with M as her grandfather was usually home. At some point the Appellant reportedly discontinued taking the Adderall medication. (Testimony Appellant)

12. On November 2, 2016, the Appellant started treatment at [redacted]. The Appellant provided weekly urine screens when she came in to get her Suboxone medication. On November 2, 2016, the Appellant tested positive for benzodiazepine (Alprazolam), buprenorphine (Suboxone) and an opiate. The opiate was not a prescribed medication. (Exhibit B, p.9, p.11; Testimony NC) According to the Appellant, she recalled that the family had colds at the time and that some cold/sinus medication would test positive for opiates. (Testimony Appellant) The record is absent any evidence to support this contention.[3] (Fair Hearing Record)

13. On November 9, 2016 the Appellant tested positive for benzodiazepine (Alprazolam) and buprenorphine (Suboxone).(Testimony NC; Exhibit B, p.9, p.11)

14. On November 19, 2016, the Appellant tested positive for benzodiazepine, buprenorphine, THC (marijuana) and amphetamines (Adderall). (Testimony NC; Exhibit B, p.9, p.11)

15. On November 26, 2016, the Appellant tested positive for benzodiazepine, buprenorphine, THC and amphetamine. (Testimony NC; Exhibit B, p.9, p.11)

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[2] MR was initially unable to recall why the police responded to the home. He then agreed with the Appellant that it was due to her concerns that he was cheating on her. (Testimony MR) According to the Appellant, these concerns were due to the increase in her prescribed medications which prompted her December 20, 2016 episode. (Testimony MR; Testimony Appellant) Neither the [redacted] Police Report nor KB's account of the incident corroborated this contention. (Exhibit C, Exhibit B, p.5) The Appellant's contention that she was hospitalized shortly following the police response is not supported by the evidence. (Fair Hearing Record)

[3] The record was left open at the conclusion of the Fair Hearing (in part) to afford the Appellant the opportunity to provide medical documentation regarding this contention. The Appellant submitted no documentation. (Fair Hearing Record)

16. On November 30, 2016, the Appellant tested positive for benzodiazepine and buprenorphine. (Testimony NC; Exhibit B, p.9, p.11)

17. On December 7, 2016, the Appellant tested positive for benzodiazepine, buprenorphine and THC. (Testimony NC; Exhibit B, p.9, p.11)

18. On December 14, 2016 the Appellant tested positive for benzodiazepine, buprenorphine and THC. (Testimony NC; Exhibit B, p.9, p.11)

19. On or about December 20, 2016, family members (the Appellant's "support team") reportedly expressed their concern for the Appellant increased erratic behaviors; these included paranoid thoughts, visual and auditory hallucinations. The Appellant agreed and she made the decision to access inpatient care; caretaking arrangements were made for M in the Appellant's absence. (Testimony Appellant; Testimony MR; Exhibit 1) The Department confirmed that appropriate caretaking arrangement were made for M to be cared for by her paternal grandmother PA and half sister D. (Testimony NC; Exhibit A, p.6; Exhibit B, p.2, p.4, p.10)

20. On December 20, 2016, the Appellant was transported to [redacted] Hospital from a [redacted] convenience store where she was observed to be "acting bizarre, babbling and crying. Testimony Appellant; Testimony IR; Exhibit A, p.2) According to the Appellant she went to [redacted] to get money and a coffee. (Testimony Appellant) The [redacted] Hospital Emergency Department evaluated the Appellant and determined that she was in need of an inpatient psychiatric hospitalization. While at [redacted] Hospital, the Appellant tested positive for benzodiazepine, Suboxone, amphetamine and THC. The mandated reporter believed that the Appellant was prescribed Xanax, Suboxone and Adderall. (Exhibit A, p.2; Testimony IR)

21. On December 21, 2016, the Department received a report from a mandated reporter pursuant to M.G. L. c. 119; §51A, alleging neglect of the child by the Appellant due to concerns of the Appellant's mental health and misuse of prescribed medication. According to the mandated reporter, the Appellant was admitted to [redacted] Hospital "for what is believed to be substance use related psychosis." The Appellant "acknowledged" that she was misusing her prescription medications and did not feel she was on the right medications. The Appellant "admitted" that MR was "verbally and emotionally abusive."(Exhibit A, p.2; Testimony IR)

22. The 51A report was assigned for a response, pursuant to M.G.L. c. 119, § 51A to NC, Response Social Worker from the DCF [redacted] Area Office. (Exhibit B; Testimony NC)

23. At the end of its response, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department based this determination on the following:

- M's report that she "sees mommy and daddy {MR} fighting all the time" with their words and their hands

- M's report that "mommy hits daddy {MR} all over the place when she's angry"
- M's report that she is "very scared" when she saw the Appellant and MR fighting
- D's report that M has urinated on herself while observing the Appellant and MR engaged in an argument.
- A September 9, 2016 [redacted] Police Department response to the residence due to an argument between the Appellant and MR
- The Appellant testing positive opiates on November 2, 2016
- The Appellant's positive urine screens for marijuana on November 19, November 29, 2016, December 7 and December 14, 2016
- The Department noted the Appellant's extensive substance abuse history resulting in the loss of three (3) older children. (Exhibit B, p.9-12; Testimony NC)

The Department concluded that this constituted neglect per its regulations and policies. (110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16)

24. The Appellant provided various explanations for the positive screens for marijuana, none of which were credible. Initially, the Appellant denied using marijuana stating that she didn't like it and it was a waste of time. The Appellant planned to have the doctor who dispensed her Suboxone medication address this issue.[4] The Appellant then stated that D smoke marijuana, suggesting that this was the reason for her positive screens. The Appellant then spoke of how KB did not like her taking Suboxone; he provided her with marijuana as an alternative. (Testimony Appellant)

25. The Appellant and MR maintained that the physical and verbal altercations occurred when they resided in [redacted] The Appellant referred to M as an extremely bright child with an excellent memory, contending that what M reported to NC were incidents that occurred prior to moving to MA. (Testimony Appellant; Testimony MR) I find that the child witnessed incidents of domestic violence while residing in [redacted] to include a police response and the child witnessing MR being arrested and going to jail. (Testimony NC; Exhibit B, p.5; Testimony Appellant) According to the Appellant, [redacted] Child Protective Services investigated the matter and determined there was no need for further involvement. The Appellant referenced that at one point she had a black eye which someone erroneously believed had been inflicted by MR. (Testimony Appellant) The Department did not contact [redacted] Child Protective Service during the course of its response. (Testimony NC; Exhibit B)

26. I do not credit the Appellant and MR's contention that since moving to Massachusetts there had been no further incidents of physical or verbal altercations. The Appellant and MR provided conflicting and inconsistent testimony regarding the reason for the [redacted] Police response to the home on September 9, 2016. (Testimony Appellant; Testimony MR) The Hearing Officer placed significant weight on the Appellant's in time report to NC, not crediting the Appellant's contention that she was "still a little out of it

[4] The record was left open at the conclusion of the Fair Hearing (in part) to afford the Appellant the opportunity to provide medical documentation regarding this contention. The Appellant submitted no documentation. (Fair hearing Record)

when she provided information to the Department.[5] On December 28, 2016, the Appellant initially reported that she and MR were "fighting" because of what she was going through at the time. After meeting with M, the Appellant wanted KB and her eighteen (18) year old daughter D (hereinafter "D") to be present when NC spoke with her again. After reviewing M's disclosure regarding the domestic violence, D began to cry and stated that M could not go through this. The Appellant then acknowledged that she and MR had been arguing a lot and that she did not want M exposed to domestic violence. MR had "put her down" and that the police did come to the home because of an argument. MR was reportedly planning to move out after the Christmas holidays. The Appellant inquired whether she should obtain a restraining order. (Exhibit B, p.5; Testimony NC)

27. On December 30, 2016, the Appellant contacted NC to report that MR had saved up enough money to move out and was receptive to this idea. The Appellant thanked NC for helping her. The Appellant stated that "right now we're not good for each other;" she just wanted to be "friends with him." (Exhibit B, p.6)

28. According to D, she was concerned for M as M "had no structure" and the Appellant did not set limits. (Exhibit B, p.4) This statement was corroborated by the Appellant's admission that she struggled with setting limits on M and that D was "very good at it." The Appellant requested that D remain present during the Department's interview with her as D knew "everything that has been going on." At the time of the Department's response, D had just turned eighteen (18) years old. (Exhibit B, p.3)

29. D informed the Department that she was "petrified" that the Department would remove M from the home. (Exhibit B, p.4) Despite this, she spoke emotionally of her concerns for M and the Appellant. According to D, the Appellant and MR had "very significant arguments in front of (M}. (Exhibit B, p.5) M had been toilet trained when she was 2 1/2 years old; (Testimony Appellant) for several months prior to the reported incident, M had been having toileting accidents. (Testimony Appellant, Exhibit B, p.5) The Appellant however disputed D's contention that D wet her pants during an argument between the Appellant and MR; the Appellant contends that M is too interested in her play activity and did not take the time to use the toilet. (Exhibit B, p.5, p.9; Testimony NC; Testimony Appellant) I do not credit the Appellant's contention.

30. On January 11, 2017, MR continued to reside in the home. The Appellant reported that she felt terrible about everything that she accused him of. The Appellant believed that the medications that she had been prescribed put her "in a state of psychosis and that she believed that things were happening that were not." The Appellant and MR were planning to renew their vows and he wanted to adopt M. (Exhibit B, p.8)

31. The director of M's daycare center reported having some concerns, noting that M arrived at school in the winter wearing a summer sleeveless dress and on another occasion wore a

[5] The Appellant was hospitalized on December 20, 2016; NC met with the Appellant following her discharge from [redacted] Hospital on December 28, 2016. The Appellant made no statement to NC that she had any type of difficulty nor did the Department note any concerns for the Appellant's presentation. Exhibit B, pp. 3-4)

shirt that appeared to belong to the Appellant. There were concerns regarding the Appellant's behavior, but "nothing they {could} validate." (Exhibit B, p.8)

32. The Department's decision to support the allegation of neglect was made in conformity with its regulations, policies and with a reasonable basis. The child's continued exposure to domestic violence and the Appellant using non-prescribed medication in addition to her prescribed medication posed a substantial risk to the child's safety and well-being. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16) The Department had reasonable cause to intervene with this family in order to further assess and ensure M's well-being. No new information detracted from the Department's original decision. (Fair Hearing Record)

Applicable Standards

Caregiver is defined as:
(1) A child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or
(2) 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

"[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

"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)

Neglect is the 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. 110 CMR 2.00

A finding of support requires that there be: 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. 2/28/2016)

"Danger" is defined as a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. DCF Protective Intake Policy #86-015, rev. 2/28/16

"Risk" is defined as the potential for future harm to a child. DCF Protective Intake Police, (rev. 2/28/2016)

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 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

It is undisputed that the Appellant was a caregiver for M. 110 CMR 2.00

The Appellant contested the Department's decision to support the allegation of neglect (in part), maintaining that her escalating behaviors and deteriorating mental health functioning were the result of being overmedicated and inappropriately prescribed medication by her in time psychiatrist. The Department acknowledged the Appellant's recognition that she required mental health treatment and a re-adjustment to her prescribed medication regime. (Exhibit B, p.10) The negative impact that certain medications had on the Appellant were not the basis for the Department's decision to support an allegation of neglect. The Appellant herself spoke of being forgetful in the couple of months preceding her hospitalization. Her behaviors became erratic, including being paranoid; the Appellant experienced visual and auditory hallucinations. The director of M's daycare center reported having some concerns, noting that M arrived at school in the winter wearing a summer sleeveless dress and on another occasion wore a shirt that appeared to belong to the Appellant. There were concerns regarding the Appellant's behavior, but "nothing they {could} validate." While fortunately no physical harm befell the child, the Court has determined 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).The Appellant's decision making to utilized non-prescribed medications in conjunction with prescribed medication compromised the Appellant's ability to provide minimally adequate "... supervision... or other essential care..." (110 CMR 2.00 to four (4) year old M and "...posed substantial risk to the child's safety or well-being..." in light of her tender age. (DCF Protective Intake Policy #86-015, rev. 2/28/2016)

In addition to the concerns regarding the Appellant's use of non-prescribed medication, the concerns related to ongoing domestic violence was the second contributing factor in the Department's decision making to support neglect. M made very clear statements regarding being very scared when the Appellant and MR fight with their words and hands, reporting that they "fight all the time." The Hearing Officer acknowledges that some of the incidents wherein the Appellant was the aggressor may have been due to the decline in her mental status and her increased paranoia; however, the concerns of domestic violence precede the Appellant, MR and M moving to Massachusetts.[6] The record is absent any evidence to reflect what, if any, action or involvement [redacted] Child Protective Services had prior to the move in August 2016.Whether or not the family received intervention in [redacted], the pattern of domestic violence continued in Massachusetts. On September 9, 2016, the paternal grandfather requested a police response due to a verbal altercation between the Appellant and MR. D reported that M witnessed "very significant arguments" between the Appellant and MR and was very concerned for M. Additionally she reported that M wet her pants while exposed to an argument between the Appellant and MR. D and the Appellant reported a regression in toileting until the Appellant entered the hospital. The Appellant herself informed the pediatrician that she was concerned with M's regression, tantrums and a stressful home environment. A physical or verbal altercation between caretakers, witnessed by the children, "constitutes a failure to provide the children with minimally adequate stability and growth." John D. v. Department of Social Services, 51 Mass Ct, 125, 132 (2001) 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, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996) The child's continued exposure to the verbal and physical altercations between the Appellant and MR constituted a failure to provide "...minimally adequate emotional stability and growth..." per Departmental regulation 110 CMR 2.00 and "...posed substantial risk to the child's safety or well-being..." (DCF Protective Intake Policy #86-015, rev. 2/28/2016)

"Reasonable cause" implies a relatively low standard of proof which, in the context of 51A, "serves a threshold function" in determining whether there is a need for further assessment and/or intervention. "[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of Section 51A." This same reasonable cause standard of proof applies to decisions to support allegations under 51B. Care and Protection of Robert, 408 Mass. 52, 63 (1990). As set forth in the Findings, and above, I find that the evidence presented was sufficient to support the Department's findings.

The evidence, in its totality, was sufficient to support the Department's determination of neglect abuse, as delineated in its regulations and policy. The Appellant did not present persuasive

[6] The Department did not support neglect by MR due to concerns of domestic violence. (Exhibit B)

evidence in this matter to allow for a reversal of the Department's support decision for neglect. The undersigned will not pass clinical judgment on the Department's broad discretion as delineated in the regulations.

Conclusion and Order

The Department's decision to support the 51A report for neglect of M by the Appellant, is **AFFIRMED.**

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which she resides, 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.

Carmen Temme (EP)
Carmen Temme
Administrative Hearing Officer

12/4/17
Date

Erica Pognon
Supervisor, Fair Hearing Unit