

**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

LB

2017-0106

FAIR HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is LB. The Appellant appealed the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of physical abuse and neglect involving her children R, M, B and A pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Three separate allegations of physical abuse involving R, M and B were filed by mandated reporters with the Department on May 17, 2004, June 1, 2004 and June 8, 2004. In addition to the allegations of physical abuse an allegation of the neglect of A by Appellant was added to the report of June 8, 2004; the allegations were subsequently supported by the Department on June 9, 2004. 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. Appellant's original request was received on June 18, 2004 with a second request for a Fair Hearing received on December 22, 2016. In 2004, the Appellant received a letter from the Fair Hearing unit notifying her that we were unable to schedule a date at that time.

The Fair Hearing was held on March 15, 2017 at the Department of Children and Families' Area Office located in Lawrence, MA. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

Carmen Colón
PS
LB

Fair Hearing Officer
Appellant's Attorney
Appellant

LB
A St.
R St.
M St.

DCF Area Program Manager
Witness
Witness (Via phone)
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; however, due to technical difficulty this recording is no longer available.

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

For the Department:

Exhibit A: 51A Intake Report of 05.17.2004 - Physical Abuse
Exhibit B: 51A Intake Report of 06.01.2004 - Physical Abuse
Exhibit C: 51A Intake Report of 06.08.2004 - Physical Abuse & Neglect
Exhibit D: 51B Child Abuse/Neglect Non-Emergency Investigation of 06.09. 2004

For the Appellant:

Exhibit 1: Receipt of Fair Hearing request letter of 6.22.2004
Exhibit 2: Police Report of 5.16.2004
Exhibit 3: Police Report of 6.1.2004
Exhibit 4: Show Cause Hearing of 10.28.2004
Exhibit 5: Correspondence belonging to M.St.
Exhibit 6: LB personal reference letter

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 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 investigation, 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. 110 CMR 10.05

Findings of Fact

On the basis of my assessment of all the evidence, I make the following factual findings:

1. LB is the mother of all children identified in this matter and therefore a caretaker pursuant Departmental Regulation CMR 110 2.00. (Exhibits A-D, p.1)
2. At the time of the reported events, R, M, B and A all resided full time with their mother. R and M were 16 y.o., B was 12 y.o. and A was reported to have been 7 y.o. (Exhibits A-D, p.1, 2 and Exhibit D, p.4)
3. The children's father, ASt. did not reside in the family home as he and Appellant had divorced prior to the Department's involvement. (Exhibit D, p. 2)
4. The relationship between Appellant and her three older children was strained and consisted of ongoing verbal arguments, name calling along with the use of past physical force and hitting all three with her hands in the arms as stated by Appellant during the investigation period. (Exhibit 2, Exhibit D, p. 2-4)
5. The Appellant became involved with the Department after allegations of physical abuse and neglect of her children were filed with the Department by mandated reporters. The reports were files on the following dates:
 - a. May 17, 2004 – physical abuse of R and M
 - b. June 1, 2004- physical abuse of M
 - c. June 8, 2004 – physical abuse of B and neglect of A

The initial allegation was screened in for a non-emergency investigation and the allegations filed in June were made during the DCF response period. All allegations were supported by the Department on June 9, 2004.

(Exhibits A, B, C, and D)

6. R, M, and B had ongoing arguments with their mother. These arguments often involved name calling and mother, at times, hitting them on the arm. This was corroborated per Appellants own statements to mandated reporter. (Exhibit 2, Exhibit D , p. 2, 4)
7. On May 16, 2004, the Appellant attempted to attend church with her children. There was a change in schedule and R, M, and D were not ready on time. They began to refuse to attend which prompted an argument in the home. This argument escalated to a verbal altercation. This led the three children to run away from the home. R and M did not return home that night. (Exhibit D, p. 3, Exhibit 2)
8. On May 24, 2004, DCF Investigator conducted a first interview with Appellant and the children. In this visit, R, M, and B complained about Appellants volatile and explosive behavior. Their statements were corroborated by Appellants documented outbursts towards the DCF Investigator. (Exhibit D, p.2)

9. On June 1, 2004, Appellant and M argued while in Appellant's vehicle. Appellant wanted to have a private conversation with M away from the family and discuss her concerns for M's behavior. On this date the following occurred :
 - a. Appellant confronted M over her relationship with an adult male and possible sexual behavior; (Exhibit D, p.3, Exhibit 3)
 - b. The two women began to argue and there was a physical struggle as M reported trying to get out of the vehicle due to Appellants "yelling" and threats; and
 - c. Appellant reached out to grab M and keep her from leaving the vehicle and "may have grabbed" her hair. (Exhibit 3, Exhibit D, p. 6)
10. During the investigation, DCF Investigator met with children, collaterals, Appellant, and children's father, ASt. (Exhibit D, p. 2-4)
11. B reported his mother "choked" him on the night of May 16, 2004. M reported she did not see her mother choke B, but she saw marks on his neck. R and A did not mention mother choking B. (Exhibit D, p. 2-6)
12. Given the children's consistent reporting of being hit by mother, DCF did express safety concerns for the children to their father, ASt. As a result , he took the matter to probate court where he was eventually given custody of the children (Exhibit D, p.2,4)
13. On May 27, 2004, DCF Investigator interviewed the children once more at separate locations. R, M, and B reported being well cared for at their father's home and were able to clearly state that there was "no yelling" there when compared to the Appellant's home. (Exhibit D, P. 4)
14. At the Fair Hearing, the Appellant was adamant about never having physically abused B even thirteen years later. Appellant relied heavily on testimony provided by her now adult children who stated not being able to "remember anything" due to the time elapsed between the investigation and the Hearing date, along with memory loss due to substance abuse , specifically, B and R. (Testimony of R, M, B)
15. I find that the Department's decision to support the allegation of physical abuse of R and M by the Appellant was not supported by credible evidence for the following reasons:
 - a. M was not a reliable reporter and account of abuse lacked detail. M , given her then volatile relationship with Appellant, did have a motive to leave Appellant's home (Exhibit B, p. 2-4, Exhibit 3, Exhibit 5)
 - b. The small mark observed on M's arm could have been obtained by Appellant attempting to keep her in the vehicle in the event of June 1, 2004.
 - c. R's disclosures of being "hit in the arm" were of past events that were not corroborated during the Investigation. Additionally, these discourse lacked detail regarding being hit. There is no evidence that R had any injuries from the Appellant.

16. I find that the Department's decision the support the allegation of physical abuse of B was not supported by credible evidence for the following reasons:

- a. B initially told the police "the same story L told me earlier in the night." LB had told the police that she grabbed him by the mouth and told him to stop yelling at her.
- b. B did not have any injury.
- c. There was no evidence presented that demonstrated there was a substantial risk of injury.
- d. B was not consistent in his reporting; he did not tell the police that his mother choke him, just the DCF investigator.

17. I find Department's decision to support the allegation of neglect of A by the Appellant was not made with reasonable basis for the following reasons:

- a. no information was gathered proving that Appellant provided A, with less than minimal adequate care at the time of the Investigation.
- b. although Appellant's reported volatile behavior and outbursts appear to have been an ongoing issue in the family home, there was no corroborating evidence gathered by DCF Investigator that could show a negative impact on A.

Applicable Standards

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred.

"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. 110 CMR 4.32(2)

"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 51A" Id. at 63. This same reasonable cause standard of proof applies to decisions to support allegations under 51B. Id. at 64; M.G.L. c. 119, 51B

Abuse means the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. This

definition is not dependent upon location (i.e., abuse can occur while the child is in an out-of-home or in-home setting.) 110 CMR 2.00.

Physical Injury means

- (a) death; or
- (b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or
- (c) soft tissue swelling or skin bruising depending upon such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises; or
- (d) addiction to drug at birth; or
- (e) failure to thrive. 110 CMR 2.00.

"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, (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 babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, 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 babysitter under age 18). Regulation 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

Analysis

The reported disclosure of abuse was initially made by M, with whom Appellant had a difficult and strained relationship with. This was corroborated by the DCF record and documentation provided by the Appellant at the time of hearing.

In addition, there was no evidence gathered stating that Appellant non-accidentally caused the small scratches on M's arm during the event reported of June 1, 2004. What was evident was that Appellant, at the time, was parenting four children and was struggling with managing M's risky behaviors and caring for the rest of the children.

