

**Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
600 Washington Street, 6th Floor
Boston, Massachusetts 02111**

Linda S. Spears, Commissioner

**Voice: (617) 748-2000
Fax: (617) 261-7428**

IN THE MATTER OF: JW

Fair Hearing # 2017-0108

FAIR HEARING DECISION

Appellant, JW, appeals the decision of the Department of Children and Families, pursuant to M.G.L. c.119, §51B, to support allegations of neglect on behalf of J and G.

Procedural History

On December 13, 2016, the Department of Children and Families (“Department”) received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect on behalf of J and G by their father, JW (“Appellant”). On January 6, 2017, the Department decided to support the allegations of neglect, pursuant to M.G.L. c. 119, §51B, by Appellant. The Department notified Appellant of its decision and of his right to appeal. Appellant made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06.

The Fair Hearing was held on February 28, 2017, at the Department’s Dimock Street Area Office in Roxbury, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

JW	Appellant
SH	Department Supervisor
PJ	Appellant’s Fiancée

In accordance with 110 C.M.R. §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 digitally recorded. All witnesses were sworn in to testify under oath. The record closed upon the conclusion of the oral evidence. The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A Intake Report – 51A Report
- Exhibit B Child Abuse/Neglect Non-Emergency Response

For Appellant:

- Exhibit 1 Fair Hearing request
- Exhibit 2 Department support letter
- Exhibit 3 Incident Report
- Exhibit 4 [REDACTED] letter

The Hearing Officer need not strictly follow the rules of evidence....Only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 C.M.R. § 10.21

Issue to be Decided

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 C.M.R. §10.05

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05.

Findings of Fact

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

1. Appellant is the father of J, age eleven, and G age ten at the time in question. [Exhibits A and B]
2. AP is the mother of J and G: AP is also the mother of four other children: twins, I and E (age 17); T (age six); and L (age 3). [Exhibits A and B]

3. As the father of J and G, Appellant is deemed to be a caregiver pursuant to the Department's Protective Intake Policy #86-015, 6/15/1986, as revised 2/28/2016. [Testimony of Appellant; Exhibits A and B]
4. On November 13, 2016, G and J visited Appellant at the home of Appellant's mother. When AP went to pick up J and G, she had T and L in the car with her. G, J, and Appellant came out of Appellant's home. AP got out of her car to let G and J in the car. Appellant became upset with AP and began yelling and swearing at her. At one point, Appellant raised his hands as if he were going to hit AP. Appellant eventually walked away from the situation. [Exhibit B, pp.4,5; Testimony of Appellant]
5. G and J reported that Appellant became upset after Appellant tried to talk with AP and asked her to call his cell phone and she refused. Appellant reported that he became upset with AP after seeing her hit G. None of the boys reported that AP had hit G. [Exhibit B, pp.4,5; Testimony of Appellant]
6. AP obtained a restraining order against Appellant. [Exhibit B, p.4]
7. On December 13, 2016, the Department received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of J and G by Appellant. The Department initiated a response into the allegations. [Exhibit A]
8. On January 6, 2017, the Department supported allegations of neglect of J and G by Appellant. The Department determined that no services were required and did not open a case with the family. [Exhibit B]
9. At some point, AP filed an incident report with the police relative to the events of November 13, 2016. Appellant was charged with Threat to Commit a Crime. On February 21, 2017, a Show Cause Hearing was held at which time the charge against Appellant was continued until December 27, 2017. On December 27, 2017, the charge will dismiss automatically if Appellant is not arrested again and if no more criminal charges are filed against Appellant. [Exhibit 4; Testimony of Appellant]
10. I find that the Department's decision to support allegations of neglect on behalf of J and G was not made in conformity with Department regulations and policies and/or with a reasonable basis.

Applicable Standards and Analysis

In order to:

- "support" a report of abuse or neglect or
- make a finding of "substantiated concern"

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. 110 CMR 4.32(2). 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 s. 51A. *Id.* at 63. 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

- (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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. *Protective Intake Policy No. 86-015* (rev. 02/28/2016)

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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (*Id.*)

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (*Id.*)

A Substantiated Concern means:

- There is 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. (*Id.*)

Danger is 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. (*Id.*)

Risk is defined as the potential for future harm to a child. (*Id.*)

Substantial Risk of Injury

A situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child. (*Id.*)

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party; . . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

To prevail, an Appellant must show by a preponderance of all of the evidence presented at the hearing, 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

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I reverse the Department's neglect support decision.

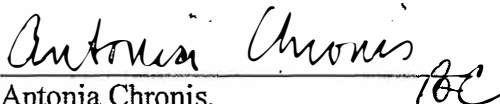
Considering the entirety of the record in this case, I find that J and G were exposed to an incident in which Appellant yelled at and behaved threateningly towards the children's mother, AP. While it was reasonable for the Department to be concerned about the emotional impact of this incident on J and G, there is no evidence that Appellant placed the children in immediate danger or posed substantial risk to their safety or wellbeing during the incident.¹ Appellant has shown by a preponderance of the

¹ Such evidence, that the child was in danger or the Appellant's actions posed a substantial risk to the child's safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the

evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of neglect. Appellant was persuasive in proving that the Department's support decision should be reversed.

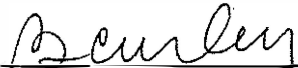
Conclusion and Order

The Department's decision to support allegations of neglect on behalf of J and G was not made in conformity with Department regulations and policies and/or with a reasonable basis. Therefore, the Department's decision is **REVERSED**.



Antonia Chronis,
Administrative Hearing Officer

April 16, 2018
Date



Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner

potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being. See DCF Protective Intake Policy #86-015, Rev. 2/28/16, pp. 28, 29