

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN & FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**LINDA S. SPEARS,
COMMISSIONER**

**Voice: (617) 748-2000
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IN THE MATTER OF)

V. I.)

FH # 2017 0111)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Ms. VI (or “the Appellant”). The Appellant appeals the Department of Children and Families’ (“the Department” or “DCF”) decision to support a report of neglect pursuant to Mass. Gen. L., c. 119, sec. 51A. Notice of the Department’s decision was sent to the Appellant on January 12, 2017, and the Appellant filed her appeal timely with the Fair Hearing Office on January 22, 2017.

The Fair Hearing was held on April 11, 2017, at the DCF VanWart Area Office. The hearing record remained open until April 25, 2017, in order for the Department to submit additional documentary evidence.¹ The following persons appeared at the Fair Hearing:

LAH, Esquire
VI
TW
AH
AG

Administrative Hearing Officer
Appellant
Witness/Grandfather of Child
Witness/Appellant's Friend and Co-Worker
DCF Response Worker

In accordance with 110 CMR 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 pursuant to DCF regulation. 110 CMR 10.26.

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

¹ The undersigned hearing officer requested that the Department produce a copy of the police report, the narrative of which is referred to in the 51B report at p.4 (see, Exhibit 4) however that document was not produced.

For the Department:

- Exhibit 1: 12/20/16 (9:03 PM) 51A Report
- Exhibit 2: 12/20/16 (10:26 PM) 51A Report
- Exhibit 3: 12/21/16 51A Report
- Exhibit 4: 1/12/17 51B Report

The Appellant did not submit documentary evidence into the hearing record.

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 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 of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject of this Fair Hearing is the female child "A" ("the child"), who was fifteen (15) years old at the time of the 51A filing referenced below. (Exhibit 1, p.1.)
2. The Appellant is the child's mother. (Exhibit 1, pp.1 and 2.) The Appellant adopted A from DCF when the child was two years old. (Exhibit 4, p.3.)
3. The child has the diagnoses of ADHD, Bi-polar Disorder, Explosive Anger Disorder and is likely on the Autism spectrum. (Exhibit 4, p.3.) It is undisputed that the child has a history of aggressive and oppositional behaviors and has had a previous psychiatric hospitalization. (Exhibit 1, p.2.) The child is prescribed the medications Seroquel, Effexor and Stratera, which the Appellant had to administer or she would not take them. (Exhibit 4, p.4; Testimony of Appellant.)
4. It is undisputed that the child has a history of socially dangerous behaviors of meeting up with adult male strangers. (Testimony of Appellant; Exhibit 1, pp.4—5.) The child has told the Appellant she is addicted to sex. (Exhibit 4, p.3.) As a result, the family has the following DCF history:

- a) 10/30/15—At 14 years old, the child was having inappropriate sexual contact with adult males she met on the internet. The child was making suicidal gestures and was evaluated by crisis. The Appellant made efforts to stop the child's behaviors and appropriately contacted the police and outside supportive services. (Exhibit 1, p.5.)
 - b) 1/5/16—The Department conducted an Initial Assessment. The child's mental health issues were "influencing her to exhibit behaviors that put her at risk." It was noted that the Appellant was a strong support to the child but was "overwhelmed." (Id. at p.4.)
 - c) 1/28/16—A CRA (Child Requiring Assistance) and resulting DCF case were opened for services. When the Appellant was working nights, the child was communicating with older men and meeting up to have physical relations with them. (Id.)
 - d) 7/13/16—Allegations of sexual abuse were unsupported. The child denied sexual abuse, but at a time when she was no longer allowed to use any electronic devices, she had exchanged nude photographs with males.² (Exhibit 1, p.4; Testimony of Appellant.)
 - e) 9/27/16 and 9/29/16—The child was sending nude photographs of herself through the internet via the Appellant's cell phone without her knowledge. The child was continuing to receive outside supportive services at this time.³ (Exhibit 1, p.4.)
 - f) 11/23/16—Sexual Abuse allegations were screened out. The child had communicated with a male online and invited him to the family home; the male was deemed not to be a caregiver. (Exhibit 1, p.4.)
5. Local police reports for the family evidence that the Appellant has appropriately reported the child missing or on the run from home on December 30, 2015, May 4, 2016, and September 4, 2016. (Exhibit 1, pp.5—6.)
6. On December 4, 2016, just prior to the subject 51A filings, the child contacted and invited a 24-year-old male stranger from [REDACTED] to spend time with her. The man picked her up in Western Massachusetts and brought her back to the eastern part of the state and to New Hampshire. The Appellant contacted the police. Eventually, the man texted the Appellant and told her where she could pick up her child (where he had left her). This experience "did not phase" the child; the child informed the Appellant she had had sex with this man three times while with him. (Testimony of Appellant.)

² The child was caught stealing phones from Wal-Mart in order to contact boys/men online. She was banned from that store for one year. (Exhibit 4, p.3.) The child has stolen nine phones in total. (Testimony of AH.) The child has also stolen the Appellant's cell phone. (Testimony of Appellant.) The Appellant's good friend, AH, had "friended" the child on Facebook in order to keep track of her online activity. (Testimony of AH.)

³ She had been in a partial hospitalization program in the past but had refused to go. The child has had in-home therapy (IHT) and Key Tracking. She also had individual therapy. Her personal hygiene has been poor, and she has also refused to attend school. (Exhibit 4, p.3.)

7. On December 20, 2016 (at 9:03 PM and 10:26 PM), the Department received two 51A reports pursuant to M.G.L. c. 119, s. 51A, from mandated reporters alleging the neglect and physical abuse⁴ of the child by the Appellant following an argument and physical altercation between them while the Appellant was driving with the child in her car. Neither the Appellant nor the child sustained any marks or injuries. (Exhibit 1, p.2; Exhibit 2, p.2.)
8. The Department screened-in the 51A reports as a non-emergency response. (Exhibit 1, p.6; Exhibit 2, p.7.)
9. The child's and Appellant's version of events differ in that each one accused the other of being the aggressor. This Hearing Officer found the Appellant's testimony at the Fair Hearing to be sincere and forthright. Considering her demeanor and content of her testimony given under oath, along with evidence cited herein and the corroborative statements she gave to DCF and to the three reporters in this matter, this Hearing Officer finds the Appellant to be a credible individual with respect to the issues in this case:
 - a) On the evening of December 20th at approximately 6:50 PM, the Appellant and child were driving in the Appellant's car together going to the movies. The child was texting her school boyfriend on her mother's phone and asked the Appellant if he could go with them to the movies. The Appellant said no because the boy would've had to lie to his parents about his whereabouts. Thereafter, the child refused to give the phone back to the Appellant upon her request. (Exhibit 1, p.2; Exhibit 2, p.2; Exhibit 4, p.3; Testimony of Appellant.)
 - b) The Appellant pulled the car over in the movie theater parking lot and the child opened the door. Fearing that the child would go on the run with her cell phone and meet up with older boys/men, the Appellant reached out and grabbed the child by her ponytail to keep her in the car. The Appellant attempted to grab the phone out of the child's hand and the child twisted the Appellant's hand/fingers, significantly hurting her and would not let go. The Appellant slapped the child twice in the face to make the child to let go of her hand. While struggling over the phone, the child reached over and punched the Appellant in the face and pulled the Appellant's hair. (Exhibit 2, p.2; Exhibit 4, p.3; Testimony of Appellant.)
 - c) The Appellant drove further down the parking lot and over a speed bump. The child "slid forward in her seat" and then exited the car. (Exhibit 4, p.3; Testimony of Appellant.) The child did not (despite the child's statements at Exhibit 1, p.2) hit her head on the dashboard, fall out of the car or sustain a neck injury. (Testimony of Appellant.) There is no medical evidence to support the child's contention. (See, Exhibits 3, and 4.)

⁴ The Department ultimately unsupported the allegation of physical abuse of the child by the Appellant. (Exhibit 4, p.6.)

- d) The Appellant drove around the parking lot to calm down, and when she came back around to the child, the child got into the car and "acted like nothing had happened" but was verbally aggressive toward the Appellant. The Appellant thereafter drove straight to the police station in her town where they are familiar with the child.⁵ (Exhibit 3, p.2; Exhibit 4, p.3; Testimony of Appellant.)
 - e) While at the police station, both the Appellant and child gave their version of events. Reporter #2 noted that while there, "when the child was not getting what she wanted out of the situation" (about 30 minutes after arrival), she then started complaining of neck pain and EMT's were called. The child "wasn't pleasant" and had a "bad attitude" while at the police station. (Exhibit 2, p.2.)
 - f) Reporter #1 and Reporter #2 noted there were no marks or bruises on the Appellant or the child. (Exhibit 1, p.2; Exhibit 2, p.2.)
 - g) The child was transported to a local hospital where she was evaluated by a Crisis Team. When they arrived at the emergency room, the child continued to be verbally aggressive toward the Appellant. The child did not meet hospital level of care and was referred to residential placement as a partial hospitalization program had not worked for the child in the past. (Exhibit 1, p.2.; Exhibit 3, p.2; Exhibit 4, p.3.)
10. The Department was able to find a residential placement for the child following her hospital discharge. (Exhibit 4, p.3.) As of the fair hearing date, the child had changed to a different residential placement, and was doing well but wanted to go home. (Testimony of Appellant; Exhibit 4, p.2.)
11. For the reasons of the child making up allegations of neck pain (whiplash), as stated in Finding #9e) above, and for the following reasons, the child's credibility is suspect in this matter. The child's statements of the incident made to the reporters and to the DCF Response Worker ("RW") do not include her assault of the Appellant by twisting and hurting her mother's hand. (See, Exhibit 1, p.2; Exhibit 2, p.2.) When the child spoke with the RW, she failed to take any responsibility for her part in the incident and blamed the Appellant. (Exhibit 4, p.2.) Her Crisis Evaluation corroborated this: "Individual presents to crisis after she was aggressive physically and verbally with her mother while they were driving in the car. Individual appears to lack insight into the incident and has a history of poor impulse control, especially when situations involve her having a phone taken away from her." (Id. at p.5.)
12. On January 12, 2017, the Department supported the aforementioned report in accordance with M.G.L. c. 119, s. 51B for neglect on behalf of the child due to the physical altercation between the two while they were in the car together. The Appellant acknowledged pulling the child's hair and slapping her in the face two times "to prevent her from leaving the car with her phone" as the child "has a

⁵ The Appellant followed the child's probation officer's recommendation that when the child is aggressive toward her, she should go to the police and file assault charges. (Exhibit 4, p.3.)

concerning history of contacting older men online and meeting up with them to have sex." The Appellant "did not appear to intend to harm [the child] during the altercation." (Exhibit 4, pp.6 and 7.)

13. In its response conclusion, the Department acknowledged that the Appellant has utilized DCF and the court system and has cooperated with both but "appears to be struggling to manage [the child's] behaviors in an appropriate way." (Exhibit 4, pp.6—7.)
14. The Department incorporated the response into the family's already open DCF clinical case. (Exhibit 4, p.7.)
15. I find the Department did not have reasonable cause to believe that the Appellant failed to provide minimally adequate care to the child and I further find that there was no evidence that the Appellant's actions placed the child in danger or posed a substantial risk to her safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16. (See, Analysis.)

Applicable Standards

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 caregiver occurred 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 2.00 and 4.32; 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. 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.

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

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.

Analysis

As the child's mother, the Appellant is deemed a "caregiver" pursuant to Departmental regulation and policy, DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00.

The Department's decision that the Appellant neglected the child was based upon its conclusion that in using inappropriate, physical means with the child, the Appellant failed to provide her with minimally adequate emotional stability and growth. The evidence in this matter does not support that conclusion.

It is uncontested that the Appellant has been trying to cope as best as possible for a very long time, and has utilized the local authorities, DCF and the court system, with a child who is combative and places herself in extremely dangerous situations. The child's diagnoses and risky, sexual behaviors are surely significant. Just prior to the subject incident, the child had placed herself in yet another such situation with an adult male who brought her to another part of the state and over state lines to New Hampshire. That the Appellant was concerned the child would leave the car with the Appellant's phone and conduct herself in the same manner was a legitimate concern at the time of the subject incident. For the Appellant to grab the child by the hair and slap her in the face in order to stop the child from assaulting her and from leaving the car with her phone, though not preferable means of doing so, was an act of desperation on the Appellant's part born out of great concern for her child and therefore was not neglect but quite the opposite. The Appellant's actions were intended to protect the child from herself, not place the child in danger or pose a substantial risk to the child's safety or well-being.

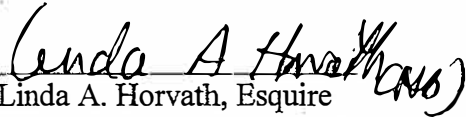
In addition, the Department deemed the actions of the Appellant to be inappropriate physical means of dealing with the child. This type of concern has been spelled out in the agency's policy to be deemed a "substantiated concern" and not a support for neglect. A finding of substantiated concern requires that the child was neglected, but that there was a lower level of risk to the child, i.e. the actions or inactions by the Appellant created the potential for abuse or neglect, but there is no immediate danger to the children's safety or well-being. An example given of a scenario of substantiated concern is the inappropriate discipline of a child. (See, DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29.)

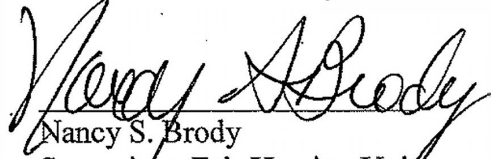
In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Appellant has shown by a preponderance of the evidence that the Department did not have reasonable cause to support the allegation of neglect of the child in this matter and there is no evidence that the Appellant's actions placed the child in danger or posed a substantial risk to her safety or well-being.

Conclusion

The Department's decision to support the 51A reports of December 20, 2016, and December 21, 2016, for neglect by the Appellant on behalf of the subject child is **REVERSED.**

Date: 4-2-18


Linda A. Horvath, Esquire
Administrative Hearing Officer


Nancy S. Brody
Supervisor, Fair Hearing Unit

Date: _____

Linda S. Spears,
Commissioner