

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
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Commissioner

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IN THE MATTER OF

LR #2017-0118

**FAIR HEARING DECISION**

LR appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

**Procedural History**

On January 10, 2017, the Department received a 51A report alleging neglect of K by her mother, LR. The Department initiated an emergency response and, on January 11, 2017, the Department made the decision that the allegation of neglect of K by her mother, LR, was supported. The Department notified LR of its decision and her right to appeal.

LR made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held at the DCF Area Office in Framingham on March 16, 2017. LR, the Department emergency response worker, the Department on-call supervisor and the Department on-going supervisor testified at the hearing. The Department submitted the 51A and B reports which were entered into evidence at the hearing. (Exhibits A and B).

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

**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 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, 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 or human trafficking. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

### **Findings of Fact**

1. LR (hereinafter "mother") is the mother of A (age 7), J (age 19) and the reported child, K (age 17). (Exhibit A, pp. 1-2).
2. The family's first involvement with the Department was in February 2014, when two 51A reports were filed alleging neglect of the children by mother and A's father who was mother's husband at the time. The allegations were supported due to an incident of domestic violence. (Exhibit A, pp. 4-6; Exhibit B, p. 1).
3. The family became involved with the Department again in May 2014, after allegations of sexual abuse of K by A's father/mother's husband were supported. (Exhibit A, pp. 4-6; Exhibit B, p. 1).
4. As of January 2017, K was diagnosed with depression, anxiety and post traumatic stress disorder (PTSD). She was a junior in high school. She received special educational services at school. She was engaged in therapy. She saw her therapist every other week. She was prescribed Fluoxetine (Prozac) for depression and Hydroxyzine for anxiety as needed. (Exhibit B, pp. 1, 2, 3, 4).
5. The Department did not become involved with the family again until December 2016. By that time, there was conflict between K and mother. K was drinking alcohol and occasionally smoking marijuana. She was not keeping her room clean or doing other chores. Mother did not approve of K's friends who drank alcohol and "self tattooed." Mother did not approve of K's boyfriend, but K saw him anyway and she was having him sneak into the home. K became pregnant by the boyfriend and had an abortion. Mother discovered that K had been going to lesbian websites and she was texting naked pictures of herself to her boyfriend on her cell phone so mother took her cell phone away. K then bought a new phone without telling mother. (Exhibit A, pp. 4, 6; Exhibit B, pp. 1, 2, 3, 4).
6. On December 10, 2016, the Department received a 51A report alleging neglect of K by mother after K and mother had an argument and mother told K to leave the home. The Department became involved and mother ultimately agreed to take K home. The Department's response concluded that there were "substantiated concerns" and the Department opened a case for the family. (Exhibit A, pp. 4, 6; Exhibit B, p. 1).

7. On either that occasion or a different occasion when there was conflict between K and mother, the police responded to the home. Police advised them that in the future they could call police to help mediate the situation. (Exhibit B, p. 2).
8. Mother spoke with K's therapist about having K admitted to residential treatment. K's therapist advised mother that the Department would need to have custody of K and make any arrangements for residential treatment. (Exhibit B, p. 3; Testimony of mother).
9. Mother gave K hangars for Christmas and said, "You could probably use these." K thought mother was being mean and making a reference to her abortion. Mother denies that was her intention. (Exhibit B, pp. 2, 3).
10. On January 10, 2017, K came home from school and went to her room to take a nap. Mother went into her room, took the blankets off of K and found that she had a cell phone. Mother took the phone. Mother and K yelled at each other and K tried to grab the phone away from mother. K then grabbed mother's phone thinking it was hers. Mother pinned K against the bed from behind and took the phone away from her. Mother told K to go downstairs and stop yelling. K called the police to mediate the situation. (Exhibit B, p. 2).
11. Police responded to the home and spoke to mother and K. Mother told police that she did not feel safe with K in the home and she told K she had to leave. She said she was concerned that K would harm someone in the home, but she could not explain why she felt unsafe. Neither K nor mother reported that there had been any physical violence between them. K identified two friends she could stay with for the night, but mother refused to allow her to go to either friend's home because she doesn't know them. Mother made no other arrangements for K for the night. Police took K back to the police station. (Exhibit A, p. 3; Exhibit B, pp. ).
12. The police contacted the Department and filed a 51A report alleging neglect of K by mother due to mother's refusal to have K stay at the home or make alternative arrangements. The Department screened-in the report for an emergency response. (Exhibit A).
13. Department emergency response workers met with K at the police station. She provided some background information and described the incident that night consistent with the above findings. K told the workers that she did not want to go home, but she would go home if mother would allow it. If mother allowed her to return home that night, K agreed to go to her room, not have contact with mother and get up and go to school in the morning. (Exhibit B, pp. 1-2).
14. Department emergency response workers spoke with mother on the phone. She also provided some back ground information and described the incident that night. She acknowledged that there has never been any physical violence in the home, however, she maintained that she felt unsafe with K in the home and she refused to allow K to come home. Emergency response workers spoke with mother about

options. Mother did not want to file a Child Requiring Assistance (CRA) petition or make any arrangements for K to stay elsewhere. She said that she wants to see K in residential treatment. (Exhibit B, pp. 2-3).

15. Emergency response workers went to mother's home and again tried to make a safety plan so that K could come home that night and then they could meet with the on-going social work staff the next day to make an appropriate plan. Mother again stated that she did not feel safe with K in the home and refused to allow her to come home. (Exhibit B, p. 4).
16. The Department took emergency custody of K that night and placed her in foster care. (Exhibit B, pp. 4, 5).
17. On January 11, 2017, the Department made the decision that the allegation of neglect was supported due to mother's refusal to allow K to come home and her failure to make an alternative arrangement for K's care. (Exhibit B, pp. 5-6).
18. Since the Department's decision, K has been in intensive foster care and she is doing well. (Testimony of the Department on-going supervisor).
19. I find that the Department had reasonable cause to believe that the Appellant neglected K and her actions posed a substantial risk to K's safety or well-being. The Department's decision to support the allegation of neglect was therefore in conformity with its policies and regulations. 110 CMR 2.00, 110 CMR 4.32, DCF Protective Intake Policy #86-015 Rev. 2/28/16 (See Analysis)

### Analysis

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A support finding of abuse or neglect requires that there be reasonable cause to believe that a child(ren) was abused and/or neglected; *and* that 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. 2/28/16

“‘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 C.M.R. §4.32(2).

“[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.

As K's parent, mother is her caregiver under Department regulations. 110 CMR §2.00(5) and DCF Protective Intake Policy #86-015, rev. 2/28/16.

"Neglect" is defined as 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. DCF Protective Intake Policy #86-015 Rev. 2/28/16

The Department found that mother failed to provide minimally adequate care for K by refusing to allow her to stay in her home and failing to make any alternative arrangement.

Mother argues that she felt unsafe with K in the home. She felt unsafe because K "came at her" on January 10, 2017. Mother contends that she tried to find someone who could take care of K after the December 2016, incident in case the same thing happened again. She asked a friend if she would take K, but the friend refused. She did not allow K to go to one of her friend's homes because the friends she had in mind drink alcohol and tattoo themselves. Another friend K suggested, she does not know. She essentially argues that she had no alternative arrangement available to her and she wanted the Department to place her in residential treatment.

Despite being the focal point of the discussion during the police response, the Department's response as well as the hearing, mother continues to be unable to articulate any particular reasonable basis for feeling unsafe with K in the home. Both mother and K denied that there has ever been any physical violence between family members in the home. Although the incident which led to the Department's response involved mutual grabbing of cell phones, any physical interaction was relatively minor. There is no evidence that K has ever harmed her mother or her sister or anyone else. There is no evidence of any other reason to justify mother's claim that she felt unsafe having K in the home.

If K had truly been a danger to anyone (including herself), that would or could have resulted in her hospitalization, but neither the police nor the Department staff felt K posed a risk to anyone after interacting with her. In fact, K expressed her willingness to return home for the night and she agreed to a safety plan.

The Department staff made a significant effort to try to resolve the matter for the night so K could stay at home and the family could meet with the on-going social worker and supervisor to develop a plan in the morning, but mother repeatedly asserted that she felt unsafe and refused to allow K to come home.

Even if mother's fear had a reasonable basis, as K's mother, she still has an obligation to ensure her safety and make some attempt to make an appropriate and safe alternative arrangement; however, mother did not make any arrangements.

Assuming that mother's claims that she was unable to allow K home due to safety concerns and she was unable to find an alternative arrangement are legitimate, that does not preclude the Department from finding her neglectful as the Department's regulations and definition of neglect contemplate a situation where a caregiver's failure to provide adequate essential care is due to inability.


For the above reasons, and in consideration of all the evidence in this matter, the Appellant did not provide K with minimally adequate care when she refused to bring her home. Additionally, there was evidence that the actions or inactions by the Appellant posed a substantial risk to K's well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16 (Fair Hearing Record). As such, there was sufficient evidence to support a finding of neglect.

### Conclusion and Order


The Department's decision to support allegations of neglect of K by mother was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which they lives, or in Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

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Anne L. Dale Nialetz,  
Administrative Hearing Officer

9/20/17  
Date

  
Erica Pogon  
Fair Hearing Supervisor