

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

**Linda Spears
Commissioner**

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

IN THE MATTER OF

CH and MH #2017 0121

FAIR HEARING DECISION

Appellants, CH (“CH”) and MH (“MH”; Collectively “Appellants”), appeal the Department of Children and Families (hereinafter “DCF” or “the Department”) decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On December 19, 2016, the Department received a report which alleged neglect of N and H by the Appellants, their parents, after N disclosed “Daddy punched Mommy” and “Mommy scratched Daddy”. The Department screened-in the report and conducted a response. On January 10, 2017, the Department made the decision to support an allegation of neglect of N and C by the Appellants. The Department notified the Appellants of its decision and their right to appeal.

Appellants made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at the DCF Robert Van Wart Area Office on May 25, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; MS, DCF Response Worker; CH, Appellant; MH, Appellant; [REDACTED] Appellants’ Attorney.

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 digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

Exhibit A: 51A Report of December 19, 2016
Exhibit B: 51B Report completed on January 9, 2017 by MS

For the Appellant(s):

Exhibit 1: Letter from Pediatrician in re N and C
Exhibit 2: Letter from Counselor in re Appellants

Issue to be Decided

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record, 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) 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. The Appellants are the parents of N and C. At the time of the report in question, N was four (4) years old and C was two (2) years old. (Exhibit B, p. 1)
2. The Appellants were N and C's caregivers under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. The Appellant were together for 10 years and married for 5 ½ years. The Appellants were not involved with the Department. CH is a firefighter and MH is a stay-at-home parent. (Exhibit B; Testimony of Appellants)

4. Prior to the report in question, the Appellants briefly attended couples counseling to address stressors in their relationship that often led to arguments. (Exhibit B, p. 4; Testimony of Appellants)
5. The children were visible in the community. N attended pre-school Monday through Thursday and C received twice weekly services from a Speech Pathologist and attended a group at [REDACTED]. The Appellants were involved with the children's care, responsive to the providers and addressed the children's needs. Prior to the report in question, there were no concerns for the Appellants' care of the children.¹ (Exhibit 1; Exhibit B, p.3; Testimony of MS)
6. Prior to the report in question, the family had recently returned from a vacation. During outings on vacations, it was customary for MH not to carry her purse and for CH to carry MH's driver's license along with his. When the family returned home, CH still had MH's driver's license. (Testimony of Appellants)
7. Shortly after the family returned home, CH wanted to get a Christmas tree. MH disagreed about going due to a scheduled doctor's appointment. The couple began to argue and amidst the argument MH asked CH for her driver's license. When CH did not immediately give her the license, MH grabbed him and scratched his neck and CH reactively punched her side as he simultaneously pulled away. (Exhibit B, p. 4; Testimony of Appellants and MS)
8. During the Appellants' brief argument, N and C were in the adjacent living room; they heard but did not see the argument. After the argument, N went into the kitchen, where still frustrated and angry, MH told N what happened. MH left for a doctor's appointment and CH took the children to get the tree without MH. (Exhibit B, p. 3; Testimony of Appellants)
9. On December 15, 2016, N went to pre-school. During circle time, N stated "Daddy punched mommy and mommy scratched Daddy". On Monday, December 19, 2016, a mandated reporter talked to N about his statement and asked N what happened. N repeated his disclosure and described what he witnessed. When asked where his father hit his mother, N responded "in the kitchen" and then was asked to point to where [on his body] CH hit NH and punched his own armpit. N's disclosure precipitated a 51A report to the Department. The Department screened-in the report and conducted a response. (Exhibit A, Testimony of MS)
10. During the discussion with N, the reporter asked N how he felt about what happened. N replied "because". When asked if he was happy or sad when the incident happened, N replied "I was happy." (Exhibit A, p. 3)
11. On December 22, 2016, MS visited with N at school and conducted an interview. During the interview, the Response Worker asked N what his parents did when they

¹ Notably, the mandated reporter commented that the Appellants have been "great". (Exhibit A, p. 3)

were mad at each other. N told the worker his parents “yell at each other” and that “one-time daddy punched mommy or her side and mommy scratched daddy on her neck”. The Response worker determined that N was “very clear” that he witnessed the incident and that his statements were consistent with the 51A report. N denied fearfulness of his parents and did not display any changes in behavior following the reported incident. (Exhibit B, p. 3; Testimony of MS)

12. The Department viewed C at home but did not interview C due to his lack of responsiveness to the worker. (Exhibit B, p. 3; Testimony of MH)
13. The Department interviewed the Appellants separately. It was undisputed that the Appellants had an argument and a brief physical altercation, in part precipitated by MH’s anxiety and over reactivity. When the Response Worker interviewed MH, she denied she was fearful of CH, despite her concern that CH had “anger issues.” Initially, MH told the worker CH punched her and she scratched him. MH later admitted she was not forthcoming with the Response Worker and that she scratched CH first, he reactively hit her and that she intended to speak with her Primary Care Provide about her anxiety. CH corroborated MH’s statements regarding the incident. The Appellants’ statements at the hearing were consistent with their statements to the Response Worker. (Exhibit B, pp. 3, 4; Testimony of MH and Appellants)
14. The Appellants discussed the incident with their Primary Care Provider and with the PCP’s recommendation, resumed couples therapy. The Appellants agreed that through sessions thus far, they acquired more tools to cope with stress, deescalate and handle arguments and make them “calmer [and] civil”. (Exhibit 2; Testimony of Appellants)
15. Based upon the information she gathered during the response, which included that: it was “a onetime incident”; the Appellants admitted to incident and MH was willing to address her issues and felt Department intervention would be helpful to encourage CH to address his issues; the Response Worker recommended a finding of “substantiated concern”. (Testimony of MS; see DCF Protective Intake Policy #86-015, rev. 2/28/16)
16. On January 11, 2017, the Department supported allegations of neglect of N and C by the Appellants because the children were present and witnessed the altercation between the Appellants. The Department asserted that it is Department policy to support the allegations when children are exposed to “domestic violence”.² The Department determined that N was “so emotionally impacted” that he reported the incident to multiple people.³ The Department determined that the Appellants’ actions placed the children in danger and posed a substantial risk to their safety and well-being. (Exhibit B, p. 6; Testimony of MS; DCF Protective Intake Policy #86-015, rev.

² MS testified that [her office] conducts a meeting when there is a recommendation to find substantiated concern. MS testified that she recommended a finding of substantiated concern; however, that following an administrative review, the office managers involved in the meeting determined otherwise.

³ MS testified that N’s repetition of the reported incident demonstrated the emotional impact.

2/28/16)

17. After a review of all the evidence and for the following reasons, I find the Department did not have reasonable cause to support allegations of neglect of N and C by the Appellants for the following reasons:

- a) The Department did not demonstrate that the Appellants failed to provide minimally adequate care for the children, as defined in the Department's policy, and;
- b) The Department did not demonstrate that the Appellant's actions placed the children in danger or posed a substantial risk of harm to the children's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

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." Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caregiver; 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

"Neglect means 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition"; 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

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 Appellants were N and C's caregivers under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

The Department determined that the Appellants neglected N and C because the children were present and witnessed an altercation between the Appellants. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellants, through their Attorney, argued that the Department's decision was not reasonable or supported by sufficient evidence. This Hearing Officer finds their argument persuasive.

This Hearing Officer is obliged to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that the Appellants neglected the children. It was undisputed that the Appellants had an argument that escalated into an isolated, brief and reactive physical altercation and the children were present in the house at the time and shortly after the incident, N talked about the incident during circle time at school. A mandated reporter revisited the incident the following week and asked N questions. There was no evidence of any concern for the children prior to the reported incident or evidence to support discernible change in the children's affect, behavior or functioning following the reported incident. For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision that the Appellants neglected the children was not based on reasonable cause or supported by the evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691.

Additionally, there was no evidence that the Appellant's actions or inactions placed N and C in danger or posed a substantial risk to N and C's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

Appellants have shown by a preponderance of the evidence that the Department's decision to support allegations of neglect on behalf of N and C was not made in

accordance with the Department's policy and regulations, and therefore the Department's decision is REVERSED.

4-2-18
Date

Maura E. Bradford
Maura E. Bradford
Administrative Hearing Officer

Nancy S. Brody
Nancy S. Brody
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner