

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

JN

#2017-0126

FAIR HEARING DECISION

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

Procedural History

On December 20, 2016, the Department received two 51A report from mandated reporters alleging physical abuse of E and the neglect of A, T, and E by the Appellant; the allegations were screened in for a non-emergency response by the Department. Upon completion of its response period, the Department supported the allegation of physical abuse of E and unsupported the allegation of neglect of the children. The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was on, March 22, 2017 at the Department of Children and Families' Area Office located in Bradford, MA. All witnesses were sworn in to testify under oath. The record officially closed upon conclusion of the second date.

The following persons appeared at the Fair Hearing:

Carmen Colón
JN
RH
KW
JM
MW

Fair Hearing Officer
Appellant
DCF Ongoing Social Worker
DCF Ongoing Supervisor
DCF Response Social Worker
DCF Response Supervisor

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

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

For the Department:

- Exhibit A: 51A Intake Report of December 20, 2016 2:03pm
- Exhibit B: 51A Intake Report of December 20, 2016 7:44pm
- Exhibit C: 51B Child Abuse / Neglect – Non Emergency Response of January 13, 2017

For the Appellant:

None for the Appellant

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 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 parents(s)/ caregiver(s) placed the child (ren) in danger or pose substantial risk to 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

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

1. JN is the father of A, E and T and was a caregiver pursuant Departmental Regulation CMR 110 2.00, DCF Protective Intake Policy #86-015, rev 2/28/16 (Exhibit A, Exhibit B, p.1).

2. The children were the following ages at time of the report: A was 12 y.o., E was 16 y.o. and T was 10 y.o. The reported incidents by E who was the focus of this hearing, took place

several years prior to the filing. (DCF RSW testimony, Appellant testimony, Exhibit C, p. 4 and 10)

3. Appellant was married to PN, mother of the children. Appellant moved out of the family home in March of 2015 due to domestic violence incidents and an active restraining order. The order did not allow him access to the children until June of 2016 at which time order was modified and Appellant was granted supervised visitation with his children. (Exhibit B, p. 4, Appellant testimony, DCF RSW testimony)

4. The Appellant and his family have a history with the Department dating back to March 2016 for allegations of neglect and physical abuse of T by Appellant. This allegation was unsupported; however, there is thorough documentation by the Department of a domestic incident which took place in the same time period. In this incident all children were present and the Appellant was said to have "choked" his wife in front of the children. (Exhibit, p.10)

5. Prior to March 2016, the children, E, T, and A witnessed ongoing arguments, were exposed to the Appellant's then volatile behavior which would escalate. As a result, Appellant was forced out of the home via 209A. The children have been described as traumatized by collaterals. The Appellant arrested was in 2015 and completed a batterers treatment program. (Exhibit C, p. 2)

6. During the time when Appellant resided in the family home, the children were between the ages of 9 and 13. The children, specifically E, who is the focus of this hearing, and the oldest of the three children, can recall incidents of violence in the home dating back to 2013. (Exhibit C, p.1, 2, 4)

7. Over the years, E, has been engaged in mental health treatments, was psychiatrically hospitalized and has experienced issues with managing her behavior. E, since her father moved out of the home has refused to see him. (Exhibit C, p.4)

8. On December 20, 2016, the Department received two 51A reports alleging the neglect of all children and the physical abuse of E by Appellant for past events. (Exhibits A, B)

9. During the Department's response period, the DCF Response Social worker conducted interviews with all family members in their perspective homes. The children were interviewed individually. Per these interviews, the DCF RSW obtained the following disclosures:

a. Appellant had been arrested and removed from the home for incidents of violence and had been denied access to the children for an extended period of time.

b. E and her sisters had witnessed ongoing incidents of violence in the home. JN was said to have "dragged" and "grabbed" E 's wrist to the point where E thought it had been broken

c. E and sisters were in fear of father and his volatile behavior

(Exhibit C , p. 3,4, 10)

10. Appellant, per his own statements, corroborated the allegations of abuse, reporting that what E disclosed happened years ago. (Exhibit C)

11. Collaterals involved with E and T expressed concerns for their “re-traumatization” as both girls were in fear that mother would allow JN to move back in to the home. (Exhibit C, p.4)

12. On January 13, 2017, the Department supported the allegations of physical abuse of E by Appellant. (Exhibit C)

13. Upon review of the evidence, I find that the Department’s decision to support the allegation of physical abuse by the Appellant was supported by the credible evidence for the following reasons:

- a. There was an extensive history of violence in the home and concerns for the Appellants volatile behavior which led to his eventual removal from the home and incarceration.
- b. Although the disclosure of abuse was of several years later, it became clear through review of DCF records, ongoing disclosures made by E, concerns expressed by collaterals that Appellant’s past behavior did place E in substantial risk of injury on more than one occasion.

110 CMR 2.00 DCF Protective Intake Policy #86-015, rev 2/28/16

Applicable Standards

In order for the Department to “Support” an allegation of neglect, the Department must find that there is reasonable cause to believe that the child(dren) 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 Police #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 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)

“[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §51A” Care and Protection of Robert, 408 Mass. 52, 63-64 (1990) 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 “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

"Abuse" is defined as (1) the non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse to a child; or (2) the victimization of a child through sexual exploitation or human trafficking, whether or not the person responsible is a caregiver. The definition is not dependent upon location. Abuse can occur while the child is in an out-of-home or in-home setting.

Substantial Risk of Injury

A situation arising either through intentional act of 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.

Physical Injury

Death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such factors as the child's age, the circumstances under which the injury occurred, and the number and location of bruises.

Emotional Injury

An impairment to or disorder of the intellectual or psychological capacity of a child as evidenced by an observable and substantial reduction in the child's ability to function within normal range of performance and behavior.

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

"Caregiver" means a child's: (1) a child's parent, stepparent, guardian or any household member entrusted with the responsibility for a child's health or welfare; or, (2) 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). 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

In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Appellant has not been persuasive in his arguments that he at no time physically abused any of his children. The Department was able to obtain corroborating statements from the children at different times as well as collaterals. The ongoing concerns were also corroborated by the family's DCF record which documented the family history, incidents of violence along with past allegations of abuse made by the reported child who does not reside with either parent. By the Department's collection of evidence, the DCF RSW was able to demonstrate that there was "reasonable cause to believe" that the Appellant physically abused the subject child. 110 CMR 4.32(2), DCF Protective Intake Policy #86-015 Rev. 2/28/16

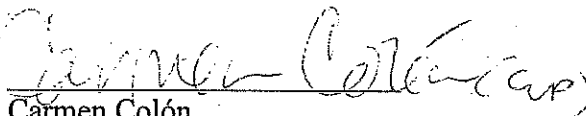
While at the Fair Hearing, Appellant argued the E's statements were not reliable due to her mental health diagnosis and medication regimen yet he was not able to provide an explanation as to the reason of the ongoing disclosures of abuse.

The Appellant was not able to show by preponderance of the evidence that the Department's decision to support the allegations mentioned above, was not made in conformity with the Department's policies and / or regulations, therefore the Department's decision will stand.

Conclusion and Order

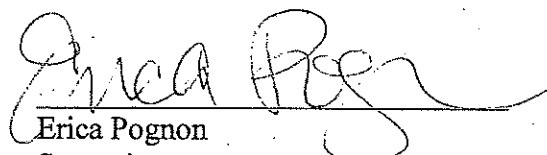
In conclusion, the Department's decision to support the 51A report of Physical Abuse of E by the Appellant is AFFIRMED.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or in Suffolk County, within thirty (30) days of the receipt of this decision. See, M.G.L. c.30A, §14. In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Carmen Colón
Fair Hearing Officer

4/3/18

Date


Erica Pognon
Supervisor