

**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 JP 2017-0142
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Fair Hearing Decision

The Appellant in this Fair Hearing is JP. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of J (hereinafter "J" or "child") by Appellant pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On December 13, 2016, the Department received a 51A report from a mandated reporter alleging the neglect of the above referenced child by Appellant; the allegation was screened in for a Non-Emergency Response by the Department and upon its completion, the Department decided to support the allegation of neglect of the child by the Appellant. The Department informed the Appellant of its decision and of her right to appeal the determination. The Appellant made a timely request for a Fair hearing under 110 CMR 10.06.

The Fair Hearing was held on April 25, 2017, at the Department of Children and Families' Area Office in Chelsea, MA. All witnesses were sworn in to testify under oath and the record closed officially upon conclusion of the Hearing.

The following persons appeared at the Fair Hearing:

Carmen Colón
JP
MG
LM

Fair Hearing Officer
Appellant
DCF Response Supervisor
DCF Response Social Worker

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 Report of December 13, 2016

Exhibit B: 51B Non-Emergency Response of January 5, 2017

For the Appellant:

Exhibit 1: Criminal Docket [REDACTED] – February 2, 2017

Exhibit 2: Abuse Prevention Order [REDACTED] – December 30, 2016

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

1. The Appellant, JP, was the father of J and therefore 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. At the time of the report, J was one (1) year old. J resided with the Appellant, her mother, MP, and brother, Ja, who was five (5) years old. (Exhibit A, Exhibit B, p.1)

3. On December 13, 2016, the Department received a 51A report from a mandated reporter alleging the neglect of J by the Appellant. It was alleged the Appellant engaged in a domestic dispute with his wife, MP. The dispute escalated to a physical altercation whereby the Appellant pushed and held his MP down on a sofa causing her to hyperventilate and experience difficulty breathing. Emergency medical technicians arrived and contacted the local police department. Once in the home, there was no mention of children being present for the altercation and neither intake reports by the EMT's or responding police officers noted children being present during the reported incident. MP was the only party to report that J was present at the time of the reported incident. (DCF Response Social Worker Testimony; Exhibit A, p.3)

5. On December 15, 2016, the Department conducted their response. At the time of the response, MP advised DCF Response Social Worker (hereinafter "DCF RSW") she and the Appellant argued over his involvement with other women who resided out of the country. (DCF RSW Testimony)

6. The DCF RSW contacted Collaterals and family members involved with the family. The following information was obtained:

- a. No evidence was obtained that this reported altercation was not an isolated event. (Exhibit B, p.3)
- b. As a result of the altercation, Appellant was arrested and removed from the family home. (DCF RSW Testimony; Appellant Testimony)
- c. J was home during the altercation, sleeping in another room of the family home. (Appellant Testimony)
- d. Appellant and MP appeared before the court several times, as an Abuse Prevention order was issued against the Appellant. At MP's request the order was later vacated. (Appellant Testimony; DCF RSW Testimony; Fair Hearing Record)
- e. MP had Appellant's cell phone which he attempted to get from MP. It was not clear to DCF RSW what the reported altercation between the Appellant and JP looked like, and no clarity was obtained by DCF RSW. (Exhibit B, p.5)

7. The DCF RSW interviewed Ja, Appellant's son. Ja confirmed that his father and mother argue but denied witnessing any incidents of violence in the home. (Exhibit B, p.4; DCF Response Worker Testimony)

8. On December 21, 2016 medical providers communicated there were no reported concerns for either of the children, J or Ja. (Exhibit B, p.5)

9. Although the Department's decision to rely on MP's statements and description of the reported altercation is understandable, I find that the information gathered was insufficient to support a finding of neglect, as there was no evidence proving that J was negatively impacted by the reported event or even present. The Department's decision to support the allegation of neglect was not made in compliance with its regulations. 110 CMR 2.00.

10. There was insufficient evidence gathered that the Appellant failed to provide minimally adequate care for J. The reported altercation between Appellant and MP alone was insufficient to support such finding. There was no evidence that the Appellant was not providing for his daughter's needs.

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 a 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 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 §51A" 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

"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 solely to the existence of a handicapping condition. 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, the term "caregiver" includes, but is not limited to school teachers, babysitters, school bus drivers, camp counselors. The "caregiver" definition should be construed broadly and inclusively to encompass any person who at the time in question is entrusted

with a degree of responsibility for the child. This specifically includes a caregiver who is a child such as 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 Appellant, (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 Appellant; 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

Analysis

After review of the evidence provided, it is undisputed that the Appellant and his wife, MP, did argue and engaged in a physical altercation of some kind. It is also undisputed that this was an isolated event and that there was no previous history of domestic violence in the home (DCF RSW Testimony; Exhibit B, p.5). The reported altercation involved a confrontation initiated by MP and involved Appellant's previous relationship and cell phone.

The Department argued that Appellant's actions placed the reported child at risk of neglect, yet failed to provide evidence of how the event had a negative impact on the child or how the Appellant failed provide minimally adequate care to his daughter, J, who was in another room of the home. The Department obtained information on the couples' relationship and ongoing arguments between the two yet failed to obtain clarification on the frequency and intensity of the reported arguments.

The Appellant admitted to arguing with his wife and attempting to get his cell phone from her; yet denied ever holding her down, obstructing her breathing or his child present. At the time of the filing, there were no injuries noted to mother or any indication that a child witnessed the alleged incident by the mandated reporters who responded to the home. All that was noted was mother's statements around child having been present.

The Appellant has shown by preponderance of the evidence that the Department's decision to support the allegation of neglect not in conformity with the Department's policies and / or regulations and resulted in substantial prejudice to the appellant.

Conclusion and Order

In conclusion, In conclusion, the Department's decision to support the 51A report of neglect of A by the Appellant is **REVERSED**.

Carmen Colón ^(dit)

Carmen Colón
Fair Hearing Officer

12/22/17
Date

Darlene M. Tonucci
Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner