

**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

DP #2017 0145

FAIR HEARING DECISION

Appellant, DP (“Appellant”), appeals the Department of Children and Families (hereinafter “DCF” or “the Department”) decision to support an allegation of sexual abuse pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On May 4, 2016, the Department received a report which alleged past sexual abuse of K by the Appellant, her father. The basis of the reporter’s concern was K’s disclosure that on three separate occasions in 2014, the Appellant sexually abused her. The Department conducted a response and on May 24, 2016, made the decision to support an allegation of sexual abuse of K by the Appellant. The Department notified the Appellant of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06(4)(b). A hearing was held at the DCF Holyoke Area Office on April 4, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; AW, DCF Investigator; DP Appellant; MP, Mother of Appellant/Appellant’s Advocate; AP, Appellant’s Sister, Note Taker/Scribe.

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.

Prior to the completion of the hearing, the record was left open until April 21, 2017 for additional submissions by the Appellant.

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 May 4, 2016
- Exhibit B: 51B Report completed on May 24, 2016 by AW

For the Appellant(s):

- Exhibit 1: Letter from Appellant's Nurse Case Manager
- Exhibit 2: Fair Hearing Decision issued November 29, 2016
- Exhibit 3: DCF Investigation of February 2016 (Incorporated with Exhibit 9)
- Exhibit 4: Cell Phone Screen Shots
- Exhibit 5: Visitation Log
- Exhibit 6: Collection of Documents Addressing Credibility of NP
- Exhibit 7: Photos of Appellant with K and K with Phone Pouch
- Exhibit 8: [REDACTED] Police Report (highlighted and annotated by Appellant)
- Exhibit 9: Collection of DCF 51A Reports, Investigations and Assessments

Appellant's Exhibit 4 is excluded for lack of relevance and will not be considered further. The Appellant submitted the exhibit as a show of proof regarding character and credibility of JT, partner of the children's mother.

Appellant's Exhibit 7 is excluded. K cannot be positively identified in the first photo; the second is a photo of K with the Appellant and a puppy and except for identification is immaterial.

Issue to be Decided

The issue presented in this 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. 110 CMR 10.05

Findings of Fact

1. The Appellant is the father of K and Ky. The children's mother is NP. NP and the Appellant ended their relationship in 2004. At the time of the report in question, the children resided with NP and her partner, JT. (Exhibit B, p. 5; Exhibit 9, Assessment Completed on 11/18/2016)
2. Prior to the report in question, the Appellant visited with the children at his home, where he resides with his parents DP and MP and MP's elderly mother. The Appellant relied upon MP for support; MP supervised the visits and kept a log regarding the visits. The Appellant's last visit with K at his home was January 17, 2015, 16 months prior to the report in question. (Exhibit 5; Exhibit 6; Exhibit 9, Assessment Completed on 11/18/2016, p. 9; Testimony of Appellant)
3. During visits with the children, the Appellant was their caregiver under Department regulations. 110 CMR 2.00
4. The Appellant was diagnosed with Schizophrenia in 2004. At the time of the report in question, the Appellant remained engaged in long term treatment for his mental illness and was compliant with his treatment. The Appellant experiences medication side effects, including fatigue. (Exhibit 1; DCF Response completed on March 17, 2016, p. 7; Testimony of Appellant)
5. In January 2015, the Department received and investigated a report which alleged neglect of K and Ky by the Appellant and physical abuse of Ky by his paternal aunt AP. The report was based upon concern for K's excessive school absences and concern that K experienced significant, incapacitating separation anxiety from NP. NP and K attributed K's anxiety to threats made by the Appellant toward NP and JT which K reportedly overheard. On February 20, 2015, the Department supported the report and completed an assessment that included the Appellant, NP, JT, K and Ky. During the Assessment, the Department noted concern for NP's interference in the assessment process and "very scripted responses" by the children. (Exhibit B, pp. 1, 2; Exhibit 9, DCF Intake Report of January 29, 2015; Exhibit 9)
6. The Department's February 20, 2015 support decision was overturned following a Fair Hearing on April 16, 2015. The 2015 Fair Hearing decision addressed the lack of credible evidence to support that the Appellant threatened NP in K's presence and is not broadly construed to support that K's statements in the instant case are not credible. (Exhibit 2; Exhibit 9)
7. Between January 29, 2015 and July 1, 2015, the Department provided ongoing services to NP, JT, K and KY. During the Department's involvement, K was evaluated and began treatment for her mental health issues. K's symptoms improved, she attended school regularly and developed a relationship with her counselor. The Department closed the case. (Exhibit B, p. 2; Testimony of AW)

8. On February 25, 2016, the Department received a report which alleged neglect and physical abuse of K by the Appellant after K disclosed that the Appellant approached her outside her home, hit her, threatened her and threatened to kill NP if K told anyone [about the encounter]. The Department did not contact the Appellant during the investigation. The Department noted that the allegations bore similarities to those made in January 2015. The Department supported the allegation of neglect of K by the Appellant and closed the case following the investigation. (DCF Intake Report of February 25, 2016; DCF Response completed on March 17, 2016, p. 7; Testimony of AW)
9. During an interview on March 8, 2016, a Department Response Worker interviewed K. K denied sexual abuse by the Appellant and told the Response Worker she "would tell mom [if abuse occurred]." (Exhibit 6; Exhibit 9, DCF Response completed on March 17, 2016, pp. 3, 4)
10. On May 4, 2016, K's friend, KT, approached a mandated reporter and told the reporter that K had "something to tell [the reporter]." K subsequently disclosed that during the summer of 2014, the Appellant sexually abused her. K's disclosure precipitated a report to the Department. The reporter attached a typed narrative of K's disclosure. The Department screened-in the report, completed a District Attorney Referral and conducted a response. (Exhibit A; Exhibit B, Appended Narrative; M.G.L. c. 119 §51B(k); Testimony of AW)
11. KT's mother was unwilling to allow a police detective to speak with KT on the basis that she did not want her daughter involved and because she was afraid the Appellant would hurt her daughter. (Exhibit 8)
12. The mandated reporter spoke with NP about K's disclosure. NP denied any previous disclosure of sexual abuse by K. (Exhibit B, pp. 2, 3; Testimony of AW)
13. On May 19, 2016, K participated in a forensic interview and disclosed that on three (3) separate Saturdays between Fall 2014 and January 4, 2017, the Appellant forcibly touched her "private areas", kissed her neck and chest and on two occasions made her touch his penis "until something wet" came out. K stated that the Appellant threatened to hurt her or NP if she "told anyone". Further details were disclosed and documented by the Response Worker and in documents provided by the mandated reporter. (Exhibit B, pp. 3, 4 and Appended Narrative; Exhibit 8; Testimony of AW)
14. K visited the Appellant's home on four (4) Saturdays between Fall (September 2014) and January 17, 2015. On Saturday December 20, 2014 and Saturday January 17, 2015, K visited the home without Ky. Ky refused a visit due to conflict with his cousin P. Both K and Ky refused to visit the Appellant on several occasions in the period between September 2014 and January 2015. (Exhibit 5)
15. The Department determined that K's disclosure during the forensic interview was reliable on the basis that her "body language and words matched". The Department

determined that it was unlikely that K's statements were coached or influenced where K's statements were consistent; K was interviewed independently by a mandated reporter and during a forensic interview and, NP was unaware of any past abuse.¹ (Exhibit B, p. 3; Exhibit 6; Testimony of AW)

16. Due to K's fear of the Appellant and concern for retaliation by the Appellant, the Department did not notify the Appellant of the allegations or contact the Appellant during the response. The Appellant was interviewed by a [REDACTED] Police Detective regarding the allegations² and with respect to K's disclosure during the forensic interview. Consistent with his brief testimony at the hearing, the Appellant denied that he sexually abused K. The Appellant was arrested and charged with crimes related to K's disclosure. (Exhibit B, pp. 5, 6; Exhibit 8; Testimony of AW and Appellant)
17. The Department did not contact or interview MP or other members of the Appellant's household (Exhibit B). The Department did not comply with 110 CMR 4.27(2) or 4.27(5) by failing to pursue obvious contacts, including the Appellant, which were likely to yield some information to corroborate or disprove the allegations; and, although the Response Worker and Supervisor may determine the nature of the contact (e.g. in the office or by phone) the Department is required to contact a parent a minimum of one time and provide a statement of rights.
18. On May 23, 2016, the Department supported an allegation of sexual abuse of K by the Appellant. The basis for the Department's decision was K's disclosure, which the Department determined was consistent and credible. (Exhibit B, pp. 7,8; Testimony of AW)
19. There are inconsistencies in K's statements. In her initial disclosure, K stated that the alleged abuse occurred during the summer of 2014. During the forensic interview, K stated the alleged abuse occurred in the fall of 2014 when she was in school. K stated that no one was home when the Appellant abused her; however, during the forensic interview stated her paternal grandfather [DP] was home when the [first] incident occurred. (Exhibit A; Exhibit B, p. 3)
20. Although aspects of K's disclosure are inconsistent, given K's history of anxiety, her demeanor during the interview and previous hesitation to disclose until she established a relationship with the reporter, it is plausible that K suffered lapses of memory regarding certain details. (Testimony of AW)
21. Regarding K's credibility, the Appellant asserted there are numerous inconsistencies in K's statements across time which affect the veracity of her disclosure in the instant

¹ AW testified as to her expertise, including an MSW degree, licensure as a Licensed Certified Social Worker (LCSW), nearly 20 years with the Department and present position as a supervisor. AW testified that based on her clinical experience, that K had developed a relationship with the reporter and felt safe talking about the abuse.

² AW testified that the Westfield Police Detective notified the Appellant of the Department's investigation but that she did not.

case. The Appellant reached back to the Department's responses in January 2015, the related Fair Hearing decision and the March 2016 response to discredit K. (Fair Hearing Record; Exhibit 2; Exhibit 6; Exhibit 9, DCF Intake Report of January 29, 2015, p. 4; DCF Response completed on March 17, 2016)

22. During the hearing, MP made a statement on the Appellant's behalf. MP asserted that the Appellant was never left alone with K and that other family members were always in the home. (Exhibit 5)
23. The issue of evaluating the credibility of a child's allegation of sexual abuse is addressed by the court in Covell v. Department of Social Services, 439 Mass. 766 (2003). In Covell, the court observed that one of the primary issues in cases involving a child's allegation of sexual abuse is whether there is any reason why the child would invent or fabricate the allegation. (Covell at 784)
24. In the instant case, the evidence does not support that K's statements were the result of suggestive questioning, or that another adult was motivated to harm the Appellant and planted the allegation in K's mind; or, that K was motivated to invent the allegation herself, particularly where there was no meaningful contact with the Appellant for 16 months. The absence of a plausible reason for fabrication tends to support K's credibility. Covell v. Department of Social Services, 439 Mass. 766 (2003)
25. The Department's failure to fully comply with Department regulations while completing the response did not result in substantial prejudice to the Appellant. The Appellant offered limited testimony at the hearing. Historically, MP has acted as the Appellant's advocate. MP was offered wide latitude to advocate for the Appellant and organize and present documentary evidence on the Appellant's behalf. Prior to the completion of the hearing, the record was left open until April 21, 2017 for additional submissions.³ The Appellant did not make any further submissions.
26. After a review of all the evidence and for the following reasons, I find the Department had reasonable cause to support an allegation of sexual abuse of K by the Appellant:
 - a) K made a credible disclosure of sexual contact by the Appellant;
 - b) Under Department regulations, any sexual contact between a caretaker and a child under the care of that individual constitutes sexual abuse (110 CMR 2.00);
 - c) The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision.
27. In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there is a reasonable basis for the decision. 110 CMR 10.05

³ AP was permitted to act as a scribe for the Appellant. During the hearing AP was not permitted to testify and was advised that she could submit a written statement if she desired to do so.

Applicable Standards

In order 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

“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

“Abuse” means the non-accidental commission of any act by a caretaker upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. 110 CMR 2.00

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. 110 CMR 10.05

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

During visits with K, the Appellant was a caregiver under Department regulations. 110 CMR 2.00

The Department supported an allegation of sexual abuse of K by the Appellant. The basis for the Department's decision was K's disclosure, which the Department determined was consistent and credible. 110 CMR 2.00 and 4.32

Appellant, with the assistance of NP, illustratively argued that the Department's response was incomplete and did not comply with Department regulations and the decision was not reasonable or supported by substantial evidence.

This Hearing Officer is obliged to consider the entire administrative record, including evidence that may cut other ways. The Appellant asked this Hearing Officer to assess the credibility of K's statements across time, including that K did not disclose abuse during other Department responses. The absence of past disclosure does not exclude the possibility that K was abused by the Appellant. This Hearing Officer relied upon the Department's testimony and clinical expertise concerning why K may not have disclosed abuse prior to the report in question. Despite procedural missteps during the response, the evidence supports that K made a credible disclosure of sexual abuse. With respect to the totality of the evidence and for the reasons set forth in the above Findings of Fact, this Hearing Officer finds the Department's decision was reasonable and made in accordance with Department regulations. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); Wilson v. Department of Social Servs., 65 Mass.App.Ct. 739, 744-745 (2006)

Conclusion and Order

Appellant has not shown by a preponderance of the evidence that the Department's decision to support allegations of sexual abuse on behalf of K was not in conformity with Department regulations or without a reasonable basis, therefore the Department's decision is AFFIRMED.

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

12-11-17
Date

Maura E Bradford
Maura E. Bradford
Administrative Hearing Officer

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor