

**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 )  
( P.F. & J.F. )  
( FH #2017-0146 )  
( )

**HEARING DECISION**

**Procedural History**

The Appellants, also referred to herein as Mr. F and his wife, Mrs. F, appeal the decision of the Department of Children and Families [hereinafter “the Department” or “DCF”], to support for neglect of M and C, pursuant to M.G.L., c.119, §§51A & 51B.

On December 28, 2016, the Department received a 51A Report from the police alleging neglect of three year-old M and one year-old C by the Appellants, their parents, in connection with a domestic incident that occurred between the parents on December 27, 2017 at the marital home. The 51A Report was screened in for a 51B non-emergency response and assigned to DCF response social worker, M.P. On January 19, 2017, following the 51B response, the Department supported for neglect of the two children by the Appellants because they exposed the children to the domestic disturbance. The neglect finding was approved by DCF management on January 20, 2017. The Department opened the family’s case for a comprehensive assessment, now called a family assessment action plan [FAAP], because there was concern there would be another reoccurrence. Mr. F. had returned to the marital home shortly after the argument and the Appellants were unwilling to work on any treatment.

The Department notified the Appellants of the decision and their right of appeal by letter dated January 20, 2017. Mr. F filed a timely request for Fair Hearing [“Hearing”] on February 6, 2017, on behalf of himself and his wife, pursuant to 110 CMR 10.06 & 10.08. The request for Hearing was granted and held on April 18, 2017 at the Department’s South Central Area Office in Whitinsville, MA. Present were the DCF Response Supervisor, A.S.; the DCF Response Social Worker, M.P.; DCF Intern, J.B.; the Appellants Attorney, A.C.; and, the Appellants. The response social worker, response supervisor, and the Appellants were sworn in and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a compact disk [CD].

Admitted into evidence for the Department is the DCF 51A Report of December 28, 2016 [Exhibit A] and the corresponding 51B Response Supported on January 19, 2017 [Exhibit B]. Admitted into evidence for the Appellants is the Police Narrative of the December 27, 2016 Domestic Modified on February 5, 2017 [Exhibit 1]; the Original Police Narrative of December

27, 2016 [Exhibit 2]; a Letter of February 6, 2017 from the Assistant Director of the Children's Daycare [Exhibit 3]; the Appellants' Redacted Budget Plan [Exhibit 4]; the DCF 51A Report of December 28, 2016 [Exhibit 5] and the corresponding 51B Response Supported on January 19, 2017 [Exhibit 6]; a Letter of DCF Notification of the Decision to the Appellants [Exhibit 7]; the Complete Police Incident Report Including Original and Modified Narratives [Exhibit 8]; Police Department Call Log Re: December 27, 2016 Events [Exhibit 9]; Police Department Call Log Re: December 29, 2016 Events [Exhibit 10]; Police Department Call Log Re: December 30, 2016 Events [Exhibit 11]; and, Hubbard v. Dep't of Children & Families, Superior Court, September 29, 2014 [Exhibit 12] The Hearing record was closed on May 10, 2017 after receipt of Exhibits 5-12 and counsel's memorandum.<sup>1</sup>

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

#### **Standard of Review**

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. 110 CMR 10.05

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05

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<sup>1</sup> In her memorandum, counsel argued some facts that were not in evidence and not under the preview of the response social worker and her supervisor involved in the 51B response. The Appellants' DCF on-going social worker was not called to testify as to current work with the family nor any documents pertaining to this submitted. [Administrative Record].

### Findings of Fact

1. The Appellants are the parents of two sons – three year-old M and one year-old C. The family is intact. [Exhibit A; Exhibit B, pp.1-2; Exhibit 8, p.1]
2. The Appellants were in a relationship for seven years and married for six, and had resided at their family home for the last five years. [Exhibit B, p.3]
3. The Appellants had no DCF history, prior to the matter at hand. [Exhibit B, p.1] Nor has there ever been a like disturbance in the Appellants' relationship, prior to the verbal and physical altercation of December 27, 2017. [Testimony of Mrs. F; Exhibit B p.3]
4. Under review herein is a domestic disturbance that occurred at the marital home on December 27, 2017 between the Appellants, which resulted in a police response. The children were in the home at the time. There is no dispute on these essential facts. [Administrative Record]
5. On December 27, 2017, Mr. F called the police department requesting that the police respond to the home because his wife "just attacked him." During the call, he stated that his wife was inside the home and he was outside, but he was afraid for his small children, who were inside. [Exhibit 9]
6. Officer T.S. responded to the marital home, spoke to the Appellants and viewed the children. Upon arrival, the officer saw the Mr. F was on the front lawn of the home. Mr. F told the officer that he and Mrs. F had an argument over finances and she told him not to come home from work. However, he did go home to retrieve his belongings and when he did, they argued at which point Mrs. F assaulted him. She struck, choked, and bit him. During the argument, Mrs. F attempted to harm herself by jumping off the deck, but he physically restrained her from that attempt. The officer then spoke with Mrs. F inside the residence. Also present were the children. Mrs. F corroborated Mr. F's statements. She stated that Mr. F had been lying about their finances and had accumulated a substantial amount of debt without her knowledge. She was frustrated about the situation and it manifested during the argument. [Exhibit 1; Exhibit 2; Exhibit 8]
7. This is the second time Mr. F had put his family in debt. [Exhibit B, p.3]
8. On scene, Mr. F was observed to have a decent fresh bite mark on his left bicep, but it had not broken the skin. [Exhibit 9; Testimony of the Response Social Worker] There is no evidence of record that Mrs. F was physically injured. [Administrative Record]
9. The Appellants declined restraining orders, and Mr. F did not pursue criminal charges against his wife, Mrs. F. [Exhibit 1; Exhibit 2; Exhibit 8; Exhibit 9]

10. The Department was concerned that Mr. F had returned to the home that night, after leaving, because it could have developed into another argument. [Exhibit B, p.4; Testimony of the Response Social Worker]
11. The Appellants were very concerned about their privacy and the impact of the incident and DCF involvement on Mrs. F's teaching career, so much so that they didn't want their family, employers or the children's daycare to know about the incident.
12. Mrs. F was not interested in treatment or couples counseling to address the matter, because she did not want anybody to know and because she felt they did not need it. [Exhibit B, p.3; Testimony of the Response Social Worker] The Appellant said they have discussed a budget, set one up, and discussed it with each other. [Exhibit B, p.3; Exhibit 4; Testimony of the Response Social Worker] The DCF supervisor had a conversation with Mr. F after the response that this was insufficient, that it might lead to another argument concerning finances, and that counseling was recommended. [Testimony of the Supervisor]
13. Mr. F contacted the police department on December 29, 2016 to amend his statement from that night and on December 30, 2016 went to the police station and provided a written statement recanting his original verbal statement. The Appellants wanted to put the argument behind them and were fearful that the incident would affect their family and careers, particularly given that Mrs. F was a teacher. [Exhibit 1; Exhibit 8; Exhibit 10; Exhibit 11; Exhibit B,.3; Testimony of Mrs. F]
14. The Appellants were interviewed separately by the response social worker at their home on January 3, 2017. Each acknowledged that Mrs. F punched Mr. F. Mr. F said that Mrs. F was so mad when she did this. Mrs. F also reported that she went out to the deck and made the statement, "I cannot do this," and made an attempt to jump off the deck, but Mr. F grabbed her on the deck and she bit him. Mr. F reported grabbing his wife, when he spoke to the response social worker. [Exhibit B, pp.2-4; Testimony of the Response Social Worker]
15. At Hearing, Mrs. F self reported that on that day she told Mr. F she wanted to kill herself and he grabbed her. She said she did not mean it. It was stupid that she said that. [Testimony of Mrs. F]
16. In contrast to the statement made to the police on scene, concurrent to the incident, Mr. F claimed during the 51B response that Mrs. F did not attack him and described the domestic as a "mild case." Although he acknowledged that he grabbed his wife, it was at the sliding door, not out on the deck as his wife had reported. [Exhibit B, p. 3; Testimony of the Response Social Worker]
17. The Hearing Officer reasonably concludes, based on the overall evidence at hand, that the children were present in the kitchen when the Appellants argued and Mrs. F punched Mr. F and when the police arrived:

- a) The two police narratives by Officer T.S., when taken together, document that the officer went inside to speak to Mrs. F. about the incident and saw the children seated at the kitchen table eating dinner, [Exhibit 1; Exhibit 2; Exhibit 8] Mrs. F reported making dinner when the police arrived. [Exhibit B, p.3]
  - b) Officer T.S. modified his narrative of the domestic on February 5, 2017. The officer added that he was not certain, if the children actually saw the exchange between the parents or if they were merely present in the home. [Exhibit 1; Exhibit 8]
  - c) Mrs. F told the response social worker on January 3, 2017 that she was in the basement playing with the children when Mr. F came home. She stated that she and the children went upstairs and the argument and the punch to Mr. F occurred in the kitchen. Although Mrs. F stated that the children were on the same floor as them when the domestic occurred, she was evasive as to their specific whereabouts. She then went out on the deck. [Exhibit B, p.3]
  - d) At her Hearing of April 18, 2017, Mrs. F stated that the children were in the front room, next to the kitchen where the domestic took place. They did not witness anything; they were just playing. [Testimony of Mrs. F]
  - e) Mr. F informed the response social worker on January 3, 2017 that Mrs. F said she was so mad she could hit him, so he told her to go ahead and she did. Mr. F reported that the children were in the kitchen with them sitting at their small table when it occurred. He denied the children said anything or cried. [Exhibit B, p.3; Testimony of the Response Social Worker]
  - f) At his Hearing of April 18, 2017, Mr. F said that he went into the home with the police and the children were sitting at the table in the kitchen. Now, like his wife, he recalled they were not there during the domestic; they were playing. [Testimony of Mr. F] This is in contrast to his statement in FF #15 (e).
  - g) Based on Mr. F's statement to the response social worker [FF # 15e), the response social worker found that the children were in the same room that the incident took place, in the kitchen where the Appellants were. According to Mrs. F, the incident took place upstairs; which was all on one floor. The response social worker observed that it was an open floor plan. [Testimony of the Response Social Worker]
18. Even though the children were present during the incident, there is no direct evidence that the children's emotional state was adversely affected by their exposure to the domestic incident and ensuing police response of December 27, 2017.

- a) In Officer T.S.'s modified police narrative, he added that neither child he saw in the kitchen appeared to be affected by the domestic or police presence. [Exhibit 1; Exhibit 8]
  - b) The Appellants report the children were not crying. [Exhibit B, p.3]
  - c) Mrs. F was sad for her children, because the police came to the home. [Exhibit B p.3]
  - d) According to Mrs. F, this was one bad night, a stressful experience. The impact on the family was one of being scared and vulnerable. [Testimony of Mrs. F]
19. The children were viewed by the response social worker at the marital home on January 3, 2017; seven days after the incident. M presented as happy and healthy and was walking around. [Exhibit B, pp.2 & 4] The children interacted well with the Appellants and exhibited no fear of them. [Testimony of the Response Social Worker]
  20. The response social worker contacted the children's medical provider and confirmed that the children were up to date with no concerns. [Testimony of the Response Social Worker; Exhibit B, p.5]
  21. The response social worker contacted the children's day care teacher, K.E., who said the children came daily, on time, and clean. They appear loved and well cared for. The Appellants often check in and will call, if they have concerns. [Exhibit B, p.5]
  22. In a letter dated February 6, 2017, the children's day care assistant director wrote that the children had been enrolled since August 1, 2016. They seem to enjoy school, especially playing with their friends, and are comfortable with their teachers. "We do not see any reason of concern of emotional distress in either child". [Exhibit 3]
  23. I find that there is no evidence that either of the Appellant's actions placed the children in danger or posed substantial risk to their safety or well being. DCF Protective Intake Policy #86-015 Rev. 2/28/16.
  24. The Department's decision to support the allegation of neglect was not made 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.

### Analysis

A party contesting the Department's decision, to support a 51A Report for neglect, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellants requested a Hearing, which was granted and held on April 18, 2017.

Regulations, policies, and case law applicable to this appeal include, but are not limited to, the following.

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question.

Reasonable cause to believe is defined as 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 and supervisor's clinical base of knowledge. [110 CMR 4.32]

"[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

Caregiver means a child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or any other person entrusted with responsibility for a child's health or welfare, whether in the child's home, a relative's home, a school setting, a child 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 and 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. Protective Intake Policy #86-015 [2/28/16]

The Appellants were and are *caregivers* of their children, three year-old M and one year-old C, as defined herein and at Protective Intake Policy #86-015 [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]

The 51A report under appeal is supported for neglect. "Neglect" is defined as failure by a caretaker, 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. 110 CMR 2.00 & Protective Intake Policy #86-015 [2/28/16]

A Support finding means there is reasonable cause to believe that a child(ren) was abused and/or neglected, and the actions or inactions by the parent(s)/caregiver(s) place the children 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. **Protective Intake Policy #86-015 [2/28/16]**

The Department supports individuals for neglect when the caregiver fails to provide minimally adequate care to children in situations of ongoing domestic violence in the presence of children. The definition of domestic violence found in the Department's policy is "A pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. *Domestic violence is not defined by a single incident of violence or only by violent acts.*" Protective Intake Policy #86-015. (Emphasis added.) In addition, our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well-being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979).

The facts of this matter do not fit within the Department's definition of "domestic violence" above as there is no sustained pattern of violence or coercive control in the Appellant's marriage. The subject incident was a single incident of violence that the children witnessed. Even if either child was witness to the events, there is no evidence that M, three years old, or C, a one year old, was affected by it. One the night of the incident, the police noted that neither child appeared to be affected by the incident or the police presence in the home. Further, the Appellants provided documentation from the children's day care provider and medical provider which documented no concerns for either child and finally, when the response worker visited the home after the incident, both children interacted well with the Appellants and did not exhibit any fear of either parent.



Not only is there a lack of evidence that the Appellant failed to provide the children with minimally adequate care in any pertinent aspect of the definition of neglect—i.e. emotional stability and growth, or "other essential care"—there is also a lack of evidence that any action by the Appellant placed the children in danger or posed a substantial risk to the children's safety or well-being. Both of these aspects of a support finding for neglect are lacking in this case.<sup>2</sup>

Based on the record as a whole, including information that sufficiently detracts from the Department's support finding, the Appellants have shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of neglect.

Orders

1. The Department's decision of January 19, 2017, to support the 51A Report for neglect of M and C by Mrs. F, is REVERSED.

2. The Department's decision of January 19, 2017, to support the 51A Report for neglect of M and C by Mr. F, is REVERSED.

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

*Frances I. Wheat (ep)*

Frances I. Wheat  
Administrative Hearing Officer

Date: 11/9/17

*Cristina Tedstone (ep)*

Cristina Tedstone  
Deputy General Counsel

Date: \_\_\_\_\_

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Linda S. Spears, Commissioner

<sup>2</sup> Such evidence, that the children were in danger or the Appellant's actions posed a substantial risk to the children's safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being. (See, DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29.) However, the Department did not make a finding of concern in this matter.