

**Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
600 Washington Street, 6th Floor
Boston, Massachusetts 02111**

Linda S. Spears, Commissioner

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IN THE MATTER OF: Ms. L.W.

Fair Hearing # 2017-0148

FAIR HEARING DECISION

The Appellant, LW, appealed the decision of the Department of Children and Families, pursuant to M.G.L. c.119, §51B, to support the allegation of physical abuse on behalf of her daughter, S.

Procedural History

On December 9, 2016, the Department of Children and Families ("Department") received a 51A report, pursuant to M.G.L. c. 119, §51A; all alleged the physical abuse of S by LW ("Appellant").

The Department notified the Appellant of its decision and of her right to appeal. The Appellant made a timely request for a Fair Hearing pursuant to 110 CMR 10.06. A hearing convened on March 30, 2017, at the Department's Lowell Area Office in Massachusetts.

The following persons appeared at the Fair Hearing:

Ms. [REDACTED]	Administrative Hearing Officer
Ms. L.W.	Appellant/Mother
Ms. D.A.	Response Supervisor
Ms. A.P.	Response Worker
Ms. M.W.	Witness

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

The Fair Hearing was recorded pursuant to DCF regulations. 110 CMR 10.26

All witnesses were sworn in to testify under oath. The record remained open until April 14, 2017 to allow the Appellant time to submit additional evidence.

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

For the Department:

Exhibit A: Intake Report 51A reported dated 12/09/16

Exhibit B: Child Abuse/Neglect Non-Emergency Response – 51B Report, 1/04/17

For Appellant:

Exhibit 1 Police Report dated 11/24/16

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

Issue to be Decided

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, 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 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 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The Appellant, LW, is the mother of the reported child S who was sixteen (16) at the time of the reported incident. (Exhibit A; Exhibit B)
2. As the mother of the child the Appellant, is a caregiver, pursuant to Department regulation 110 CMR 2.00. (Fair Hearing Record)
3. A 51A report was filed on December 9, 2016, pursuant to MGL c. 119, §51A, alleging physical abuse of the reported child (S) by the Appellant. According to the report, the child (S) disclosed that on Thanksgiving she and her mother were out and her mother was "drunk" and refused to let the child go shopping (Black

Friday). The child reported that when they returned home she started throwing things around her room and kicked down her door. At the point the child stated the Appellant walked into her room and punched her in the face with a closed fist. Subsequently the two got into a physical altercation. The child reported that she sustained a bloody nose. The police did respond to the home however a 51A report was not filed. The report was screened in for a non-emergency response pursuant to MGL c. 119, §51B, and assigned. (Exhibits A & B; Exhibit 1; Testimony of the Response Worker)

4. The family has no prior history with the Department however the child (S) was known to the [REDACTED] Police Department as the Appellant was having issues with the child's behaviors and ability to follow household rules. (Exhibit B, pgs. 1-3; Exhibit 1, p. 2)
5. The child was diagnosed with Anxiety, Depression, Attention Deficit Hyperactivity Disorder (ADHD) and anger issues. The child refused to take prescribed medications or attend therapy. (Exhibit B, pgs. 2, 4 & 6)
6. It was undisputed that at the time in question the child was upset with the Appellant for not driving her to go shopping and when she got home she broke the frame of her bedroom door. (Exhibit B, p. 3)
7. The Appellant slapped the child on the side of jaw with an open hand. The child punched the Appellant in the side of the face at which point the Appellant grabbed the child to prevent her from running as child had done in the past and Appellant elbowed the child in the nose during the struggle. The Appellant acknowledged that the incident got out of hand. (Exhibit B, p. 2; Testimony of the Response Worker; Testimony of the Appellant)
8. The Appellant has called the police on eight or nine occasions for the child running away. (Testimony of the Appellant; Exhibit B, p. 2)
9. The child did sustain a bloody nose and she declined medical attention when the police responded. The child reported being "nailed her in the face and punched her in the face and then pushed on her bed." There were no other details. The child then placed the appellant in a headlock. The Appellant sustained an injury to the side of her head (bleeding from the side of her temple) and she declined medical attention as well. (Exhibit B; Exhibit 1; Testimony of the Appellant; Testimony of the Witness)
10. The child is not afraid of the Appellant or of living in the home. The child acknowledged she does not want to fight with her mother because she "5lbs. on her." (Exhibit B, p.4)
11. The Department observed holes in the kitchen wall of the home, which the child reported happened on another day when she was mad at the Appellant. "She

(child) stated that the wall was in her path of destruction so she hit the wall.”
(Exhibit B, p. 4)

12. The police respond to the home and both parties were advised of their 209A rights’. There were no arrests made and the child went to a relative’s home for the night. (Exhibit 1)
13. The Appellant filed a Child Requiring Assistance (CRA) petition with the court after this incident. At the time of the hearing the CRA was still active and the child had been assigned a probation officer. (Testimony of the Appellant; Exhibit B, p. 2)
14. The Department relied solely on the child’s statement and given the situation, the child’s behaviors and actions at the time in question, throwing things around her room and kicking down her door. I do not find child to be a reliable reporter. I credit the Appellant’s statement as it was supported by the facts. The Appellant used inappropriate discipline when she smacked the child in the face and got into a physical struggle with her. There was no evidence that the child sustained a significant injury which would result from being punched in the nose with a closed fist. The 51A report was filed three weeks after the altercation and there was no evidence that the child sustained any injury at all. The police who responded to the home that night did not file a 51A report. (Exhibit A; Exhibit B; Exhibit 1; Testimony of the Appellant) Edward E. v. Department of Social Services, 42 Mass. App. Ct. 478, 486 (1997)
15. At the end of its response, the Department supported the aforementioned report for physical abuse of the reported child S by the Appellant. It was learned that the Appellant and the child had a verbal altercation which turned physical. The child was struck by the Appellant and sustained a bloody nose. The Department concluded that the Appellant’s actions constituted physical abuse and neglect, as defined by its policies and regulations. (Testimony of the Response Worker; Exhibit B, p. 7) DCF Protective Intake Policy #86-015, Revised 2/28/16; 110 CMR 2.00
16. After considering all the evidence, I find that while it was reasonable for the Department to believe that a physical altercation took place between the Appellant and the child (S), the Department did not have reasonable cause to support the allegation of physical abuse of S by Appellant for the following reasons:
 - There was insufficient evidence to find reasonable cause to believe that Appellant had abused her child S;
 - There was evidence to determine that the way the Appellant handled the situation was inappropriate discipline;

- The child S did sustain a bloody nose, however there was no significant injury, the police who responded did mention any injury to the child in the police report, and no arrests were made;
- I did not credit the child's statement that the Appellant punched her in the nose based on the lack of evidence that she sustained a substantial injury as well as her state at the time in question; out-of-control, throwing things and breaking the bedroom door frame;
- The totality of the evidence did not support a finding of abuse as defined by Department policies and/or regulations. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16. (Also see Cobble v. Commissioner of DSS, 430 Mass. 385 [1999]);
- The Department did not have sufficient evidence to support a finding that the Appellant abused S under Department policies and regulations. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16 (See Findings; Fair Hearing Record)

Applicable Standards and Analysis

To "support" a report means:

- that there is reasonable cause to believe that a child(ren) 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; 110 CMR 4.32 (2).

"[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.

"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 and supervisor's clinical base of knowledge. 110 CMR 4.32

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child's health or welfare, and (e) 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 baby-sitting), a foster home, a group care facility, or any other comparable setting. As such, "caregiver" includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The "caregiver" 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 himself/herself a child (i.e. baby-sitter). 110 CMR 2.00

"Abuse" means the non-accidental commission of any act by a caregiver 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 caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 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.

The Appellant disputed the allegation of physical abuse that was supported on behalf of her child. The Appellant did not dispute that the altercation took place but denied that she punched her child in the face. The Appellant smacked the child in the face and believed that child sustained a bloody nose while the two struggled. The Appellant had been struggling with the child's behaviors for some time as indicated through the response write up, her testimony and that of the Witness.

There were two sides to the story, the Appellant's and the child's. While the Witness was in the home at the time she did not see the altercation in its entirety. The Department relied on the child's statements which were not reliable based on her presentation at the time of the altercation as well as her accounts that she was punched in the face when there was no evidence of any significant injury. The police responded to the home and a review of the police report does not indicate anyone sustained a significant injury, there were no arrests made and there was no 51a report filed at that time. The police were familiar with the family as they had been contacted previously due to this child's

behaviors. The Appellant declined to press charges against the child and subsequently filed a CRA. The 51A report was filed three weeks after the incident and there was no evidence of the child having any injury. The Appellant had a poor reaction to the child's out-of-control behaviors (throwing things and breaking her bedroom door), which was clearly an inappropriate form of discipline.

While the child sustained a bloody nose she did not sustain any injury which would be required to reach a determination of abuse, per the Department's definition. There was no evidence that the altercation rose to the level of abuse. 110 CMR 2.00


Based on the evidence presented, I find that the Department's decision to support the allegations of physical abuse was not made in conformity with its policies and not with a reasonable basis. 110 CMR 2.00, 4.32

Conclusion

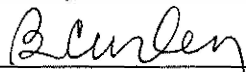
The Department's decision to support the allegations of physical abuse of S by Appellant is **REVERSED**.

April 16, 2018
Date

Date



Lisa Henshall
Administrative Hearing Officer



Barbara Curley, Supervisor
Fair Hearing Unit

Linda S. Spears
Commissioner