

**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

Voice: 617-748-2000
FAX: 617-261-7428

IN THE MATTER OF

KC

#2017-0160

FAIR HEARING DECISION

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

Procedural History

On January 3, 2017, the Department received the first of three (3) 51A reports from mandated reporters alleging the neglect of N by Appellant. This report was followed by the two (2) additional 51A's in which the allegation of neglect was added for the Appellant's other children J, S, and A. The allegations were screened in and the Department initiated a non-emergency response. Upon completion of its response period, the Department supported the allegations and informed the Appellant of its decision and of her 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 held on May 23, 2017 at the Department of Children and Families' Area Office located in Malden, 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

KC

IA

JG

Fair Hearing Officer

Appellant

Appellant's partner / Father of
Reported Children

Witness for Appellant / Nanny

KD
EF

DCF Response Social Worker
DCF Area Program Manager

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 January 3, 2017 – 11:57AM
- Exhibit B: 51A Intake Report of January 3, 2017 – 3:47AM
- Exhibit C: 51A Intake Report of January 25, 2017
- Exhibit D: 51B Non-Emergency Response of January 25, 2017

For the Appellant:

- Exhibit 1: Provider Letters for KC
 - a. OBGYN – [REDACTED] Hospital
 - b. Psychiatrist – [REDACTED] Hospital
 - c. Family Therapist – [REDACTED] Mental Health
- Exhibit 2: Personal Reference Letters
- Exhibit 3: Medical Documentation for J
- Exhibit 4: Medical Documentation for S
- Exhibit 5: Appointment / Services in place notes

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. KC is the mother of J, S, A and N therefore deemed as 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 ages of the reported children at the time of the report, were as follows: J was 6 years old, S was 4 years old, A was 2 years old and N was 4 days old. (Exhibit A, p. 1, Exhibit B, p.1).
3. Appellant and the children shared the family home with her partner, IA, and father of the children. Living in the family home, was also JG, the family's live in nanny (Exhibit A-D, p.1, Appellant Testimony, DCF Testimony).
4. The Appellant and her family have intermittently been involved with the Department since 2011. There have been several 51A's filed in which concerns for the children's care have been expressed by mandated reporters due to the Appellant's use of substances during pregnancy, her mental health and alcohol consumption (Exhibit D, p.1).
5. At the time of the Department's involvement, the Appellant carried an active diagnosis for hypersomnia, ADHD, anorexia nervosa, anxiety and bipolar disorders. Appellant was engaged in mental health treatment consistently since June 2016. As part of her treatment regiment, Appellant was prescribed the following medications: Sertraline, Lamotrigine, Clonazepam, Klonopin and Prividgal¹ (Exhibit D, p.6, Exhibit 1:b)
6. On December 31, 2016, Appellant gave birth to her fourth child, N. Upon delivery, both Appellant and child tested positive for benzodiazepines resulting in a 51A filing of neglect as N was found to have been exposed to substances while in utero. This allegation was screened in for a response by the Department. At the completion of the response period, the allegation was unsupported as Appellant's collaterals were able to corroborate her participation in mental health treatment and compliance with her medication regiment. (Exhibits D, p.5- 6, Exhibit 1:a-c)
7. DCF Response Social Worker (RSW) conducted an interview with Appellant on January 17, 2017. During this interview the Appellant discussed her mental health history both pre and post-partum, along with her psychiatric hospitalization. (Exhibit D, p.3)
8. DCF RSW was able to view the family home go over the reported concerns with Appellant. He was able to also interview IA, who is the primary caregiver for the

¹ Due to issues with hypersomnia and two motor vehicle accidents, Appellant was prescribed medication to both fall asleep and remain awake.

children and their father. DCF RSW confirmed that the children required ongoing medical supervision and the supports the Appellant had in place to care for them. (Exhibit D, p.3).

9. Appellant's issue with hypersomnia was discussed and families sleeping arrangements, although all children had their own beds and a crib available for N, Appellant was co-sleeping with N while on sleeping medications, which was not recommended. Appellant was advised to refrain from continuing to do this by DCF RSW at the time of this visit (Exhibit D, p.4, 7)
10. Between the dates of January 19 and January 20, 2017, DCF RSW contacted collaterals involved with the family and the care of S, J and A as well the Appellant. No concerns were expressed for mother's ability to engage with collaterals or the children's care. Collaterals confirmed Appellant had assistance with the care of the children available to her at all time in the form of a live-in nanny and also from the children's father. (Exhibit D, p.6,7)
11. On January 25, 2017, the allegation of neglect was supported for all four children with concerns for mother's mental health, ability to care for the children and mother's own admission to co-sleeping with N while medicated. (Exhibit D, p. 9, DCF Testimony)
12. I find the Department's decision to support the allegation of neglect of J, S, and A by Appellant was not made in compliance with Departmental regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev 2/28/16 The Department did not have sufficient evidence to show that Appellant was not providing minimal care for the above referenced children during the reported time period.
13. I find that the Department's decision to support the allegation of neglect of N was made in compliance with Departmental regulations for the following reasons:
 - a. Appellant has a preexisting medical condition for which she is medicated on a regular basis.
 - b. Appellant demonstrated difficulty staying awake and sleeping for periods of time as reported by her providers (Exhibit D, p.6, Exhibit 1)
 - c. Appellant was co-sleeping with newborn child while medicated placing the child in danger and posed substantial risk to the child's safety.

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

"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. 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). 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

The Department's decision that the Appellant neglected all of her children was based on the Appellant's DCF and mental health history. Through her own admission, the Appellant stated to providers and DCF RSW that she did feel overwhelmed with her fourth pregnancy, which was unexpected, while dealing with her own mental health and her children's medical issues which caused her to be psychiatrically hospitalized during the pregnancy to treat her anxiety.

At the Fair Hearing, the Appellant disputed the Department's finding and provided medical documentation proving her ongoing engagement in treatment in addition to testimony from her partner and children's father, IA, around his role in caretaking of the children and the children's nanny, who resided with the couple. Appellant stated she was not solely responsible for caring for the children and argued they were provided with adequate level of care at all times. The Department was not able to provide as stated in the finding any evidence around the appellant's inability to provide care of supervision to her children J, S, and A as their father was heavily involved in their care and in their home.

Therefore, the Appellant has shown by preponderance of the evidence that the Department's decision to support the allegations of neglect of J, S, and A was not made in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the appellant.

However, although, all collaterals and documentation corroborated Appellant's arguments around her engagement in treatment, it did not negate the information obtained around Appellant's own admission to sleeping with her newborn daughter, N, while medicated without obtaining medical consent from providers or notifying them that this was taking place. DCF RSW advised her against this and warned Appellant of the dangers of co-sleeping and notified the providers who immediately also stated to DCF RSW that they would advise against this as well due to the Appellant medication regiment. (Exhibit D, p. 6-7) Therefore, the Department's decision to support the allegation of neglect of N was made in compliance.

Conclusion and Order

The Department's decision to support the allegation of Neglect of J, S, and A by Appellant was not made with reasonable basis and is **REVERSED**.

The Department's decision to support the allegation of Neglect of N by Appellant is **AFFIRMED**.



Carmen Colón
Fair Hearing Officer

1/22/2018
Date



Sophia Cho, LICSW
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner