

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET 6<sup>TH</sup> FLOORS  
BOSTON, MASSACHUSETTS 02111**

**Linda S. Spears  
Commissioner**

**Voice: (617) 748-2000  
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**IN THE MATTER OF: JC and CA**

**Fair Hearing # 2017-0171**

**FAIR HEARING DECISION**

The Appellants in this Fair Hearing are Ms. JC (hereinafter JC) and Mr. CA (hereinafter CA or collectively as Appellants). The Appellants appeal the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support allegations of neglect by the Appellants of the reported child, B, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

**Procedural Information**

On December 19, 2016 the Department received a mandated 51A report alleging the physical abuse and neglect of the subject child by the Appellant. The report was received by the Department's [REDACTED], where it was deemed emergent and assigned accordingly. The Department completed its response on January 19, 2017. The allegations of neglect of B by the Appellants were supported. Allegations of physical abuse by an unknown perpetrator were also supported. The Appellants were informed of the decision and of their right to appeal the Departments determination. The Appellants filed a timely request for a Fair Hearing under 110 C.M.R. 10.06 (8).

The Fair Hearing was held on March 28 2017 at the Department of Children and Families Pittsfield Area Office. As the Appellants had left the area, both participated by phone. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record closed concurrent with the hearing date of March 28, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph  
JC  
CA  
SN  
NM

Hearing Officer  
Appellant  
Appellant  
Department Supervisor  
Department Response 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 following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit 1: 51A dated December 19, 2016

Exhibit 2: 51B dated January 19, 2017

For the Appellant:

None

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)

**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 subject child of this investigation, B, was twenty-one (21) days old at the time of the reported incident. (Exhibit 1, p.1)

2. Appellants have Department history as consumer children. The subject report constitutes the first adult consumer involvement for both Appellants. (Exhibit 1, p. 4 & 5, Exhibit 2, p.1)

3. B is the child in common between the Appellants. (Testimony of Appellants)

4. At the time of B's birth, the Appellants were residing in a temporary family shelter, having been placed there from the Eastern part of the Commonwealth. (Exhibit 2, p. 2)

5. On December 19, 2016, the Appellants brought B to his pediatrician for a well-child visit. The Appellants self-reported that in the days prior to the appointment, they observed B had "bruises". The pediatrician observed and documented multiple small bruises on B's body and referred him for more specialized testing. (Exhibit 1, p. 2)

6. In accordance with Department practice and policy, the emergency response included a referral to the district attorney's office, and to the forensic expert on child abuse injury. (Exhibit 2, p.1)

7. After forensic exam, and further testing, the child abuse expert was unable to determine that the injuries to B were inflicted. Indeed, the forensic doctor ultimately found that the cause for the marks was as likely to be innocent as sinister. (Testimony of Department Response Worker, Fair Hearing Record, Exhibit 2, p.5)

8. In the course of the Department's response, the Appellants signed an emergency service plan with a number of provisions for B's safety. The Appellants' compliance with services and recommendations were inconsistent. (Exhibit 2, Testimony of Department Response Worker)

9. On the day of the Department's first visit to the Appellants' room, emergency response workers found the room's smoke detector disabled by CA, and no safe sleeping area for newborn B. When Department response workers returned, more than two (2) weeks later, the smoke detector was still not functional and there was no safe sleeping arrangement for B. (Exhibit 2, p. 3, Exhibit 2, p. 8, Testimony of Department Response Worker)

10. The Appellants were able to improve the condition of their living area, but failed to bring B back for a follow up skeletal survey as directed. B's primary care provider reported ongoing concerns for the Appellants' poor follow through. (Exhibit 2, p.9, Exhibit 2, p.10)

11. The Appellants' youth is not in itself a protective factor; however, the immaturity displayed by JC, including yelling at and then hanging up on the child abuse specialist, lends credibility to the Department's protective concerns (see analysis, Exhibit 2, p.7)

12. Since the subject events the Appellants have returned to the Eastern part of the state, nearer to relatives. They have engaged in services recommended by the Department and have each found employment. (Testimony of Appellants)

13. On January 17, 2017 the Department supported the allegations of neglect. Based upon a review of the evidence presented in its entirety, and after consideration of all the facts and circumstances, I find that the Appellants did not take those actions necessary to provide the subject child with minimally adequate supervision, and "other essential care". (See, Definition of "Neglect" below)

14. On January 17, 2017, the Department supported the allegations of neglect. Based on the totality of the evidence presented at the Fair Hearing, including testimony from all witnesses and documents submitted by the parties, this Hearing Officer finds that the Department's decision was made in compliance with its regulations. (See, "Reasonable Cause" "neglect" below)

### **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. 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

"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 be due solely to the existence of a handicapping condition. DCF Protective Intake Policy #86-015, rev. 2/28/16; 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 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

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

### Analysis

The Department supported allegations of neglect of B by the Appellants, his parents. The Department's response came after B was observed to have bruising on multiple areas of his body. Upon further testing and forensic exam, these faint marks remained unexplained, but could not be labeled as inflicted. The Department's supported findings of physical abuse unknown are unsustainable.

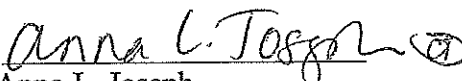
The Department has met the threshold set forth for neglect of B. The Appellants first noted the marks on B a full three (3) days prior to having him seen by his pediatrician. Additionally, the conditions of the Appellants albeit cramped living quarters were sufficient to warrant remedy. That the smoke detector remained disabled and B had insufficient sleeping arrangements weeks after these issues were first identified by the Department, equated to substantial risk for B.

The Court has concluded that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789(2003). In the extant case, this newborn was at substantial risk due to the minimally adequate safety of his living quarters, unsafe sleeping conditions, and failure to follow through on medical testing.


**Conclusion and Order**

1. **The Department's decision to support the allegation of neglect of B by his mother, JC , is AFFIRMED.**
2. **The Departments decision to support the allegation of neglect of B by his father, CA, is AFFIRMED.**

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

  
Anna L. Joseph  
Administrative Hearing Officer

Date: 12-28-17

  
Susan Diamantopoulos  
Fair Hearing Supervisor