

**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: SM

Fair Hearing # 20170173

FAIR HEARING DECISION

Appellant, SM, appeals the decision of the Department of Children and Families, pursuant to M.G.L. c.119, §51B, to support allegations of neglect on behalf of A.

Procedural History

On January 10, 2017, the Department of Children and Families (“Department”) received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of A by his mother, SM (“Appellant”). On February 1, 2017, the Department decided to support allegations of neglect, pursuant to M.G.L. c. 119, §51B, by Appellant on behalf of A.

Appellant made a timely request for a Fair Hearing regarding the Department’s decision pursuant to 110 C.M.R. §10.06. The Fair Hearing was held on April 5, 2017 at the Department’s Dimock Street Area Office in Roxbury, Massachusetts. In addition to the Hearing Officer, the following persons appeared that day:

SM	Appellant/Mother
JP	Department Response Worker
PH	Department Intake Supervisor

The Hearing Officer left the record open until April 7, 2017 to afford the Department the opportunity to submit additional documentary evidence.

In accordance with 110 C.M.R. §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 following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A Intake Report - 51A Report
- Exhibit B Child Abuse/Neglect Non-Emergency Response
- Exhibit C Medical records

For Appellant:

- Exhibit 1 Fair Hearing Request and Department support letter
- Exhibit 2 ██████████ records
- Exhibit 3 Childcare incorporation document
- Exhibit 4 Early Education and Care Professional Qualifications Registration Confirmation

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 C.M.R. § 10.21

Statement of the Issues

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 Appellants; 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 Appellants; 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) 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. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

On the basis of the evidence, I make the following factual findings:

1. Appellant is the mother of a son, A. [Exhibit B, p.1]
2. As the mother of A, Appellant is deemed a caregiver pursuant to the Department's Protective Intake Policy. See below. [Testimony of Appellant; Exhibits A and B]
3. At the time of the 51A report, Appellant and A lived with A's maternal grandmother. [Exhibit B, p.4]

4. At the time of the 51A report: A was ten years old and attended fourth grade; he was medically up to date; he attended school consistently and went to school clean, well dressed, and well taken care of; A's parents were involved with the school, in communication with A's teacher, and wanted to help A; A participated in class and did his work but put minimum effort into it; he did have some behavioral issues at school and got distracted a lot; A participated in swimming, basketball, soccer, baseball, football, and playing the piano. [Exhibit B, pp.3,4,5; Testimony of Appellant]
5. In January 2017, Appellant was dieting and working out in an effort to lose weight. [Exhibit B, p.2; Testimony of Appellant]
6. On Saturday January 7, 2017, Appellant got up early. She and A went to the movies. Appellant then did things around the home. She did not eat. She felt tired as she had not gotten enough sleep. Appellant and A went to maternal grandfather's home where Appellant had some soup. Appellant then went to a community holiday party and had a small salad with a little pasta. [Exhibit B, pp.3,4; Testimony of Appellant]
7. On Sunday January 8, 2017, Appellant got up very early and took A to soccer. Appellant did not eat breakfast, although she prepared breakfast for A. When she returned from soccer, Appellant ate some chips and salsa. Appellant and A walked the dogs. Appellant did some cleaning. Appellant had her period and was not feeling quite well. At one point, A found Appellant on the floor unresponsive. She was moaning and not responding to A. A called maternal grandmother who told him to call 911. A called 911. An ambulance and police responded. The EMTs found that Appellant's blood sugar was low and transported Appellant to the hospital. [Exhibit B, pp.3,4; Exhibit A]
8. At the hospital, Appellant was admitted to the Intensive Care Unit ("ICU"). She was given medications for agitation and her mental status improved. A observed that once Appellant ate, she was talking again and recognized A and maternal grandmother. A urine screen was completely negative. The hospital discharged Appellant on January 10, 2017 with prescriptions for folic acid, multivitamins and naltrexone, a medication to help with cravings for alcohol. The hospital discharge record indicated that Appellant presented to the hospital with altered mental status likely related to alcohol use and low blood sugar from poor food intake. [Exhibit A; Exhibit C]
9. A was very scared by seeing his mother passed out and transported to the hospital and by hearing the doctor say that if Appellant had stayed longer without treatment she could have fallen into a coma. A hoped nothing like this ever happened again. [Exhibit B, p.4]
10. On January 10, 2017, the Department received a report filed by a mandated reporter, pursuant to M.G.L. c. 119, §51A, alleging neglect of A by Appellant. The report contained allegations that: Appellant was admitted to the ICU for alcohol intoxication; reportedly, Appellant had reported that she had drunk a pint of spiced

rum throughout the day on January 8, 2017, maternal grandmother reported seeing 3 or 4 bottles of vodka in Appellant's room and Appellant stated someone may have confused her bottles of Angry Orchard (alcoholic drink) for vodka. The Department initiated a non-emergency response to look into the allegations. [Exhibit A]

11. The mandated reporter filed the 51A report based on information reportedly provided by maternal grandmother when Appellant initially presented to the emergency room. Hospital tests did not verify that Appellant had consumed a lot of alcohol. [Exhibit B, p.5; Exhibit C]
12. On or about February 9, 2016, the Department supported allegations of neglect against Appellant on behalf of A. [Exhibit B]
13. Appellant anticipated receiving her Associate's degree in Early Childhood Education in May 2016. She plans to operate an in home daycare center. [Testimony of Appellant; Exhibits 2 and 3]
14. The Department did not have reasonable cause to believe that A was neglected by Appellant as there was no evidence that the Appellant failed to provide her son with minimally adequate care; he was clean, appeared well cared for, went to school consistently, was up to date medically, and participated in a number of extracurricular activities. Additionally, there was no evidence that the Appellant's actions or inactions placed A in danger or posed a substantial risk to his safety or well-being. [Fair Hearing record] See Analysis

Applicable Standards

"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

A support finding of abuse or neglect requires that there be 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

"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. Id.

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

In making a determination, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29(2)

Analysis

On the basis of the factual findings and standards set forth above, and for the reasons set forth below, I reverse the Department's decision to support allegations of neglect against Appellant.


Although I did not fully credit Appellant's assertions that she did not have an issue with the abuse of alcohol, the evidence was unclear as to what caused her to pass out on January 8, 2017. According to the hospital discharge record, Appellant's admission to the ICU was *likely* related to her alcohol use and low blood sugar from poor food intake. She was discharged from the hospital with a prescription for a medication to help with cravings for alcohol. These are indicators that alcohol use was a problem for Appellant. However, Appellant's urine screen was negative for all substances. Appellant denied drinking alcohol on the day in question to the Department's response worker. Maternal grandmother denied making any statements at the hospital regarding seeing vodka bottles in Appellant's room. Although he expressed concern about his mother and was very scared by the events leading to her hospitalization, there was no evidence that ten year old A reported that Appellant was drinking on the day in question or that he expressed any concerns regarding Appellant's use of alcohol. A was clean, appeared well cared for, went to school consistently, was up to date medically, and participated in a number of extracurricular activities. A was bonded with his mother. It was reasonable for him to be scared when he found her passed out whether her condition resulted from

alcohol misuse, poor food intake, or a combination of the two. He was able to seek the assistance of his maternal grandmother and followed her instructions to call 911.

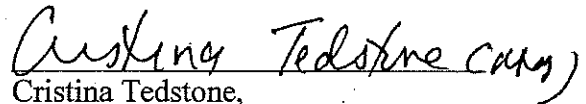
Based on a review of the evidence presented at the Fair Hearing, including witness testimony and all submitted documents, Appellant has shown, by a preponderance of the evidence, that the Department's decision to support allegations of neglect on behalf of A was not supported by substantial evidence and was not made in conformity with Department policies or regulations. Appellant was persuasive in proving that the Department's support decision should be reversed. The evidence indicated that Appellant was providing A with minimally adequate essential care and there was no evidence that her actions or inactions placed A in danger or posed a substantial risk to his safety and well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

The Department's decision to support the allegations of neglect of A by Appellant, SM, was not made in conformity with Department policy and regulations. Therefore, the Department's decision is REVERSED.


Antonia Chronis,
Administrative Hearing Officer

7-17-17
Date


Cristina Tedstone,
Deputy General Counsel

Date

Linda S. Spears,
Commissioner