

**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: SR

Fair Hearing # 2017-0174

FAIR HEARING DECISION

Appellant, SR, 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 S.

Procedural History

On December 7, 2016, the Department of Children and Families ("Department") received a report, pursuant to M.G.L. c. 119, §51A, alleging neglect of S by her step-grandmother, KM, and by her foster mother, SR ("Appellant"). January 12, 2017, the Department decided to support allegations of neglect on behalf of S, pursuant to M.G.L. c. 119, §51B, by Appellant.

The Department notified Appellant of its decision and of her right to appeal. Appellant made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing was held on April 6, 2017 at the Department's Central Office in Boston, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

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|----|------------------------------|
| JN | Department Investigator |
| SR | Appellant |
| FF | Witness/Brother of Appellant |

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 Fair Hearing was digitally recorded. All witnesses were sworn in to testify under oath. The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A Intake Report – Institutional Abuse (12/7/16)
- Exhibit B Child Abuse/Neglect Non-Emergency Response (1/12/17)
- Exhibit C Intake Report (2/24/15) and Non-Emergency Investigation (4/9/15)
- Exhibit D Department Entry and Support letters
- Exhibit E Letters requesting police reports
- Exhibit F Police reports

For Appellant:

- Exhibit 1 Fair Hearing request/Department support letter

The record closed upon conclusion of the oral evidence.

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 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) 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. S was a child in the care and custody of the Department with the plan of adoption. At the time of the subject allegations, S was four years old. [Exhibit A; Exhibit B, p.3; Testimony of Investigator]

2. Appellant is the maternal great aunt of S.¹ At the time in question, Appellant was the foster/pre-adoptive parent for S. [Exhibits A and B; Testimony of Appellant]
3. As the foster/pre-adoptive parent for S, Appellant is deemed a caregiver pursuant to the Department's Protective Intake Policy. *See* below. [Testimony of Appellant; Exhibits A and B]
4. In 2015, the Department supported allegations of neglect against Appellant due to her allowing her brother, EF; to have unsupervised contact with S. The Department had not approved EF as a caretaker of S due to his criminal record history. While with EF, S was exposed to her mother's substance abuse and possible overdose. [Exhibit B, pp.1-2,5; Exhibit C]
5. KM is the maternal step-grandmother of S.² In October 2015, the Department decided that KM would no longer be an approved caretaker of S and was not to have unsupervised contact with S due to issues going on in KM's home. [Testimony of Appellant; Exhibit B, p.3; Exhibit A]
6. On December 7, 2016, Appellant allowed KM to take S overnight unsupervised. Appellant did not inform the Department that she was doing so. [Exhibit B; Exhibit A; Testimony of Appellant]
7. Appellant knew that KM was not an approved caretaker of S and that KM was not to have unsupervised contact with S. [Exhibit B, pp.3,6,7]
8. KM told Appellant that she was taking S to KM's mother's home for the night. Instead, KM took S to her own home. [Testimony of Appellant; Exhibit B; Exhibit F]
9. On December 7, 2016, while S was in her home, KM got into a verbal altercation with her nephew, M, of whom KM was the guardian. KM nudged M with her elbow, pulled the phone out of the wall when M called his father for assistance, stepped on M's hand, and threw her shoulder into M. M's father arrived and noted that KM smelled like alcohol. KM left in her car with S, leaving M at her residence. M's father reported that KM "peeled out." The police responded to the scene and interviewed M and his father. [Exhibit B; Exhibit F]
10. KM took S to her mother, CM's home. KM texted CM asking her not to tell the police that she was there with S and telling CM that she did not have to let the police in and that they would get in a lot of unnecessary trouble. The police arrived at CM's home, made contact with KM in the lobby area of the residence, and detected that KM had an odor of alcohol emanating from her person and had somewhat bloodshot eyes. When asked how much she had been drinking, KM responded "probably too much." [sic] The police found S asleep in the bedroom area. The police asked that M

¹ Appellant's brother, EF, is the maternal grandfather of S.

² KM was the former wife of EF, Appellant's brother/S's grandfather.

also be brought to the home to stay with CM/his grandmother. At Appellant's request, Appellant's sister (a Department approved caretaker) arrived and took S home to Appellant. The police arrested KM, charging her with Domestic Assault & Battery, Intimidation of a Witness, and Reckless Endangerment of Children. [Exhibit F]

11. On December 7, 2016, the Department received a report, pursuant to M.G.L. c. 119, §51A alleging the neglect of S by Appellant. The Department initiated a response to look into the allegations. [Exhibit A; Exhibit B]
12. On December 8, 2016, the Department removed S from Appellant's home. [Exhibit B, p.3]
13. S reported that, when she was at KM's house, M was very angry because he wanted to see his father and KM said, "no." S further reported that KM drove in her car and that the booster seat strap hurt S's neck. [Exhibit B, p.7]
14. Appellant acknowledged making a "serious mistake," felt ashamed of creating a safety issue for S, and described the event in question as the "worst day" of her life. [Exhibit B, pp.3,6,7; Testimony of Appellant]
15. On January 12, 2017, pursuant to M.G.L. c. 119, §51B, the Department supported allegations of neglect on behalf of S against Appellant. [Exhibit B; Testimony of Investigator]

Applicable Standards and Analysis

Protective Intake Policy #86-015, 6/15/1986, as revised 2/28/2016

Caregiver

- (1) A child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or
- (2) 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.

A "Support" finding means:

Allegation(s)

- 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 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.

“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.*

“Reasonable cause” implies a relatively low standard of proof which, in the context of the 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. *Care and Protection of Robert*, 408 Mass. 52, 63-64 (1990). “(A) presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of § 51A.” *Id.* At 63. This same reasonable cause standard of proof applies to decisions to support allegations under §51B. *Id.* At 64; G.L. c.119, s 51B.

“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 Fair Hearing shall address (1) whether the Department’s or provider’s decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;.... In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 C.M.R. §10.05.

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department’s or provider’s decision was not in conformity with the Department’s policies and/or regulations and resulted in substantial prejudice to the aggrieved party.... 10 C.M.R. §10.23.

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I uphold the Department’s neglect support decision.

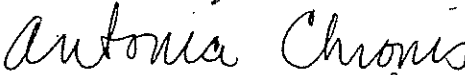
In order to support a finding of neglect, the Department must determine that there is reasonable cause to believe that Appellant neglected S *and* that the actions of Appellant placed S in danger or posed substantial risk to S’s safety or well-being. Appellant did not dispute allowing KM to have unsupervised contact with S and not informing the

Department of this event. S was four years old at the time and unable to care for herself or seek assistance if necessary. This Hearing Officer did not doubt that Appellant loves S and, in general, cared deeply for her wellbeing. However, Appellant's actions went beyond a minor lapse in judgement, especially in light of a prior support decision for neglect when she allowed S's grandfather to care for S. Appellant's giving permission to KM to have S overnight unsupervised was sufficient for the Department to have reasonable cause to believe that Appellant was neglectful in failing to provide S with minimally adequate essential care, i.e. supervision and/or safety. Furthermore, Appellant's actions posed a substantial risk to S's safety and well-being. While having S with her, KM acknowledged to the police that she probably had been drinking too much, engaged in a physical and verbal altercation with her nephew, and, according to her nephew's father, "peeled out" in her car with S. Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's neglect support decision. The Department's decision was made in conformity with its policies and with a reasonable basis. The Department had enough information at the time of its investigation to find "reasonable cause" existed to make the support decision of neglect. "Reasonable cause" implies a relatively low standard of proof. Care and Protection of Robert, supra.

Conclusion and Order

The Department's decision to support the allegations of neglect of S by Appellant, SR, was made in conformity with Department regulations and with a reasonable basis. Therefore, the Department's decision is **AFFIRMED**.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c.30A, §14). In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Antonia Chronis, *BC*
Administrative Hearing Officer

October 2, 2017
Date



Barbara Curley
Supervisor, Fair Hearing Unit