

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

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IN THE MATTER OF)
)
B. S.)
)
FH # 2017 - 0183)

HEARING DECISION

Procedural Information

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

On January 6, 2017, the Department received a 51A report filed by a mandated reporter alleging physical abuse and neglect of X ("X" or "the child(ren)"), and neglect of A ("A" or "the child(ren)"), and B ("B" or "the child(ren)"), by the Appellant's partner, Mr. F.B. ("FB" or "the partner")¹; the allegations of neglect of the children by the partner were subsequently supported.² The Department 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 CMR 10.06.³

The Fair Hearing was held on April 13, 2017, at the Department of Children and Families' Worcester West Area Office. All witnesses were sworn in to testify under oath. The record remained open until April 27, 2017 to allow for the submission of additional documents to be entered into the record.⁴

The following persons appeared at the Fair Hearing:

¹ The partner is not a party to this appeal. (Fair Hearing Record)

² Allegations of physical abuse of X by the partner were not supported by the Department. (Exhibit 2, p.9)

³ As the children's biological mother, the Appellant appealed the supported allegations of neglect of the children by the partner. (110 CMR 10.06(11))

⁴ Exhibits "A" and "B"

Anastasia King
Ms. B.S.
Ms. S.C.
Ms. W.K.

Administrative Hearing Officer
Appellant⁵
DCF Supervisor
DCF Response Worker

In accordance with 110 CMR 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 pursuant to DCF regulations 110 CMR 10.26.

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

For the Department:

Exhibit 1: 51A Report
Exhibit 2: 51B Response

For the Appellant:

Exhibit A: Appellant's Statement
Exhibit B: Various Behavioral and Educational Documents

Pursuant to 110 CMR 10.21, 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.

Issue To Be Decided

The issue presented in this 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 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)

⁵ At the Appellant's request, the Appellant participated in the Fair Hearing via telephone conference. (Fair Hearing Record)

Findings of Fact

1. The subject children of this Fair Hearing are X ("X" or "the child"); a male child who was 11 years old at the time the 51A report was filed, B ("B" or "the child"); a male child who was 10 years old at the time the 51A report was filed, and A ("A" or "the child"); a female child who was eight years old at the time the 51A report was filed (Exhibit 1, p.1)
2. On January 6, 2017, the Department received a 51A report filed by a mandated reporter alleging physical abuse and neglect of X and neglect of B and A by the Appellant's partner, Mr. F.B. ("FB" or "the partner"). According to the report, X disclosed to the reporter that the partner "freaked out" the night before, broke objects, including a television and an Xbox unit, and put a hole in the ceiling. The child further stated that the partner pushed him into a wall and kicked the Appellant. The reporter stated that on January 4, 2017, the child also reported that he was always hungry. The reporter spoke to the Appellant who stated that X had been found hiding food in his room. X had become very upset, which resulted in the child going to the hospital for an evaluation. (Exhibit 1, p.3; Testimony of RW)
3. The 51A report was screened in for a Non-Emergency Response and assigned to DCF Response Worker, Ms. W.K., ("Response Worker" or "RW") to complete a 51B Response. (Exhibit 2, p.1)
4. The subject children are the Appellant's biological children. (Testimony of Appellant). The Appellant is a "caregiver" as defined by Departmental regulation 110 CMR 2.00.
5. Mr. J.S. ("JS" or "the father") is the children's biological father. JS resides in [REDACTED] and had little contact with the children at the time of the 51B response. (Exhibit 2, p.3)
6. The Appellant, who is legally blind and diagnosed with Multiple Sclerosis, resided in the home with the partner and the children. (Testimony of Appellant)
7. The Appellant and the partner are not married and have been in a relationship for approximately four years. (Exhibit 2, p.4)
8. The family had a clinical case with the Department that closed on October 24, 2016. The Appellant reported that the Department successfully closed its case with the family determining that no further services were required. (Testimony of Appellant) This was not disputed by the Department at the Hearing. (Fair Hearing Record)
9. The Appellant denied that multiple police responses to the home were due to domestic violence as reported during a telephone call to police made by the Department on January 6, 2017. The Appellant maintained that the police responses occurred at the Appellant's previous residence and were the result of issues with a neighbor. The Appellant further maintained that there was only one incident that the police

responded to her home due to an argument between herself and the partner, and the Appellant called the police to have her mother's boyfriend removed from her home. (Exhibit 1, p.8)

10. X is diagnosed with ADHD, Depression, and Anxiety. X has suicidal tendencies and learning disabilities. The Appellant and the partner had been taught how to restrain X when he is attempting to harm himself or others. (Exhibit 2, p.4)
11. X has had multiple services implemented in the past which closed shortly after the Department closed its clinical case with the family. However, due to the concerning behaviors that X was once again displaying, service referrals for the child had been made. (Testimony of Appellant)
12. On January 9, 2017, the partner had to restrain X for thirty minutes because the child was cutting himself. Police and an ambulance responded to the home and X was taken to the hospital to be evaluated. When X found out the ambulance was coming to the home, he smiled and put on his coat. (Exhibit 2, p.4)
13. On the day of the reported incident, X became upset when the Appellant and the partner discovered that X had been hiding food and other items in his room. X's behaviors escalated and the child struck the partner and the partner's mother, who was at the home, with a guitar. The partner broke the guitar and left the home to de-escalate the situation. (Fair Hearing Record)
14. The RW spoke to the mandated reporter who confirmed that the information provided in the 51A report was accurate. The RW found the mandated reporter to be credible with the information provided to the Department regarding the child's disclosures. (Testimony of RW)
15. When interviewed by the RW on January 12, 2017, X's account of the reported incident was inconsistent with the information provided in the 51A report. X denied that he disclosed all of the information that was reported in the 51A report. Contrary to what the child disclosed to the mandated reporter, the RW did not observe holes in any of the walls or ceilings. The RW also observed two Xbox units in the home, both in working order, as well as three televisions, also in working order. (Exhibit 2, p.4; Testimony of RW)
16. During the RW's interview with B and A on January 12, 2017, the following information was obtained:
 - A was aware of one incident that occurred the year before in which the partner struck the Appellant. A did not witness this, but was told of the incident by her friend who she stated saw the incident occur outside on the street. (Exhibit 2, p.5)
 - A likes the partner when he is not mean. A reported of becoming afraid at times when the partner was "being scary" and further reported that this may occur every couple of weeks. (Exhibit 2, p.5)
 - The partner disciplined A and B by sending them to their rooms. (Exhibit 2, p.5)
 - A did not know what alcohol or drugs were. (Exhibit 2, p.5)

- A felt safe in the home. (Exhibit 2, p.5)
 - B had witnessed the partner argue with the Appellant and break things. B had never witnessed the partner and Appellant punch or kick each other, but had witnessed them push each other. (Exhibit 2, p.5)
 - When the partner and the Appellant have argued, B would become scared and blocked his ears, although this had only happened occasionally and B was unable to recall the last time this occurred. (Exhibit 2, p.5)
 - B was not afraid of anything in the home. (Exhibit 2, p.5)
 - B and A were not afraid of the partner. (Exhibit 2, p.5; Exhibit 2, p.6)
17. The Department relied on statements made by the children during the 51B response. The RW found the children to be reliable reporters and did not obtain any evidence to suggest that the children's statements were not credible. (Testimony of RW)
18. I find that the reliance on the statements made by B and A to be reasonable, as no evidence was presented to suggest otherwise; there was nothing to suggest that B or A were motivated to make false allegations. (Edward E. v. Dep't of Soc. Servs., 42 Mass. App. Ct. 478, 484-485 (1997))
19. However, I do not find such reliance on the statements made by X to be reasonable. During the RW's interview with X, the child maintained that some of the information provided in the 51A report was accurate, but denied that he disclosed other information that was reported. Although X admitted that he struck the partner and the partner's mother with a guitar, X also reported that the partner threw him against a wall and kicked him when he fell. However, neither B nor A corroborated X's version of the reported incident, including X's report of being struck by the partner. In addition, despite the child's disclosures to the mandated reporter that the partner smashed the Xbox, broke the television, and put a hole in the ceiling, during the RW's visit to the home, the RW did not observe holes in any of the walls or ceilings. The RW also observed two Xbox units in the home, both in working order, as well as three televisions, also in working order. As a result, I did not find X to be a reliable reporter, and therefore, the Department's reliance on X's statements was not found to be reasonable. (Fair Hearing Record)
20. The Department received no evidence that B and A had any behavioral issues in their schools or in the home. (Testimony of RW)
21. The Appellant's sister, Ms. D.S. ("DS" or "the sister") reported numerous concerns regarding domestic violence in the Appellant's home when speaking to the RW by telephone on January 20, 2017. However, due to the contentious relationship between the Appellant and the sister, it is unknown if the sister was motivated to make false allegations against the partner and the Appellant. As a result, I give little weight to the information provided by the sister during the 51B response. (Exhibit 2, p.7; Testimony of Appellant)

22. On January 30, 2017, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the children by the partner. The Department based its decision on information obtained during the 51B response. (Exhibit 2, p.10; Testimony of RW)
23. After consideration of all the evidence provided, I find that the Department did not have reasonable cause to believe that the partner failed to provide the subject children with minimally adequate care, and that the partner's actions placed the children in danger or posed substantial risk to their safety or well-being as required by the Department's intake policy when supporting for neglect. (110 CMR 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16)
24. Therefore, I further find that the Department's decision was not in compliance with its policy and regulations. (110 CMR 2.00 & 4.32) (See, "Analysis")

Analysis

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. 110 CMR 2.00 and 4.32; 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. (110 CMR 4.32(2)) 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 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

Neglect is the 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. 2/28/2016

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

Despite the Appellant's denials, the Department concluded that there was sufficient evidence to support allegations of neglect of the children by the partner. However, this conclusion was not substantiated by the evidence presented, and despite the numerous behavioral issues displayed by X, no evidence was presented that the child's behaviors were a direct result of the partner's actions. In addition, there was insufficient evidence presented that the children's emotional stability and growth had been negatively affected as a result of the reported incident.

Even accepting the Department's premise that the children were neglected, the Department failed to provide evidence that the partner's actions placed the children in danger or posed substantial risk to their safety or well-being as required by the Department's intake policy when supporting for neglect. (Protective Intake Policy 86-015 (revised 2/28/16))

Therefore, based on the totality of the evidence, for reasons cited above, and in the detailed Findings of Fact, the evidence was insufficient to support the Department's determination that the partner's actions rose to the level necessary to support the allegations of neglect. A Hearing Officer's decision must be supported by substantial evidence; there must be substantial evidence supporting the Hearing Officer's conclusion that the Department had reasonable cause to believe that neglect occurred in this instance. (Wilson v. Dep't of Soc. Servs., 65 Mass. App. Ct. 739, 745-746 (2006))

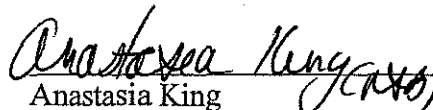
The Appellant has shown by a preponderance of the evidence that the Department acted without reasonable basis or in a reasonable manner, and resulted in substantial prejudice to the partner.

Conclusion

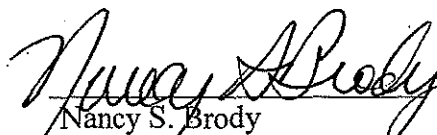
The Department's decision to support the allegation of **neglect** of **X** by the Appellant's partner, Mr. F.B., was not made with a reasonable basis and therefore, **REVERSED**.

The Department's decision to support the allegation of **neglect** of **B** by the Appellant's partner, Mr. F.B., was not made with a reasonable basis and therefore, **REVERSED**.

The Department's decision to support the allegation of **neglect** of A by the Appellant's partner, Mr. F.B., was not made with a reasonable basis and therefore, **REVERSED**.


Anastasia King
Administrative Hearing Officer

Date: 4-2-18


Nancy S. Brody
Supervisor, Fair Hearing Unit

Date: _____

Linda S. Spears,
Commissioner