

**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
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IN THE MATTER OF)
)
)

FAIR HEARING DECISION

JM)
FH #2017-0184)
)

The Appellant in this Fair Hearing is JM (hereinafter "JM" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On October 21, 2016, December 5, 2016 and December 6, 2016, the Department received three (3) 51A reports alleging neglect of C (hereinafter "C" or "the child") by the Appellant. The Department conducted a response and on December 9, 2016, made the decision to support the allegation of neglect of C by the Appellant. According to the Appellant, she did not receive notification of her right to appeal. Although the Area Office provided a copy of the letter mailed to the Appellant at the response conclusion, the Appellant maintained that it did not include a notification of her right to appeal and the requirement to do so within thirty days of the support decision letter. As such, on March 8, 2017, the Fair Hearing Unit allowed the Appellant's late request for a Fair Hearing. The Hearing was scheduled and held on April 13, 2017 at the DCF Coastal Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the Fair Hearing to afford the Appellant the opportunity to submit additional information. The Appellant submitted supplemental documentation which was reviewed, entered into evidence and considered in the decision making of the instant case. The record closed on April 28, 2017.

The following persons appeared at the Fair Hearing:
Carmen Temme Fair Hearing Officer
JM Appellant

TP

Department Response Social Worker

In accordance with 110 CMR 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 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 A DCF Intake Report/51A Report, dated 10/21/2016
- Exhibit B DCF Intake Report/51A Report, dated 12/5/2016
- Exhibit C DCF Intake Report/51A Report, dated 12/6/2016
- Exhibit B DCF Child Abuse/Neglect Non-Emergency Response, completed 12/9/2016

For the Appellant:

- Exhibit 1 Appellant's written version of events
- Exhibit 2 Notarized statement from EB, maternal grandmother, dated April 17, 2017

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 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) 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 Fair Hearing is C; at the time of the subject 51A reports, C was just shy of his fourteenth (14th) birthday. (Exhibit A, p.1; Exhibit B, p.1; Exhibit C, p.1; Exhibit D, p.1)

2. The child's father is AD; the Appellant is the child's mother. At the time of the subject 51A reports, the Appellant was the child's primary caretaker and a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/2016
3. Since C's birth, the Appellant and AD had an on again off again relationship, including remarriage, up until their final divorce in 2009. The Appellant maintained that she raised C as AD was disinterested and only wanted occasional visitation; however, they always shared legal and physical custody of C. When C turned eleven (11), AD gained additional visitation time, including some overnight visitation. When C turned thirteen (13), AD started to take C for extra overnights and extended visits. (Testimony Appellant; Exhibit 1)
4. On July 11, 2013, the Department screened out a 51A report filed due to a parental argument at a drop off following visitation with AD. C refused to get out of the car; the Appellant attempted to pull C from the car. AD contacted the police who responded; the police referred the Appellant and AD to Probate Court. (Exhibit B, p.11)
5. Sometime in 2015, AD became engaged to another woman who was a social worker. According to the Appellant, thereafter AD began to question her parenting decisions. According to the Appellant, she noticed an increase in aggressive behaviors as C spent more time with AD. The Appellant obtained two (2) psychiatric evaluations of C; C was reportedly diagnosed with "Depression and Anxiety, as well as irritability and mood disorder. {C} was also reportedly diagnosed with ADHD without hyperactivity when he entered middle school." (Exhibit 1) Sometime in September 2016, AD remarried; (Exhibit B, p.9) according to AD he and the Appellant were able to communicate regarding C up until the time that he re-married. (Exhibit D, p.3)
6. Sometime at the end of September 2016, AD presented at the [REDACTED] Probate Court requesting custody of C and a restraining order on behalf of C. The child was brought to the Court where he was interviewed; custody remained with the Appellant. (Exhibit B, p.8) The Appellant also attempted to secure a restraining order against AD, reporting that he had made threatening statements to her. The Presiding Justice scheduled a Hearing with the Appellant, AD and the child for October 6, 2016. (Exhibit B, pp. 9-10)
7. On October 3, 2016, the child got into trouble with the Appellant for lying about riding in a car with other children. The child contacted AD when he learned that he would be disciplined; AD contacted the police. (Exhibit B, pp.9-10)
8. On October 4, 2016, the Department received a 51A report filed by a non-mandated reporter who noted concerns with the Appellant and child arguing a great deal and the child reportedly feeling unsafe with the Appellant. According to the report, the child contacted AD, who contacted the [REDACTED] Police, who responded to the Appellant's residence. The police observed no concerns. Thereafter, the Appellant brought C to Children's Hospital for an evaluation; according to the Appellant, C was angry, throwing things and screaming. The child was discharged home with a referral to "Crisis." Crisis came to meet with the child and made a referral for in home counseling services to commence on or about October 24, 2016. The

Department screened out this 51A report. (Exhibit B, pp.8-11)

9. On October 5, 2016, the Department received a 51A report from a mandated reporter noting ongoing Probate Custody issues. AD maintained that the Appellant was verbally and emotionally abusive to the child. (Exhibit B, p.9) The Department screener contacted the child's school who reported no concerns regarding the Appellant; however noting that C was caught in the middle of his parent's ongoing custody battle. The DCF screener also contacted the Appellant. The Appellant spoke of AD having remarried a month prior and reported that he became angry at her when she would not permit his new wife to have access to C's school records. According to the Appellant, this prompted the Probate Court proceedings. The Appellant spoke about the false allegations made about her and AD's attempts to "manipulate" the child. The Department screened out this 51A report. (Exhibit B, p.9)

11. On October 21, 2016, the Department received a total of three (3) 51A reports; the Department screened out the first two (2) 51A reports. The initial 51A was filed by a non-mandated reporter, reporting similar concerns as those in the third 51A report referenced below. The second 51A report noted that the [REDACTED] Police had again responded to the Appellant's residence after receiving a phone call from the Appellant and C. C locked himself in his bedroom during an argument about the child's homework; the Appellant stated she was concerned that he would hurt himself. The Appellant unscrewed the door hinges so she could gain entry to his bedroom. C contacted AD who advised him to call the police. The Appellant also contacted the crisis team who responded to the home; the child remained in the home. The child reported that he was unhappy residing with the Appellant. The reporter stated that "there appeared to be animosity between the mother and the father that is causing issues between the mother and the child. (Exhibit B, p.8)

12. Upon receipt of the third 51A report filed pursuant to M.G. L. c. 119, §51A, alleging neglect of C by the Appellant, the Department screened in the report to conduct a response; this 51A report was filed by a non-mandated reporter. On October 20, 2016, C contacted the [REDACTED] Police, stating that the Appellant was arguing with him, calling him names and making negative statements about him; C reportedly did not feel safe. The Appellant contacted the crisis team. AD believed the plan was for C to go to school the following day and then spend the weekend with AD. On October 21, 2016, AD learned that C did not attend school. AD contacted the police for a well child check as C was home alone "again." Crisis again met with C; they recommended a day program for the child. AD did not agree with this plan; as he shared legal custody, C could not be admitted to the program. The Department added an allegation of neglect by AD due to his refusal to follow the recommendations of the crisis team regarding C's day program and his belief that C had no mental health issues. (Exhibit A; Testimony TP)

14. The 51A report was assigned for a response, pursuant to M.G.L. c. 119, § 51A to TP (hereinafter "TP") Social Worker from the DCF Coastal Area Office. (Testimony TP; Exhibit D)

15. During TP's initial home visit on October 26, 2016, the Department learned that C was attending [REDACTED] Hospital's partial program on a daily basis from 9:00am to 3:00pm. C had recently started in home therapy with BK (hereinafter "BK"). The Appellant reported that she had obtained a restraining order against AD sometime the month prior. The Appellant spoke of

C's aggressive behaviors and her issues with AD. TP questioned the Appellant's need to physically intervene when C would lock his bedroom door as he was making no threats to harm himself and did not appear to be unsafe. The Appellant maintained that she would never permit C to reside with AD. (Exhibit D, pp.1-2) C informed TP that he and the Appellant fought daily. The Appellant reportedly brought up issues regarding AD. C reported that the Appellant contacted crisis "when nothing {was} going on." C reported that the Appellant did not give him any freedom and would not leave him alone. (Exhibit D, p.3)

16. On November 1, 2016, TP met with AD. AD felt that it was a "possibility" that C was manipulating things in order to gain additional access/time with him. AD did not feel that C had any mental health issues and believed "that his presentation {was} due to {the Appellant's} inability to control him. Mother will push an issue and when {C} is defiant she turns it all on him." (Exhibit D, p.4)

17. On November 2, 2016, C was discharged from the partial hospitalization program at ██████████ Hospital. The discharge plan was for C to return to school and continue with his in home therapist BK from ██████████; Remeron (to assist with sleep) was added to his ADHD medication. According to staff at ██████████ Hospital, C's "main stressors come from the conflictual relationship between parents and this increases his depression." C felt "pressure" from the Appellant whenever he would talk about wanting to live with AD. C reported the Appellant making "manipulative" statements such as "you will feel bad if I die after you leave me." (Exhibit D, p.4)

18. On November 14, 2016, the Appellant and AD were in Court regarding the custody issues. (Exhibit D, p.5)

19. On November 15, 2016, the Department received a 51A report filed by a mandated reporter alleging neglect of the child by the Appellant. On November 14, 2016, the reporter responded to a call to the Appellant's residence. C had left the residence stating that he wanted to stay with AD. The child reported that he and the Appellant argued; C contacted AD and asked AD to "meet with him." C reportedly went outside to "clear his head" while he waited for AD. The Appellant reported that she did not want AD "near the child when the child is with her." The Appellant expressed frustration that the child contacted AD for advice when she and the child argued. The reporter stated that "it appeared that mother's anger and hatred toward the father has been projected onto the child." The Department screened out this 51A report due to a "lack of information regarding protective concerns." (Exhibit C, p.7)

20. The Department maintained an open response conducted by TP. (Exhibit B, p.5) TP addressed the aforementioned concerns during a home visit on November 15, 2016. C informed TP that he wanted to live with his father; C said he told the Appellant this daily. When asked how the Appellant responded to this, C stated that the Appellant told him she would leave the state and he would never see her again. (Exhibit D, p. 5) The Appellant denied saying this. (Exhibit 1; Testimony Appellant) C stated that the Appellant was attempting to make him "feel guilty and put him in the middle." The Appellant reportedly told C that he was the reason that she and AD divorced. TP noted that C "had a little insight" as he acknowledged that he and the Appellant were "antagonizing each other and he owns some of the responsibility." (Exhibit D, p.5)

21. On November 15, 2016, the Appellant spoke of C being "all about his dad, wanting more time with his father." The Appellant spoke of feeling "bullied" by AD and his wife. The Appellant felt that she was at her "breaking point" and believed that they were attempting to push her to the point where she agreed to have C reside with them. The Appellant stated that should this occur, she would move to [REDACTED] and "they could have him." TP inquired how this would help C. The Appellant replied that C was making a choice. TP informed the Appellant that she was being unreasonable. The Appellant continued by saying that she would not sit by and "watch her son's life go down the tubes living with father." The Appellant then informed TP that her plan had always been to return to [REDACTED] after C graduated high school. The Appellant stated that she could now leave and return to school. The Appellant stated "they turned him against me" and it was not fair. When asked why she did not permit C to go outside to "get some air", the Appellant replied that he could get air on the porch. (Exhibit D, p.5) Exhibit 1 and the Appellant's testimony corroborate the Appellant's long term plan to return to [REDACTED] following C's graduation from high school.

22. On November 18, 2016, TP spoke with BK who had been meeting with C for the preceding three (3) weeks. He reported that C presented as a "sad kid" due to his wanting to see his father more frequently and struggling to understand the Appellant's issues with this. BK saw the Appellant's statement to C that she would move to [REDACTED] if he resided with AD as an attempt to "manipulate {C} with guilt over losing her." When this was addressed with the Appellant she "had zero qualms" reporting that she had told C this for years. C stated that he did not want to live with AD if the Appellant was going to move. BK "feels this is a kid who is in the middle and is equally scared to lose the relationship with either parent." BK saw the Appellant as being scared that she was "losing control over the care of her son." BK had a scheduled appointment with AD and C in two (2) weeks' time. The Appellant was "adamant" that this would not occur during her time." (Exhibit D, p.7)

23. On December 5, 2016, the Department received a 51A report from a mandated reporter alleging neglect of the child by the Appellant. On this date, the [REDACTED] Police responded to the Appellant's residence following receipt of a telephone call from BK. The police found C and BK locked out of the residence. During a counseling session with BK, the Appellant became upset when C said that he wanted to spend more time with AD. The Appellant stated "Well, if you feel that way, go live with him" as she pushed the child and BK out of the residence. C reported that the Appellant took his key. The Appellant left prior to the arrival of the police; she reportedly went to visit the maternal grandfather who was ill. AD arrived and took the child to his home for the night. This 51A report was incorporated into the pending response being conducted by TP. (Exhibit B; Testimony TP)

24. On or about December 5, 2016, AD approached the Probate Court and was granted temporary custody of C pending a December 14, 2016 Hearing. (Exhibit D, p.9; Testimony Appellant)

25. On December 6, 2016, the Department received a 51A report filed by a mandated reporter alleging neglect of the child by the Appellant regarding the aforementioned incident. The police were called to the residence due to the Appellant's ongoing "neglect and mental abuse to the

child." The Appellant was described as "manipulative and {tried} to use therapy and court to her advantage." On December 5, 2016, C attempted to hug the Appellant; the Appellant pushed him away. There was a verbal exchange between the Appellant and C. The Appellant "announced" that the grandfather was dying and needed to be moved to a hospice setting. C reportedly did not know that his grandfather was that ill. The Appellant "became irrational, and began screaming and yelling" telling the child if he wanted to leave he could; she then threw the child out of the home. The reporter felt unsafe due to the Appellant's out of control behavior. The police were contacted at approximately 6:30 pm at which time it was dark and the child had no way to gain access to the residence. The reporter had to negotiate with the Appellant so that she would give C his medication and some clothing; AD was contacted. (Exhibit B) This 51A report was also incorporated into the pending 51A response in progress with TP. (Exhibit C; Testimony TP)

26. On December 6, 2016, TP spoke with the Appellant and BK regarding the 51A reports filed on December 5 and December 6, 2016; TP did not re-interview C. (Exhibit D)

27. BK's account of the December 5, 2016 events was as follows: the Appellant was unable to control her emotions and was acting like a thirteen year old. The Appellant presented the information about the maternal grandfather dying in an "abrupt and cold fashion." The Appellant left the room; C spoke of his concern regarding the Appellant's communication with him. BK then approached the Appellant, wanting to discuss communication; the Appellant "lost it." BK stated that the Appellant felt that she was losing control and would do whatever she could to maintain control. The Appellant said that she would not permit C to reside with her if C wanted to live with his father. She took C's key stating that C and AD would steal items from the residence. The Appellant attempted to "kick" BK out first. When told that BK would not leave as he felt that C was unsafe, she "kicked them both into the hall." BK contacted the police and AD. The Appellant locked the door and "just left." According to BK, he found the Appellant "manipulative and easily misinterpret{d} situations." BK had referred the Appellant for counseling due to "depression, anxiety and struggling with managing the current situation. BK did not believe that it would be in C's "best interest" to return to the Appellant's home until she engaged in treatment. (Exhibit D, p.9)

28. According to the Appellant, while C was in session with BK, she received a call that her grandfather only had a couple of days to live. The Appellant went into the counseling session to tell C with BK present as C had a hard time receiving bad news. C became upset stating that he had no idea that his great grandfather was ill. (Exhibit D, p.8) According to the Appellant, C "immediately had an outburst and started screaming." The Appellant maintained that C was aware that he was ill and was in hospice. (Exhibit D, p.8; Testimony Appellant; Exhibit 1) C then said that he did not want to live with her. The Appellant told him that if he did not want to live with her he could live with his father. (Exhibit D, p.8) C then called AD. (Exhibit 1) The Appellant left and took C's keys. She took the keys as she could not "trust her son and his father if he "was" not going to live her." (Exhibit D, p.8) According to the Appellant, on a previous occasion when C stayed with AD, AD reportedly entered the Appellant's apartment and stole various items from her. (Exhibit 1) The Appellant made no offer of proof regarding this contention. (Fair Hearing Record) The Appellant told TP that, AD "wants C, looks like they all got what they want." The Appellant stated that C could live with his father and she would move elsewhere. (Exhibit D, p.9)

29. During the Appellant's conversation with TP on December 6, 2016, the Appellant made no mention of issues or concerns that she raised at Fair Hearing regarding BK's alleged "rude and unprofessional behaviors" directed towards the Appellant. The Appellant wrote that both BK and C were "yelling" at her. The Appellant contended that BK called the police when he realized that he "went to far." [Sic] The Appellant reportedly filed a complaint with [REDACTED] regarding BK. (Exhibit 1)¹ Additionally, I do not credit the Appellant contention that on December 6, 2016 she only spoke with TP for approximately ten (10 seconds; the documented information in the 51B report reflected a far more detailed and lengthy conversation. (Exhibit B, p.8; Testimony TP)

30. At the conclusion of its response on December 9, 2016, the Department supported the aforementioned reports for neglect of C by the Appellant. The Department based this determination on the following:

- The Appellant "admitting" that she told C that she would move to [REDACTED] and never see her again should he decide to live with AD. The Appellant's failure to recognize that this was inappropriate and "clearly has an impact on her son's emotional well being." (Exhibit D, p.5, p.10; Testimony TP)
- The Appellant locking C out of the apartment on December 5, 2016, taking his key and leaving in her vehicle. (Exhibit B, p.2; Exhibit C, p.2; Exhibit D, p.10; Testimony TP)

31. The Appellant and the maternal grandmother maintain that the Appellant remained in the complex parking lot with eyes on C until C left with AD and the police left. The Appellant did so because she was "sick and tired" of dealing with the police. I find this contention to be reasonable and credit the Appellant's testimony as corroborated by the maternal grandmother EB (testimony Appellant; Exhibit 2)

32. Noteworthy was TP's belief that C manipulated situations in order to obtain a reaction from AD. Additionally, TP described the Appellant as rigid and "overbearing as it relates to rules in the house and freedoms her son can have." The Appellant struggled with disciplining C; TP opined that the Appellant overreacted to C's defiant behaviors when contacting the crisis team and taking C to Children's Hospital. In all other areas, the Appellant had ensured that C received his medical, educational and mental health needs. The Appellant was "instrumental" in accessing and engaging C with in home therapy, she requested a mentor and when she felt that he was having a crisis, she contacted the appropriate professionals. (Exhibit D, p.10)

33. At the time of the Fair Hearing, C remained in his father's care and custody. (Testimony Appellant)

34. Based on the evidence at the time of the response, I find it that the Department had reasonable cause to believe that the Appellant's actions and behaviors beginning in October 2016 constituted a failure to provide C with minimally adequate care. 110 CMR 4.32(2), DCF Protective Intake Policy #86-015 Rev. 2/28/16

¹ In the Appellant's February 26, 2017 e-mail to the DCF Fair Hearing Unit requesting a Fair Hearing, the Appellant wrote that she felt that TP "was inappropriate towards me during his visits at my home and makes me feel as if his recommendation in my case is unfair and unwarranted." (Fair Hearing Record)t

35. I find that there was no evidence that the Appellant's actions or inactions placed C in danger or posed substantial risk to the child's safety or well-being. DCF Protective Intake Policy #86-015 Rev. 2/28/16. Therefore, the Department's decision to support the allegation of neglect was not made in conformity with its policies and regulations. 110 CMR 2.00, 110 CMR 4.32, DCF Protective Intake Policy #86-015 Rev. 2/28/16.

Applicable Standards

Caregiver is defined as:

- (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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

"[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

"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)

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. 110 CMR 2.00

A finding of support requires that there be: 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. (DCF Protective Intake Policy #86-015, rev. 2/28/2016)

“Danger” is defined as a condition in which a caregiver’s actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. DCF Protective Intake Policy #86-015, rev. 2/28/16

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Police, (rev. 2/28/2016)

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

It was undisputed that the Appellant was a caregiver for C. 110 CMR 2.00

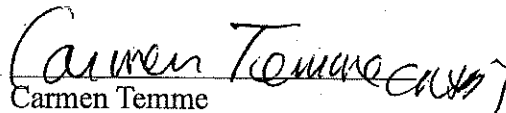
The Appellant denied and disputed the support finding. The Appellant loved C and was hurt when C expressed his desire to reside with AD after many years of the Appellant raising C as a single parent. This desire was the catalyst for the disputes between the Appellant and C.

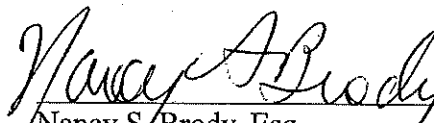
The Hearing Officer carefully considered the differing versions of events, recognizing the level of emotion and personal investment within each scenario. The Appellant, AD and the child all bore some burden of responsibility during the reported incidents. As C’s caregiver, the Appellant was required to provide C with minimally adequate care. C was exposed to the Appellant’s heightened emotional responses to his requests to reside with AD. Once AD became engaged in 2015 and then married in September 2016, AD became more available, involved and sought out increased visitation with C. The Appellant and AD’s ability to communicate effectively regarding C’s well-being declined, culminating in the events of October–December 2016. During this period of time, the Appellant and C had daily arguments, primarily stemming for C’s desire to reside with AD and the Appellant’s complete refusal to consider this. C was exposed to multiple responses by the ██████████ Police, involved with Probate Court, and caught in the midst of his parent’s dispute of his care and custody. It was believed that C was manipulating his parents in his effort to achieve his goal. The Appellant’s responses to C’s behaviors were viewed as excessive, thereby exposing C to several evaluations by the crisis team and on one occasion a presentation at Children’s Hospital. The Appellant’s verbal responses to C were opined by the professionals to be manipulative, with the intent to guilt C to remain in her care. As a result, C’s aggressive behaviors increased, resulting in him screaming and throwing items. While it was

reasonable for the Department to be concerned about the emotional impact of these disagreements on C, there was no evidence that the Appellant placed C in immediate danger or that her actions or inactions posed substantial risk to his safety or well-being during the arguments.² The Appellant did avail C to crisis intervention services, in home counseling services and requested a mentor for him. In all other areas, the Appellant provided excellent care for C. The Appellant has shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of neglect.

Conclusion and Order

The Department's decision to support the 51A report of neglect on behalf of C by the Appellant is **REVERSED**.


Carmen Temme
Administrative Hearing Officer


Nancy S. Brody, Esq.
Supervisor, Fair Hearing Unit

12-30-17
Date

Date

Linda S. Spears
Commissioner

² Such evidence, that the child was in danger or the Appellant's actions posed a substantial risk to the child's safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being. (See DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29)