

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

**Linda Spears  
Commissioner**

**Voice: (617) 748-2000  
Fax: (617) 261-7428**

**IN THE MATTER OF: AO**

**Fair Hearing # 2017-0191**

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing is Mr. AO (hereinafter AO or Appellant). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support allegations of physical abuse and neglect of the reported child, J, and neglect of the reported child, A, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

**Procedural Information**

On January 5, 2017, the Department received a mandated 51A report regarding the subject child, J. The report was received by the Department's Worcester East Area Office where it was screened in and assigned for non-emergency response. The Department completed its response on January 22, 2017. The allegations of physical abuse and neglect were supported. The Appellant was advised of his right to appeal the Department's determination. The Appellant then filed a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was held on April 13, 2017 at the Department of Children and Families' Worcester East Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record closed remained open until April 27, 2017 to allow for the further submission of documentary evidence. The evidence was received via e-mail and the record closed on April 27, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph  
LK  
AO

Hearing Officer  
Department Response Worker  
Appellant

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 January 5, 2017

Exhibit 2: 51B dated January 22, 2017

Exhibit 3: Emergency Service Plan Dated January 10, 2017

For the Appellant

Exhibit A: Photograph of J

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 children of this investigation were J, age six (6) and A, age two (2) at the time of the subject events. (Exhibit 1)
2. J and A are the children in common between the Appellant and his spouse, Ms. MO (hereinafter MO). (Testimony of Appellant)
3. The Appellant has an eight (8) year old child from a previous marriage, who resided in [REDACTED] and visited with the Appellant. The Appellant was the subject of a lone unsupported investigation of physical abuse in [REDACTED]. (Testimony of Appellant)
4. The Appellant has a protective history with the Department consisting of a lone unsupported finding of physical abuse of J dating to October, 2016. (Exhibit 1)
5. On the afternoon of January 4, 2017, J was in the sole care of the Appellant. When J declined to eat her supper in a timely manner, the Appellant threatened to strike her, then proceeded to do so with a belt that he removed from his waist. J was struck once, on the left side of her torso, causing her to be in fear, and resulting in pain. (Testimony of Appellant, Exhibit 2, p. 4, Exhibit 2 p.6)
6. The Appellant understood as he undertook these actions, that he was in error, that this action could result in an "irreparable" injury and that J was fearful. (Testimony of Appellant)
7. The Appellant was, in the immediate aftermath of the incident, remorseful, and remained so as of the date of fair hearing. The Appellant's regret at the adverse impact his actions had on the relationship with his daughter was evident at fair hearing. (Fair Hearing Record, Testimony of Appellant)
8. J related clear, consistent, credible disclosures regarding this event to her school counselor, school principal, and to the Department's response worker. (Exhibit 2, Testimony of Department Response Worker)
9. J's disclosures mirrors the self-report of the Appellant, who conceded that he struck his daughter, frightened her, and caused her to be in pain. (Fair Hearing Record, Testimony of Appellant)
10. The Appellant is a registered nurse and a graduate student in a nursing program. (Testimony of Appellant)
11. The Department's decision could have an adverse impact on the Appellant's professional license and future employment. (Testimony of Appellant)

12. The subject child A, age (2), has a diagnosis of Autism, and receives an array of services for the attendant symptoms, including in home care upwards of fifteen (15) hours per week. (Exhibit 2, Testimony of Appellant)
13. None of the providers for A or any of the collaterals contacted in the course of the Department response, reported any protective concerns for her. (Exhibit 2)
14. The Appellant is an active member of a faith community, where his wife and children are also active and visible members. (Testimony of Appellant)
15. The Appellant and MO signed a safety plan with the provision that no physical discipline would be utilized. This plan has been adhered to, and enhanced by the Appellant's own action of enlisting his pastor to aid J if needed. (Testimony of Appellant)
16. The Department's decision to support the allegation of neglect of A by the Appellant was based solely on speculation that he "may be" at risk due to his non-verbal status. (Testimony of Department Response Worker, Fair Hearing Record)
17. After a review of the evidence and for the following reasons, I find that the Department did not have reasonable cause to find that A was neglected by AO and further, that AO's actions/inactions did not place A in danger or pose a substantial risk to A's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
18. The Department's decision to support the allegation of neglect by Appellant of A was therefore not made in conformity with its policies and regulations. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16
19. After a review of the evidence and for the following reasons, I find that the Department had reasonable cause to find that J was abused and neglected by Appellant AO and that Appellant AO's actions/inactions placed J in danger or posed a substantial risk to her safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
20. The Appellant struck J with a belt on her side, causing pain, and fear. In so doing, AO compromised her safety and thus failed to provide J with minimally adequate care. The Appellant's actions also created a substantial risk of physical injury to J, providing sufficient evidence that she was abused, as set forth in the Department's definitions. The Department's decision to support the allegations was made in conformity with its policies and regulations. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

### **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

“Abuse” means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

“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

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

As J and A's father, the Appellant was a caregiver for J and A under Department regulations and/or policies. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

On the basis of information obtained during the investigation, the Department supported an allegation of physical abuse of J by the Appellant. In reaching the decision in question, the Department gave significant weight to both contemporaneous statements made by the Appellant and by J, as well as the interviews conducted, from which the Department determined that the Appellant struck J once on her torso with a belt. Considering all the evidence, I find the Department had "reasonable cause to believe" that physical abuse did occur as the Appellant's actions were non-accidental and placed J at substantial risk of injury. See Findings; Cobble v. Commissioner of DSS, 430 Mass. 385 (1999)

The Department's decision that the Appellant failed to provide minimally adequate care for J was also supported by the evidence. J expressed fear experienced from the reported incident and the Appellant's actions compromised her safety and well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16

That the Department's supported finding has a possible adverse effect on the Appellant's employment prospects is regrettable. However, the court has concluded that a potential unfavorable impact of an Appellant's professional licensure does not constitute a prejudice to the Appellant, and lies outside the purview of the Fair Hearing. Wilson v. Department of Social Services, 65 Mass Appeals 739(2006).

The Department's decision relative to two (2) year old A is unsustainable. There was no evidence that the Appellant failed to provide minimally adequate care for A. No provider reported concern for A, an exceptionally visible child due to the nature of his diagnoses.

Based upon the evidence presented both at the time of the investigation and at the Fair Hearing, the decision of the Department to support the allegations of physical abuse and neglect of J by the Appellant, as defined in its regulations, was made in conformity with Department regulations, policies and procedures. Therefore, the decision of the Department to support the allegations of neglect and physical abuse of J is AFFIRMED.

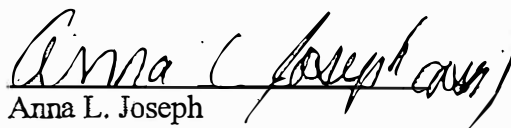
Based upon the evidence presented both at the time of the investigation, the decision of the Department to support the allegation of neglect of A, as defined in its regulations, was not made in conformity with Department regulations, policies and procedures. Therefore, the decision of the Department to support the allegation of neglect of A is REVERSED.

### Conclusion and Order

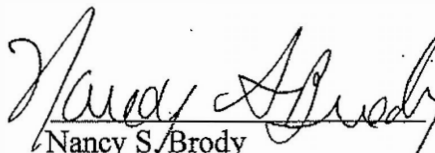
The Department's decision to support the allegations of abuse and neglect of J was made in conformity with Department policy and regulations and therefore the Department's decision is **AFFIRMED**.

The Department's decision to support the allegation of neglect of A was not in made conformity with Department policies and/or regulations and therefore the Department's decision is **REVERSED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the County in which he lives 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: 4-29-18

  
Nancy S. Brody  
Supervisor, Fair Hearing Unit

Date:

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Linda S. Spears  
Commissioner