

The following documents were submitted into the record at the Fair Hearing:

For the Department:

Exhibit 1: 1/3/17 51A Report
Exhibit 2: 1/24/17 51B Report

The Appellant did not submit documentary evidence into the hearing record.

Statement of the Issue

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 of human trafficking. Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject female child of this hearing is "L" ("the child"), who was two (2) years old at the time of the subject 51A filing referenced below. (Exhibit 1, p.1.) The child has global delays with multiple diagnoses and is considered "medically complex." (Exhibit 2, pp.4 and 7.)
2. The Appellant is the biological father of the child. (Exhibit 1, pp.1 and 2.)
3. The biological mother of the child is Ms. C (or "mother"). (Exhibit 1, pp.1 and 2.) The parents are not married. (Testimony of Appellant.) The Appellant was staying with the mother and child at the time of the 51A filing.² (Id. at p.2.)
4. The Appellant has DCF history as a child but not as an adult. (Exhibit 1, p.5.)

² The couple and child had previously resided in California. In October, 2016, the mother and child returned to Massachusetts to be closer to family while the Appellant stayed in California to work. The Appellant was visiting with them for the holidays when the incident occurred. (Exhibit 2, p.3; Testimony of Appellant.)

5. On January 3, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A, from a mandated reporter, alleging neglect of the child by the Appellant after following up on a report from a local veterinarian that during a domestic disturbance at their apartment, the Appellant "head-butted" the mother in the face near her eye, and kicked the family dog injuring both. The reporter viewed the mother's eye to be black and blue and the side of her face was swollen. The 80-pound dog had a back injury rendering the dog's legs immovable; the dog had to be euthanized. The mother telephoned the Appellant from the veterinarian's office who heard the mother say, "Thanks to you, we don't have a dog anymore." (Exhibit 1, p.2.)
6. The Department screened-in the 51A report for a non-emergency response. (Exhibit 1, p.6.)
7. On the day of the incident, the mother woke up to the Appellant "flipping out" on her. She told him to get out. Believing he was going to take her car, the mother followed the Appellant out of the apartment into the entryway. This is when the Appellant head-butted the mother in the face. The Appellant then went into the apartment to get something and thereafter left. When the mother entered the apartment, the family dog was "army crawling" toward her and was in pain. She thereafter sought help for the dog, but did not call the police. (Exhibit 2, p.3.) The child was present in the home during the subject incident. (*Id.* at pp.11-12.)
8. The mother initially did not want to cooperate fully when speaking with the reporter, and declined wanting to seek a restraining order against the Appellant, as she did not want to get him in trouble, and as she believed the Appellant had gone to [REDACTED] (Exhibit 1, p.2; Exhibit 2, p.4.) However, thereafter she obtained a no-abuse order against the Appellant and did not allow him back into the home; her father also moved into the apartment with her and the child. (Exhibit 2, p.3.) Mother willingly signed an emergency service plan agreeing to not allow the Appellant into the home. (*Id.* at p.4.)
9. On January 5, 2017, the DCF Response Worker ("RW") viewed the mother's left eye to be bruised and swollen.³ (Exhibit 2, p.3.) The mother gave the DCF RW examples of domestic violence in her relationship with the Appellant. The Appellant had hit the mother in the past and caused bruises. He was also controlling of her and in the past did not allow her to get her license or a job. While living in [REDACTED] the mother had contacted a domestic violence shelter but when they had an opening for her, she did not have a way to get there. His abusive behavior toward her was one reason she wanted to move back to [REDACTED]. The night before the subject incident, the Appellant and mother had gone out to dinner and the Appellant "gave her permission" to have a drink. (Exhibit 2, p.3.) The mother described the Appellant as having "a switch in his head and if it goes off he goes into a rage, yelling, throwing things at her, and hurting himself." (*Id.* at p.4.)

³ The mother's bruised eye was still visible nine days after the subject incident when a social worker at the office of the child's medical provider made note of it. (Exhibit 2, p.7.)

10. The RW viewed the child but did not interview her due to her age. (Exhibit 2, p.3; Testimony of TM.) Although there is no specific evidence as to how cognizant the child was at that time (Testimony of TM), the RW viewed the mother remove the child from her pack-n-play where she was initially sleeping, and then sit her on the floor after she awoke. There is no evidence the child needed assistance to sit up, and in fact, the RW thereafter interviewed the mother at the kitchen table. (Exhibit 2, p.3.)
11. The Appellant was arrested following the incident. He informed the reporter he was trying to leave and did not mean to hurt the mother, and, "I know I fucked up." (Exhibit 1, p.3.)
12. The DCF RW interviewed the Appellant during the response however did not discuss details of the subject incident due to his pending criminal charges. He denied wanting to continue a relationship with the mother. (Exhibit 2, pp.6; 7—8.) Contrary to the mother's report, the Appellant denied a history of domestic violence in his relationship with her. Contrary to DCF records, he denied a childhood history of abuse or neglect. (*Id.* at p.8.)
13. The Appellant's credibility is suspect as he gave conflicting information regarding the injury to the dog. The Appellant denied to the reporter and at the time of the fair hearing that he hurt the dog. (Exhibit 1, p.3; Testimony of Appellant.) He informed the reporter that the veterinarian told him it was common for dogs like theirs to have back problems. He also initially informed the reporter he was at the vet when the dog was euthanized, and thereafter changed his story when confronted with his lie. (Exhibit 1, p.3.) The Appellant informed the mother that a cabinet fell on the dog however the RW verified there were no cabinets or other furniture in the family's apartment that could have injured the dog. (Exhibit 2, p.3.) In addition, the Appellant testified that in 2016, the dog was involved in a car accident while with them and was never physically the same after that and was less adventurous. (Testimony of Appellant.)
14. On January 24, 2017, the Department supported the aforementioned report, in accordance with M.G.L. c. 119, s. 51B, for neglect on behalf of the child by the Appellant⁴ due to an act of domestic violence to the mother causing an injury to her eye, and violence upon the family dog, causing the dog to be euthanized; the Appellant fled the home after the incident. The child was present in the home at the time. This was not an isolated incident of domestic violence in the couple's relationship. (Exhibit 2, pp.11 and 12.)
15. The Department opened the family for services following the support decision(s). (Exhibit 2, p.12.)

⁴ The Department also supported the mother for neglect. (Exhibit 2, pp.11-12.) She is not an Appellant in this hearing.

16. Based upon a review of the evidence presented in its entirety, the Appellant was unable to take those actions necessary to provide L with minimally adequate emotional stability and growth, and the actions by the Appellant posed a substantial risk to the child's safety and well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16; See, Analysis.)

Applicable Standards

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).

"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. 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 s. 51A. Id. at 63. 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.

"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. Protective Intake Policy #86-015, rev. 2/28/16.

"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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. *Protective Intake Policy No. 86-015* (rev. 02/28/2016)

To prevail at a Fair Hearing, an Appellant must show based upon all evidence presented at the hearing, 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/or statutes and/or case law 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. If the challenged decision is a supported report of abuse or neglect, the Appellant must show 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 the child's father, the Appellant is deemed a "caregiver" pursuant to DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant argued that he did not purposefully head-butt the mother as she described, and it was the mother who was the aggressor at the time of the subject incident, as well as during past domestic disturbances between them. The Appellant pointed out that during the DCF response, the mother had mental health diagnoses and was not medicated for such, intimating that this was a contributing factor in the subject incident. The Appellant testified that at the time of the incident the mother was short-tempered because she had drank alcohol the night before, and he had told her he wanted to end their relationship. The mother wanted to talk things out but the Appellant did not want to; instead he walked away and she followed him. According to the Appellant, the mother put herself between him and the door and he tried to "rock her aside" to get by. He thereafter went to get some valuables and went to the main door in order to leave when the mother and he started a "pushing game" during which their "heads met"; he had no malicious intent to hit mother's head. He then left the home and she let him go. The Appellant also denied injuring the dog during the incident and argued that there were no witnesses to this happening, including the mother.

The Appellant's arguments in this regard are not persuasive. Although there is often some degree of conflicting statements between parties involved in a domestic dispute (i.e.

"he said, she said"), the Appellant's statements to the reporter and to the mother contemporaneously with the event are deemed the most credible. (See, Findings of Fact #11, #13, and the mother's statement to the Appellant on the phone in #5.) The bruise to the mother's eye/face was significant and still visible nine days after the incident; this evidences more than just the parties "heads meeting." In addition, the Appellant's denial of hurting the dog (another example of violence in the home), is not credible based upon his lack of credibility in various explanations as to how the dog physically declined to the degree he had to be euthanized on the day of the incident. There is no evidence that the dog was not functioning fine prior to the incident, and thereafter the evidence is such that he/she was unable to walk following the Appellant's departure from the home.

The Appellant also argued that simply because the child was in the home when the alleged incident took place (he testified the child was in her playpen in the mother's room), she was not neglected because there is no evidence of how cognizant the child was of what was going on in her surroundings, and she could not express herself in order for DCF to determine such. However, our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979). Considering the type and degree of injuries to the mother and the family dog in this matter, along with mother's statements of examples of past domestic violence in her relationship with the Appellant, the Department was appropriately concerned with the possibility of ongoing domestic violence by the Appellant.⁵

In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Department had reasonable cause to support the allegation of neglect of the child in this matter, and the actions by the Appellant posed a substantial risk to the child's safety and well-being.

Conclusion

The Department's decision to support the 51A report of January 3, 2017, for neglect on behalf of the subject child is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the

⁵ The Department supports individuals for neglect when the caregiver fails to provide minimally adequate care to children in situations of ongoing domestic violence in the presence of children. The definition of domestic violence found in the Department's policy is "A pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. *Domestic violence is not defined by a single incident of violence or only by violent acts.*" Protective Intake Policy #86-015. (Emphasis added.)

county in which the Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the Findings of Fact.

Dated: 4-4-18

Linda A. Horvath
Linda A. Horvath, Esquire
Administrative Hearing Officer

Nancy Brody
Nancy Brody, Esquire
Supervisor, Fair Hearing Unit