

**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

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IN THE MATTER OF	)	
	)	
BL	)	<b>FAIR HEARING DECISION</b>
	)	
FH # 20170225	)	

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

**Procedural History**

On December 29, 2016, the Department of Children and Families received a 51A report from a mandated reporter alleging sexual abuse and neglect of R by his father, BL. A response was conducted and, on February 17, 2017, the Department made the decision to support the allegations of sexual abuse and neglect of R by BL. BL was not named on the Department's Central Registry of Alleged Perpetrators ("Central Registry"). The Department notified BL (Mr. L or "Appellant") of its decision and his right to appeal.

The Appellant made a request for a Fair Hearing under 110 CMR 10.06. The hearing was held on April 6, 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 hearing for one month to allow the Appellant to submit additional evidence. The Appellant did so, and on May 6, 2017, the record on this matter was closed.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
BL	Appellant
JI	Attorney for Appellant
SL	Witness
PL	Witness
JV	Department Supervisor

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 on one compact disc.

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

For the Department:

Exhibit A Child Abuse/Neglect Report dated 12/29/16

Exhibit B Child Abuse/Neglect Non-Emergency Investigation completed 2/17/17

Appellant

Exhibit 1 [REDACTED] Unfounded Investigation Letter

Exhibit 2 Google Earth view of Appellant's home

Exhibit 3 Plaster Fun Time receipts

Exhibit 4 Affidavit of SL

Exhibit 5 Medical records of R

Exhibit 6 Affidavit of Appellant

Exhibit 7 [REDACTED] of R

Exhibit 8 [REDACTED] Behavioral Plan

Exhibit 9 Imessages between Appellant and R's mother

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 investigation, the Department's decision or procedural action, in supporting the 51A report of sexual abuse 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. DCF Protective Intake Policy #86-015, rev. 2/28/16.

Findings of Fact

1. At the time of the filing of the subject 51A report, R was fourteen (14) years old. He resided in [REDACTED] with his mother, stepfather, sister and infant half-sibling; R and his sister S visited with their father, BL, in [REDACTED] (Fair Hearing Record)

2. The Appellant is the father of the subject children; therefore he was a caregiver pursuant to

Departmental policies and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

3. R was diagnosed with Autism Spectrum Disorder, Obsessive Compulsive Disorder, Oppositional Defiant Disorder, and Generalized Anxiety Disorder. At the time of the filing of the subject 51A report, R had been psychiatrically hospitalized three times in three months as he was not able to keep himself safe and made threats of harm against his mother. (Exhibit B)

4. On December 29, 2016, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A from a mandated reporter alleging the sexual abuse and neglect of R by his father, BL. According to the reporter, R disclosed that during a visit with father in June of 2016, the Appellant put R's penis in his mouth and later put his penis in R's buttocks. R said his father threatened to kill him and threatened his sister S as well. (Exhibit A)

5. R participated in a forensic interview in [REDACTED] which was viewed by the DCF supervisor; the written report was also provided to the Department. R disclosed that the alleged sexual abuse occurred when he and S visited their father and his wife in June of 2016. R stated that S went with the Appellant's wife to Plaster Fun Time and he was alone with his father in the house when his father pulled his pants down. As alleged, R said that that his father put R's "groin" in his mouth for a few seconds and that his father put his "groin" in R's buttocks and made a back and forth motion. R reported this event was "mentally painful" and when it was over he ran outside for air after his father showed him pornography on his cell phone and said, "This is a real man". (Testimony of JV, Exhibit B)

6. BL denied sexually abusing or neglecting R, and denied that he was alone with R during the referenced June 2016 visit or any visit due to past allegations. (Exhibit B)

7. R's mother provided inconsistent statements to the Department during the subject investigation. She said R started exhibiting anxiety in July of 2016, later admitting he had generalized anxiety for years. R's mother then said S was never interviewed by [REDACTED] child protective services as they decided not to come to the home, later admitting they did come to her home. (Exhibit B)

8. The Department relied solely on R's statements and supported the allegations. (Fair Hearing Record)

9. On February 17, 2017, the Department supported the allegations of the neglect and sexual abuse of R by BL.. (Exhibit B)

10. The Department did not corroborate R's statements relative to the alleged abuse he disclosed; R's statements were not consistent. R said the incident happened when his sister and his stepmother went to Plaster Fun Time and left him alone with his father. R went to Plaster Fun Time and painted a Love sign, he did not stay alone with his father. (Testimony of SL, Exhibit 3, Fair Hearing Record)

11. After going to Plaster Fun Time during their June visit, R and S were brought to [REDACTED]

to visit with their paternal grandparents. During that visit, R was alone with his grandfather, who he was comfortable with, and made no disclosure of abuse or neglect. (Testimony of Dr. PL)

12. R told his grandfather that he and S had been having a good visit; he said they went out to eat a lot, went to a ceramics shop, and was very talkative. (Testimony of Dr. PL)

13. R and S's grandfather travelled to [REDACTED] in November of 2016 to see them. He told them he and their dad were sad that their dad had no relationship with them, and asked both children if there was something he could tell their father to do better. S replied he could listen to them better and R said there was nothing else, he should just listen better. (Testimony of Dr. PL)

14. After the subject report and Dr. PL becoming aware of the instant allegations, Dr. PL had a phone conversation with R. He told R he had heard something that was very troubling to him. R said he had been advised not to talk about his father and hung up on him. (Testimony of Dr. PL)

15. R disclosed the subject abuse to his stepfather when he was being hospitalized after holding a knife to his mother. R felt it was his father who had him brought to the hospital as he contacted mother to come home after R made suicidal statements on the phone to him. R was known to "bargain" and manipulate events in order to be discharged home and not hospitalized. The crisis note indicated that R appeared to be crying with no tears present, "just a tactic not to be admitted to the hospital". After R's disclosure of abuse his stepfather brought him home.  
(Exhibit 7, Fair Hearing Record)

16. He had a history of making up stories, lying, and being manipulative. (Exhibit B, p. 8; Fair Hearing Record) R was not a reliable reporter. (Edward E. v. Department of Social Services, 42 Mass.App.Ct.478 (1997).)

17. According to R's medical records at the [REDACTED] on 12/11/16 the treating doctor reported, "When I observed R and he did not see me looking at him, his affect did not seem that he was in pain, he had a pleasant expression....When he saw me observing him, he would immediately grimace, cry and if ambulating, hunch over.". On 12/12/16, R's mother said he was, "very manipulative. R can vomit or cry on command. He goes from crying to trying to guilt you to bullying you". (Exhibit 5)

18. At the time of the support decision, there was no medical evidence and/or clinical evidence to support the claim that R was sexually abused and neglected by his father and no evidence to independently corroborate R's statements. (Exhibit B)

19. R was not physically examined following his disclosure of abuse. (Fair Hearing Record)

20. After review and consideration of all of the evidence, I find that the Department did not have reasonable cause to support the allegation of sexual abuse and neglect of R by BL for the following reasons.

- a. R's alleged disclosure of sexual abuse was not supported by sufficient indicia of reliability. (See Edward E.)
- b. R was not a reliable reporter. He provided inconsistent information and had a history

of making false allegations.

c. No independent evidence existed to corroborate R's alleged disclosure of sexual abuse.

21. After review and consideration of all of the evidence, I find that the Department did not have reasonable cause to support the allegation of neglect of R by BL as there was no reliable evidence to support a finding that the Appellant failed to provide minimally adequate care for R and that he placed R in danger or posed substantial risk to his safety or well-being. 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 caretaker 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. 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. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

Under Department regulations, sexual abuse is the "non-accidental commission of any act by a caretaker upon a child under age 18 which ... constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual." 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. 110 CMR 10.23

### Analysis

The Appellant, through counsel, contested the Department's determination that the Appellant sexually abused and neglected his son R during a visit in June of 2016. He argued R was not a credible or reliable reporter of events, that R had reason to be angry with him, and that R was manipulative when trying to get out of being hospitalized. I find the Appellant presented credible evidence to support his assertion, and therefore, his argument was persuasive.

In making a decision to support a report of abuse or neglect, the Department must consider the entire record, including whatever in the record fairly detracts from the weight of the evidence supporting its conclusion. Arnone v. Commissioner of the Department of Social Services, 43 Mass. App. Ct., 33, 34 (1997); the record did not reflect that the Department did so in this response. Rather, the Department relied solely on R's statements, with no independent evidence to verify the information given<sup>1</sup>. R's sister, who was present for his visitation, did not corroborate his accounts, his stepmother who was present the entire visit did not corroborate his statements, and other family members present denied having any concerns for R during his June 2016 visit. Additionally, having determined that R's disclosures unreliable, there was no evidence to find that the Appellant failed to provide R with minimally adequate care, as required for a finding of neglect or that the Appellant's action placed R in danger or posed a substantial risk to his safety or well-being, which is required to support the allegation of neglect.

As allowed by the Department's regulations, the Appellant presented additional documentation at the Fair Hearing; information that was available at the time of the investigation, as well as witness testimony that to raise convincing questions about R's credibility and reliability.

This Hearing Officer is duty bound to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that BL neglected and abused R. In reaching the instant decision, this Hearing Officer gave substantial weight to the Department's testimony at the hearing, witness testimony, and the record. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App. Ct. 739, 843 N.E.2d 691 I find that the evidence in this case, in its totality, was insufficient

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<sup>1</sup> The court in Covell wrote: "As with every case involving a child's allegation of sexual abuse, one of the primary issues in assessing the credibility of that allegation is whether there is any reason why the child would invent or fabricate such an allegation. If the evidence indicates a likelihood that there is such a reason, that would greatly tend to undermine the child's credibility. On the other hand, if there is no plausible reason for fabrication, the very absence of such a reason tends to support the child's credibility" Covell at 784.

to support the Department's decision. R's statements alone were not reliable (Edward E., 42 Mass. App.Ct.478 (1997) and there was no independent evidence presented to corroborate the allegations against the Appellant.

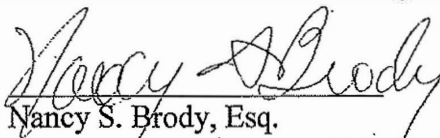
**Conclusion and Order**

The Department's decision to support the 51A report of sexual abuse by the Appellant is REVERSED.

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

  
Laureen Decas  
Administrative Hearing Officer

Date: 10-2-17

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

Date: \_\_\_\_\_

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Linda S. Spears,  
Commissioner