

**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
FAX: (617) 261-7428

IN THE MATTER OF)
)
 CM)
)
 FH # 20170228)
)

FAIR HEARING DECISION

The Appellant in this Fair Hearing was CM (hereinafter "CM" 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 MGL c. 119, §§51A and B.

Procedural History

On January 18, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of T and Ta (hereinafter "T" or "Ta" or "the children") by their mother, CM. An emergency response pursuant to MGL c.119 §51B was conducted. On January 25, 2017, the Department made the decision to support the allegations of neglect of T and Ta by the Appellant. The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was initially scheduled for May 9, 2017 at the Department's New Bedford Area Office in New Bedford, Massachusetts. However, per the request of the Appellant it was rescheduled and held on September 12, 2017. All parties were sworn in to testify under oath. The record was closed at the end of the hearing

The following persons appeared at the Fair Hearing:

Jorge F. Ferreira	Fair Hearing Officer
CM	Appellant
JF	DCF Response Worker

RH
CC

DCF Social Worker/Witness
DCF 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 pursuant to Department regulations. 110 CMR 10.26

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

For the Department:

Exhibit A: 51A Report, dated 01/18/2017

Exhibit B: 51B Report, completed 01/25/2017

For the Appellant:

None

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. 110 CMR 10.05

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child 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

On the basis of the evidence, I make the following factual findings:

1. At the time of the filing of the subject 51A report, T was four (4) years old and Ta was two (2) years old. They resided with their mother, CM in [REDACTED] (Exhibit A, p. 1)
2. The Appellant is the mother of the subject children; therefore she was a "caregiver" pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, Rev. 2/28/16
3. Since 2016, the family had involvement with the Department. In July 2016, there were reported concerns that the children were sexually abused by the Appellant's maternal grandfather, who had a previous history. The allegations were not supported however; there was a concern that the Appellant used poor judgement by allowing the maternal grandfather unsupervised contact with the children when the Appellant believed there had been inappropriate touching and did not report it to the appropriate authorities. From August to December 2016, further concerns involved the Appellant struggling in meeting the basic needs of the children. There was a concern the Appellant was not paying utility bills pursuant to program rules and she was not maintaining a clean home with sufficient food and provisions. Additional concerns were the Appellant did not address her mental health needs with treatment as recommended, as Appellant had prior delusional thoughts. (Exhibit A, pp. 7-8)
4. On January 18, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of the children by the Appellant pursuant to MGL c. 119, §51A. According to the reporter, a Care and Protection petition had been filed by the Department on behalf of the children and the Appellant maintained conditional custody of the children. The reporter alleged concerns following a visit to the home on January 17, 2017, as there was little food found in the home and mold in the refrigerator. The children were reported as not having their own beds but slept with their mother on a mattress in her room. Moreover, the Appellant acknowledged she had smoked marijuana earlier, while one daughter was in another room. (Exhibit A, p. 3)
5. The report was screened in and assigned for an emergency response, pursuant to MGL c. 119, §51B. At the conclusion of the emergency response, the allegations of neglect of the children by the Appellant were supported because the Department had concerns that the Appellant was smoking marijuana while in a caregiving role. The Department had additional concerns that the Appellant had difficulties maintaining a clean home with sufficient food, despite supportive services being in place. The Appellant had been asked to vacate the home, an apartment, by [REDACTED] due to non-compliance with the program and breaking property. Finally, there were ongoing

[REDACTED] subsidized the rent and the Appellant paid the utilities.

mental health concerns that were not being addressed by the Appellant. Subsequently, the Department supported as it had reasonable cause to believe that the children were being exposed to chronic neglect and were at risk of being harmed. (Exhibit B, p. 9)

6. A legal consult took place prior to the DCF Response. Although the family was involved with the Department, the Appellant was not cooperative with the assessment or the service plan. There were concerns regarding the Appellant's mental health due to her reports to [REDACTED] she saw demons, and the Appellant's non-compliance with a recommended psychiatric evaluation. Additionally, there were concerns regarding the cleanliness of the home, as it was infested with cockroaches, and the Appellant cancelled three (3) appointments with the exterminator referred by [REDACTED] before allowing access to the home to exterminate the infestation. The Appellant was facing eviction due to non-compliance with [REDACTED] utilized the stove as heat; broke property, including the smoke detectors. (Exhibit B, p. 2; Testimony of the DCF Social Worker)
7. The children's daycare provider expressed concern that the children were often "tattered" but their attendance was good. However, the Appellant claimed the daycare was undermining her parental authority when the children were encouraged to read at night. A parental liaison visited the home to address their concerns and noted cockroaches in the home, a lack of furniture and possible eviction. According to the daycare, the Appellant refused help from them which also gave them concern. (Exhibit B, p. 3; Testimony of the DCF Response Worker)
8. On January 18, 2017, the Department made an unannounced home visit with police assistance to address the allegations with the Appellant. The Appellant was observed bringing in groceries into the home upon arrival. The children were interviewed but were unable to focus and answer most of the response worker's question. T confirmed the home had cockroaches in the bathroom. (Exhibit B, pp. 3-4)
9. During the home visit, the Department observed the refrigerator to have sufficient food and not appear to be moldy. The Appellant acknowledged that she smoked marijuana while caring for her children but promised to stop going forward. There were beds with clean bedding in the rooms for the children. (Exhibit B, pp. 3-4; Testimony of the DCF Response Worker)
10. The Appellant denied the she had been uncooperative, relating that she had made herself available to the Department and [REDACTED] The Appellant related that she did cancel an extermination appointment but then allowed them in to do their job. When interviewed, the Appellant related that she continued to have cockroaches despite the extermination. (Exhibit B, p. 4)
11. The Appellant testified that she complained to [REDACTED] about the condition of her

home since she moved in, including being harassed by her first floor neighbor. The Appellant reported CSS did not address her concerns and she denied ever seeing ghost or demons; alleging it was a fabrication to have her evicted and question by DCF. (Testimony of the Appellant)

12. The children's pediatrics' office reported both Ta and T were overdue for a physical examination. Ta was last seen on March 24, 2016 and T was last seen on November 12, 2015. However, both children were up to date with their immunizations and there were no other protective concerns. (Exhibit B, p. 5)
13. The Department interviewed the Appellant's mother and brother. The Appellant's brother had no concerns regarding her ability to parent the children and her mother had not spoken to her since July 2016. The Appellant's mother advised she encouraged the Appellant to contact the police when there were concerns that her father sexually abused her children. The Appellant refused at the time and as a result was asked to leave the home of her mother. (Exhibit B, p. 5)
14. The Appellant's Probation Officer made a home visit and noticed the home was minimally furnished and had poor lighting. Greater concern was the smell of marijuana in the air, which the Appellant acknowledged and advised she was going to stop if it was a concern. The home was observed to be "messy" with dirty floors and with a minimal amount of food. (Exhibit B, p. 6)
15. The Department interviewed the maternal grandfather, who the Appellant alleged that he inappropriately touched the children. It was reported the Appellant continued to have contact with him despite these allegations. (Exhibit B, p. 7)
16. The Appellant maintained throughout the hearing she never smoked marijuana in front of the children but only when they were in school or asleep. (Testimony of the Appellant)
17. On August 17, 2017, the Department obtained temporary custody of the children and placed them in unrestricted foster care as the Appellant did not abide by service referrals nor meet with providers to address the Department's concerns. (Testimony of the DCF Social Worker; Testimony of the DCF Supervisor)
18. After review of credible evidence, I find that the Department's decision to support the allegations of neglect of the children by the Appellant was reasonable and made in compliance with its regulations. The Appellant failed to provide the children with minimally adequate care and her actions placed the children in danger or posed substantial risk to the children's safety or well-being. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

Applicable Standards

"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 §51A. Id. at 63. This same reasonable cause standard of proof applies to decisions to support allegations under §51B. Id. at 64; M.G.L. c. 119, §51B.

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; and (e) 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

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

A "support" finding of abuse or neglect means that there is reasonable cause to believe that a child(ren) was abused and/or neglected; and the actions or inactions by the parent(s)/caregiver(s) placed 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. 2/28/16

"Danger" is 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

A Fair Hearing shall address (1) whether the Department's or provider's decision was not

in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;. . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

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, or (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, or (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 is undisputed that the Appellant was a "caregiver" pursuant to Departmental regulations and policies. 110 CMR 2.00; DCF Protective Intake Policy No. 86-015, rev. 02/28/2016

The Appellant disputed the Department's decision to support the allegations that she neglected the children under her care and supervision. The Appellant denied her children were exposed to her smoking marijuana or ever witnessed her abusing substances. The Appellant also argued she always had enough food in the home and she always made [REDACTED] aware of issues revolving the state of her home. The Appellant argued she cooperated with exterminators when she had a cockroach infestation but that [REDACTED] was not responsive to her needs. The Appellant maintained she had always cooperated with the Department; their referred providers; and had been willing to undergo a psychiatric evaluation to address concerns regarding her mental health, which she denied having. Finally, the Appellant vehemently denied ever putting her children at risk and reported she always tried to meet her children's needs as best she could. The Appellant argued the concerns presented by the Department originated from false allegations by [REDACTED] who failed to support her and her children when she was in need, despite her repeated requests for help. Subsequently, the Appellant argued that she was substantially prejudiced by the Department's decision.

This Hearing Officer finds the Appellant's argument to be unpersuasive. The salient facts are undeniable: the Appellant's record indicated she had struggled to provide a safe

and clean home in the past and present. (Fair Hearing Record) She had failed to cooperate with recommended services to address issues related to her mental health, cleanliness of the home and to furnish her home, specifically beds for her children. The Appellant acknowledged that she slept with the children, despite the Department providing beds to the children. The Appellant also acknowledged to the Department and her Probation Officer that she regularly smoked marijuana while in a caregiving role. The Appellant did not cooperate with available services provider by [REDACTED] when it came to the subsidy of her apartment, which placed her and her children at risk. The Appellant minimized concerns regarding her mental health, expressed by the Department and collaterals involved in her life trying to support her. Finally, the Appellant struggled in keeping the children medically up to date, with one being two years overdue for a physical examination; which resulted in the Department obtaining temporary legal and physical custody via the Care and Protection petition and the children were placed in substitute care. (Fair Hearing Record)

The Hearing Officer must determine if the Department acted reasonably, and in compliance with its regulations, when supporting the allegation of neglect; for the reasons outlined in the Findings, I find that it did. Subsequently, I find that the Appellant use of poor judgment by abusing an illicit substance, minimizing her mental health, being unavailable to providers, struggling in keeping her home clean and not keeping up with the children's medical appointments did place the children at risk and failed to provide them with minimally adequate care. Therefore, the Department did have reasonable cause to believe that the subject children were neglected. (*See Applicable Standards Above*) The Court has determined that the Department's determination of neglect does not require evidence of actual injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003)

In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there is a reasonable basis for the decision. 110 CMR 10.05 After review of the testimonial and documentary evidence presented, I find that the Appellant has not demonstrated any failure by the Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. 110 CMR 10.06(8)

As provided for in the regulations quoted above, the Investigator relied on available documentation, observable behavioral indicators and her clinical knowledge to support the decision made. Based on the totality of the circumstances, and the evidence gathered, I find that the Department's determination of neglect was based on "reasonable cause" and was made in conformity with Departmental regulations.

Conclusion

The Department's decision to support the allegations of **NEGLECT** of Ta and T by the Appellant was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which he lives, or within Suffolk County, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

Jorge F. Ferreira *det*
Jorge F. Ferreira
Administrative Hearing Officer

2/8/18
Date

Darlene M. Tonucci
Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit