

**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)
)
 FA) **FAIR HEARING DECISION**
)
 FH # 20170229)
)

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

Procedural History

On January 27, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of C and M by FA. An emergency response was conducted and on January 30, 2017, the Department made the decision to support the allegations of the neglect of C and M by their mother. The Department notified FA (Ms. A or "Appellant") of its decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on April 20, 2017, at the DCF Coastal Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
FA	Appellant
KC	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 on one compact disk.

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

For the Department:

Exhibit A Child Abuse/Neglect Report dated 1/27/17

Exhibit B Child Abuse/Neglect Emergency Investigation completed 1/30/17

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 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. At the time of the filing of the subject 51A report, C was eight years old and M was six years old. The children resided in [REDACTED] with their mother, FA. (Exhibit A)
2. The Appellant is the mother of the subject children; therefore she is deemed a caregiver pursuant to Departmental regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. On January 27, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A from a mandated reporter alleging the neglect of C and M by FA. According to the reporter, one of the children called 911 from the home. When police responded it was learned the children were home alone. They had a cell phone number for mother, however when it was called it was learned the number was not in service and did not accept incoming calls. An emergency response was initiated. (Exhibit A)
4. FA left the home with her boyfriend at approximately 3:00pm as they both had chiropractor appointments; with full knowledge her children were unattended. They arrived back at the house at 5:32pm. (Exhibit B)

5. FA had a friend who lived down the hall from her, who was regularly home and willing to watch the children. FA did not ask her to supervise the children on January 27, 2017. (Exhibit B, p.2)
6. After the chiropractor appointments, which she expected to last twenty to twenty five minutes for each of them, FA and her boyfriend went to pick up takeout food. (Fair Hearing Record)
7. FA had never left the children alone before. C did not want to go with her, and since she was going to be just down the street, FA decided to allow C and A to stay home. (Testimony of FA)
8. C called 911. He then opened the door without checking the peep hole when someone knocked and identified themselves as the police. (Exhibit B)
9. On January 30, 2017, pursuant to M.G.L. c. 119, s. 51B, and based on the evidence gathered during its investigation, the Department supported allegations of the neglect of C and A by the Appellant for her failure to provide minimally adequate care. (Exhibit B)
10. I find FA failed to provide C and A with minimally adequate supervision on January 27, 2017. Her medical appointments were expected to last fifty minutes; she was gone from the residence and left the children alone for over ninety minutes. (Fair Hearing Record)
11. After consideration of the relevant evidence, I find the Department's decision to support the allegations of neglect by the Appellant was based on reasonable cause and made in compliance with its regulations. The Appellant failed to provide her children with minimally adequate care; supervision. Her actions as the children's caregiver placed the children in danger and posed substantial risk to the children's safety and well-being.

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" is "[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

“Neglect” is defined as failure by a caretaker, 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. 110 CMR 2.00.

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

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

It is undisputed that Appellant was a caretaker pursuant to Departmental regulation. 110 CMR 2.00

The Appellant contested the Department's decision to support allegations that she neglected her children. She took the opportunity at hearing to explain she understood her actions rose to the level of neglect as defined by the Department for lack of supervision; however wanted to express she learned her lesson and will never leave her children without age appropriate supervision again.

After review of the testimonial and documentary evidence presented, I find that the Appellant did not provide evidence that the Department did not follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. See 110 CMR §10.06.

In making a determination on the matter under appeal, the Hearing Officer shall give due weight

to the clinical decision made by a Department social worker. (110 CMR §10.29). As provided for in the regulations quoted above, the Investigator relied on professional opinions and recommendations, 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 that the Appellant's actions constituted neglect was based on "reasonable cause" and was made in conformity with Departmental regulations and policy. The Appellant's actions on January 27, 2017, posed substantial risk to the children's safety and well-being.

Conclusion

The Department's decision to support the allegations of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he/she may do so by filing a complaint in the Superior Court for the county in which she/he lives, or within Suffolk County, 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.



Lauren Decas
Administrative Hearing Officer

Date: 12/28/17



Sophia Cho, LICSW
Fair Hearing Supervisor