

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

**Linda Spears
Commissioner**

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

IN THE MATTER OF: JD

Fair Hearing # 2017-0231

FAIR HEARING DECISION

The Appellant in this Fair Hearing is Ms. JD (hereinafter "JD" or "Appellant"). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support allegations of neglect of the subject child, T, by the Appellant, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

Procedural Information

On October 6, 2016, the Department received a mandated 51A report regarding the subject child. The report was received by the Department's Berkshire Area Office where it was screened in and assigned for non-emergency response. The Department completed its response on October 28, 2016. The allegation of neglect of the reported child by the Appellant was supported. The Appellant was advised of their right to appeal the Department's determination. The Appellant filed a timely request for a Fair Hearing under 110 C.M.R. 10.06 (8).

The Fair Hearing was held on June 6, 2017 at the Department of Children and Families Berkshire Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record closed concurrent with the conclusion of the Hearing session on June 6, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph
TB
JD
JL
KF

Hearing Officer
Department Supervisor
Appellant
Department Response Worker
Appellant's Attorney

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 October 6, 2016
Exhibit 2: 51B dated October 28, 2016

For the Appellant:

Exhibit A: DCF Service Plan

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 reported child of this investigation T, age twelve (12) at the time of the subject response. (Exhibit 1)
2. The Appellant, T's biological mother, had a history with the Department dating to 2011, with one previously supported finding of neglect. (Exhibit 1, p. 3)

3. The Appellant is T's mother; therefore, she is deemed a caregiver pursuant to Departmental regulation 110 CMR 2.00. (Fair Hearing Record); DCF Protective Intake Policy #86-015, rev. 2/28/16
4. The Appellant had a substantial and well documented history of mental illness, with diagnoses of Bi-polar disorder, Anxiety, Depression and Post Traumatic Stress Disorder (PTSD). The Appellant had relied on psychotropic medications to manage symptoms of these diagnoses. (Testimony of Appellant, Exhibit 2, p.4)
5. Due to the Appellant's mental illness, both T and her now adult sibling have spent long periods in the care of relatives. (Exhibit 1, p.4)
6. At the time of the subject report, T had been staying with her maternal grandmother. While long standing, this arrangement had not been sanctioned by the court. (Exhibit 2, p.1)
7. The Appellant was psychiatrically hospitalized in August of 2016, approximately eight weeks previous to the events. (Exhibit 2, p. 1)
8. As a result of the Appellants conduct, specifically the persistent threats of self-harm, T experienced severe anxiety, expressing same to the Department's response worker, as well as mandated reporters and relatives. (Exhibit 1, p. 2, Exhibit 2, p. 3, Testimony of Department Response Worker)
9. The Appellant denied having made any suicidal statements or gestures in the hours and days preceding the Department's response. (Testimony of Appellant, Fair Hearing Record)
10. I find this denial not credible. The information documented by the Department indicated that the Appellant was expressing suicidal ideation. That she was found to need immediate psychiatric hospitalization and acute intervention, including Electro Convulsive Therapy (ECT). (See analysis, Exhibit 2, p. 4)
11. The Appellant, through counsel, argued that the reported child was not negatively impacted sufficiently to warrant the Department's findings. (Fair Hearing Record)
12. I find this argument without merit. That the reported child did not require crisis intervention did not mean that she was not adversely impacted. (See analysis, Testimony of Department Response Worker)
13. The Appellant asserted that she never intentionally put T at risk, or exposed her to harm. (Testimony of Appellant, Fair Hearing Record)
14. I find this assertion credible, but not relevant. As demonstrated by her Department history, the Appellant had long periods where she maintained mental health stability, chiefly by adhering to a therapeutic regimen. In the extant matter, the Appellant was

in a period of decline for some weeks, and failed to take the steps necessary to prevent the resulting crisis. (See analysis, Exhibit 2, p. 1, p.4)

15. The Department's decision has not, as of yet, had an adverse impact on the Appellant's professional nursing license. (Testimony of Appellant)
16. Since the extant incident, the Appellant engaged in therapy, completed the recommended course of ECT, and complied with the recommendations of the Department. (Testimony of Appellant, Fair Hearing Record, Exhibit A)
17. As of Fair Hearing, the reported child remained in the guardianship of her maternal grandmother, and was visiting the Appellant regularly. (Testimony of Appellant)
18. After a review of the evidence and for the following reasons, I find that the Department did have reasonable cause to find that T was neglected by JD and further, that JD's actions/inactions did put T in danger. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
19. The Appellant's in/actions posed a substantial risk to T's safety or well-being. The Department's decision to support the allegations of neglect by Appellant of T was therefore 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.

Caregiver is defined as:

- (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

“‘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

“[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 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

The Department supported an allegation of neglect of T by her mother, the Appellant, due to exposure to untreated mental illness, and a subsequent crisis. T clearly articulated feelings of profound worry and anxiety related to the threats the Appellant made to suicide. The Appellant did not intend for T to be exposed or harmed by these events. However, the absence of intent is not the determinative factor in making this decision.

The Appellant failed to take the steps necessary to protect T from the harrowing effects of her mother's illness.

The Court has concluded that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789(2003). "If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing physical or emotional injury." Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 795 (2003).

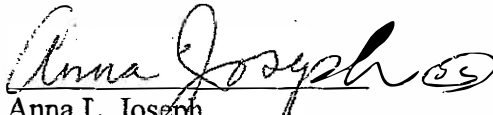
That the Departments supported finding has a possible adverse effect on the Appellants employment prospects in regrettable. However, the court has concluded that a potential unfavorable impact of an Appellants professional licensure does not constitute a prejudice to the Appellant, and lies outside the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

The Appellant failed to show by a preponderance of the evidence, that the Department's decision to support the allegation of neglect of T was not in conformity with Department regulations nor that such was done without reasonable basis, and therefore the Department's decision is **AFFIRMED**.

Conclusion and Orders

- 1. The Department's decision to support the allegation of neglect of T by the Appellant, JD, 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 in Suffolk County, or in the county in which she resides, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Anna L. Joseph
Administrative Hearing Officer
General Counsels Office

Date: 12/29/2017


Sophia Cho, LICSW
Supervisor, Fair Hearing Unit
General Counsels Office