

**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)
)
 LF) **FAIR HEARING DECISION**
)
 FH # 20170239)
)

The Appellant in this Fair Hearing was LF (“Appellant”). 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 received a 51A report from a mandated reporter alleging the neglect of G and T by their legal Guardian, LF. A response was conducted and on February 10, 2017, the Department made the decision to support the allegations of the neglect of G and T by LF. The Department notified LF 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 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	Administrative Fair Hearing Officer (“FHO”)
LF	Appellant
AF	Witness
JB	Department Response Social Worker
JV	Department Supervisor

In accordance with 110 CMR 10.03, the Fair 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 1/23/17
- Exhibit B Child Abuse/Neglect Non-Emergency Response completed 2/10/17

Appellant

- Exhibit 1 Letter to FHO from Appellant
- Exhibit 2 Addresses for LF's son AF
- Exhibit 3 Notarized statement of R
- Exhibit 4 Notarized statement of N
- Exhibit 5 Letter from CP
- Exhibit 6 Statement of CC, school nurse
- Exhibit 7 Statement of JR, principal

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

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 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) 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 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, G was thirteen (13) years old and T was nine (9) years old. The children resided with LF, their legal Guardian, in [REDACTED] (Exhibit A)
2. The Appellant is the guardian of the subject children; therefore she was a caregiver pursuant to Departmental regulations and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
3. Prior to LF being granted Permanent Guardianship of G and T in December of 2009, the children were in the custody of the Department due to the substance abuse of both parents. (Exhibit A)

4. On January 27, 2017, the Department received a report pursuant to M.G.L. c. 119, §§51A from a mandated reporter alleging the neglect of G and T by LF. According to the reporter, LF had a three bedroom home with six adults and three children residing in her home. Ongoing concerns involved LF's denial of drug activity by her family and household members. On January 12, 2017, CZ, a resident of LF's home, was arrested after purchasing drugs from LF's son AF (at another residence). CZ was bailed by LF and returned to her home before he entered detox. A drug raid occurred at the home of AF. The parents of G and T were listed as the emergency contacts for G and T with their schools; who had only had contact with parents and not LF. Numerous police responses have occurred to LF's home. This report was screened in for a response. (Exhibit A)

5. On February 10, 2017, pursuant to M.G.L. c. 119, §51B, and based on the evidence gathered during its response, the Department supported the allegations of the neglect of G and T by LF; The Department determined there continues to be concerns surrounding the Appellant's judgement and she was continuously allowing known drug users in her home which was directly impacting the functioning of the children. (Exhibit B, pgs. 10, 11)

6. Based on the evidence, it was unclear who was living at the Appellant's home.

- R, great niece of LF, reported she, her boyfriend CZ, son, G, T, and G and T's parents were all residing with LF. (Exhibit B, p.4)
- The Appellant acknowledged prior to the subject report CZ, R, and their son, C, were residing in her home. They came to live with her in 2013. (Exhibit B, p.6)
- T spoke of his grandmother, aunts, uncles, cousins, and parents residing there. (Exhibit B, p. 8)
- AF testified that he used the Appellant's address for his ongoing case. It was reasonable for the Department to believe that he was a frequent visitor. (Testimony of AF)

7. It was reasonable for the Department to have concerns with the family members who were reported to be living and or frequently visiting the house.

- CZ had an open case with the Department as well as an ongoing investigation due to drug activity. Within the prior two weeks of the 51A report, CZ was arrested on drug charges and the Appellant bailed out CZ and he returned to her home before entering into detox. CZ's wife R, reported that CZ had relapsed while in the Appellant's home. (Exhibit A, p. 10; Testimony of JB)

8. The evidence demonstrated that the Appellant was unable to tell when someone was on drugs.

- The Appellant reported that she was unable to tell when CZ was using because he was always sick and sleeping. (Exhibit B, p. 6)
- When asked how she knew G and T's parents were sober, the Appellant reported she knew they were sober because "they have gotten fat". (Exhibit B, p.5)

9. T exhibited behaviors at school including bullying weaker children, name calling, and threatening to kill specific children and their families. He was not engaged in counseling. When spoken to at school T he broke down and said his house was too stressful with so many kids and people living in it. (Exhibit B, p.8)

10. G's school reported he had no behavioral issues but did not do any homework therefore his grades were "not good." (Exhibit B, p.8)

11. Since December 29, 2009, when LF became legal guardian of G and T, nine (9) police responses have occurred to LF's home. Two months prior to the subject report being filed, G and T's mother was served a restraining order at the home. (Exhibit B, pgs. 3, 4)

12. 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 was made in accordance with Departmental regulations. The actions of LF posed substantial risk to the children's safety and well-being for the aforementioned reasons. 110 CMR 10.00; 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" 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 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 or human trafficking. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

It is undisputed that Appellant was a caretaker pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant contested the Department's decision to support allegations that she neglected her grandchildren, who were in her Permanent Guardianship. She argued she had no knowledge CZ was once again abusing opiates in her home, was unaware her son AF had again relapsed and was dealing and using substances, and did not believe her home was overcrowded to the point that it was impacting the functioning of the boys. The Appellant argued she had Guardianship and believed she was allowed to use her own judgement in whom she allowed to visit and reside in her home. The Appellant was correct in her assumption; she did have Guardianship and was allowed to use her own judgement regarding the residence she maintained for G and T. However, it was that very judgement that raised concern to the Department and was the basis for their finding of neglect.

The Department has broad authority to collect information from mandated reporters and collaterals during a response and is obliged to obtain information to corroborate or disprove an allegation of abuse or neglect. In the instant matter, the Department took the opportunity to speak with collaterals and numerous family members during the response and prior to making its determination to support the allegations. The concerns for G and T were not new issues in their family. In fact, the concerns were what brought them to the attention of the Department in their biological family, brought them to the attention of the court via a Care and Protection, and what ultimately led to their being placed in the permanent Guardianship of the Appellant. The Appellant agreed to provide appropriate, stable care to G and T when their parents were unable


to do so. Instead, with no documentation of sobriety or treatment, the Appellant allowed several family members to reside with them. Based on these factors the Department determined the actions by the caregiver posed substantial risk to the children's safety or well-being. 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). That decision was made with a reasonable basis.

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. See 110 CMR §10.06.

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.


Laureen Decas
Administrative Hearing Officer

Date: 11/1/17


Erica Pognon
Fair Hearing Supervisor