

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET, 6<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02111**

Linda S. Spears  
Commissioner

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IN THE MATTER OF )  
 )  
Mr. C.C. ) **FAIR HEARING DECISION**  
 )  
FH # 2017-0240 )  
 )

The Appellant in this Fair Hearing is the Father, hereinafter referred to as CC or the Appellant. The Appellant appealed the Department of Children and Families' decision to support the allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

The Department received a 51A report on January 17, 2017, alleging the neglect P by the Appellant. The Department conducted a response and, on February 27, 2017, the Department made the decision to support the allegation of neglect of the child by the Appellant. The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held at the DCF Malden Area Office in Massachusetts. 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:

Ms. Lisa Henshall	Fair Hearing Office
Mr. C.C.	Appellant (father)
Ms. D.H.	Witness (mother)
Ms. A.C.	Response Worker
<del>Mr. P.C.</del>	<del>Reported Child</del>

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 DCF regulations. 110 CMR 10.26

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

For the Department:

Exhibit A 51A dated 1/17/17  
Exhibit B Child Abuse/Neglect Non-Emergency Response dated 2/7/17

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 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. For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issue is 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 Appellant (CC) is the father of the child (P) who was two (2) months old at the time of the response. (Exhibit A, & B, p. 1)
2. The Appellant, as the child's father, was a caregiver for the children as defined by DCF regulation 110 CMR 2.00. (Fair Hearing Record)
3. On January 17, 2017, the Department received a 51A report pursuant to M.G. L. c. 119, §51A, alleging the neglect of the child by the Appellant. The report alleged that the Appellant was "drinking excessively around a one month old baby." There were concerns that the Appellant had a history of domestic violence and he had reportedly been terminated from substance abuse treatment for missing appointments. (Exhibit A, p. 5; Testimony of the Response Worker)
4. It was undisputed that, on July 10, 2016, the Appellant did physically assault the mother while she was pregnant with the child. The Appellant was arrested as a result of his actions and charged with Assault and Battery on a pregnant person. There was no evidence that there have been any such incidents since the birth of the baby. (Exhibit B, p. 3; Testimony of the Response Worker; Testimony of the Appellant; Testimony of the Mother)

5. It was undisputed that the Appellant has a history of alcohol use and he was drinking at the time of the report. At the time of the hearing the Appellant was doing well. (Testimony of the Appellant; Testimony of the Response Worker; Exhibit B; Testimony of the Mother)
6. The Appellant was diagnosed with Depression and has taken medication for Depression in the past. (Testimony of the Appellant)
7. The Appellant was engaged in counseling with Dr. B at the [REDACTED] in [REDACTED]. The Appellant disputed that he was terminated from counseling due to non-compliance; he reported that he ended his therapy. I find that this is not relevant as it was voluntary service. (Exhibit B, pgs. 5 & 7)
8. There were concerns that the Appellant came to work intoxicated but there was no evidence that the child was in his care at this time. (Exhibit B; Testimony of the Appellant; Testimony of the Response Worker)
9. There were no safety concerns with the home. (Testimony of the Response Worker; Exhibit B, p. 5)
10. The child was up-to-date medically and no concerns were noted, however the child was being seen by a specialist due to hearing loss. (Exhibit B, p. 6; Testimony of the Response Worker)
11. Early Intervention is in the home every two weeks for the child since it was determined he was having hearing loss. (Testimony of the Appellant)
12. The Appellant had been prescribed Vivitrol to address his alcoholism but continued to drink daily. The Appellant has since terminated the use of this medication as a result of the long term risks to the liver. (Testimony of the Appellant; Testimony of the Witness; Exhibit B, p. 10)
13. The child's mother was on maternity leave during this time and child was never left alone in the Appellant's care if the Appellant was drinking. In addition, the mother and the child were out-of-state visiting relatives for a portion of the time that the Appellant appears to have been struggling. (Exhibit B; Testimony of the Appellant; Testimony of the Mother)
14. There was no evidence that the Appellant was consuming alcohol while caring for the child and both the Appellant and the mother refuted that this ever occurred. There is a plan in place if the Appellant feels the need to drink while caring for the child. The Department determined that because he was drinking daily and is a caregiver that he was caring for the child while intoxicated. The Appellant and the mother (witness) disputed this and there was no evidence that the Appellant was caring for the child while intoxicated. (Exhibit B; Testimony of the Response Worker; Testimony of the Appellant; Testimony of the Mother)

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15. After the response concluded, the child's Nurse Practitioner (NP) contacted the Department and reported concerns that the mother is a battered woman but there was no evidence to support this claim. There were also concerns about the added stress of the hearing loss on the family. Despite these concerns the Department was not contacted as there was no evidence to support this claim. (Exhibit B, p. 10; Testimony of the Response Worker)

16. At the end of its response, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department based this determination on the Appellant's actions towards the mother when he physically assaulted the mother while she was pregnant with the child. Additionally, the Appellant had a history of alcohol use and was actively drinking at the time of the report and was terminated from therapy for non-compliance. The Department concluded this constituted neglect as defined by its regulations. 110 CMR 2.00 The case remained open for an assessment. (Exhibit B, pgs. 9-10; Testimony of the Response Worker)
17. Based on the credible evidence, I find that the Department did not have reasonable cause to believe that child was neglected per the Department's definition or that the Appellant's actions placed the child in danger or posed a substantial risk to the child's safety or well-being. There was a great deal of "concerns" but no evidence to determine that the child had been neglected.<sup>1</sup> 110 CMR 2.00

### 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.

- There is reasonable cause to believe that a child(ren) was abused and/or neglected; and
- That 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. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 4.32 (2)

"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, §51B

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child's health or welfare, and (e) any other person entrusted with ~~the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including baby-sitting), a foster home, a group care facility, or any other~~

<sup>1</sup> Such evidence, that the child was in danger or the Appellant's actions posed a substantial risk to the child's safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being. (See DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29)

comparable setting. As such, "caregiver" includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The "caregiver" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is himself/herself a child (i.e. baby-sitter). 110 CMR 2.00; 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. 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

The Appellant contested the Department's decision to support the allegation of neglect on behalf of the child and maintained that there was no evidence that he neglected his son. The Appellant has a history of alcohol use and this was a chronic issue. The Appellant was drinking at the time of the report despite taking Vivitrol, but was never a primary caregiver for the newborn when he was drinking as the mother was present or the child was with the mother with relatives. The Appellant and the mother acknowledged the physical altercation that occurred before the child was born.

The Department argued that the Appellant was drinking daily and has a history of domestic violence and therefore neglected the child and placed the child in danger. The Department determined that the Appellant was actively drinking and as the father of the child, a caregiver for him. The Department was also concerned that the Appellant was no longer engaged in therapy.

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There were many concerns but no evidence to support the Department's assertion that the child was neglected. There was a history of the Appellant being violent towards the mother while she was pregnant with the child. In addition, the Appellant has a history of alcohol use and was actively drinking at the time of this report. In addition to these stressor the child is experiencing hearing loss which in and of itself is a huge stress for a family. However, while there were many concerns there was no evidence presented that the Appellant failed to provide his child with minimally adequate care. The Appellant was drinking but there was no evidence he neglected the child while drinking or that he was a primary,

or sole, caretaker. In fact, testimony indicates that the mother and child were out-of-state while much of this was going on and was never a primary caretaker if he was drinking.


There was no evidence that there have been any physical altercations between the parents since the birth of the child. The Appellant was engaged in services and while it remains unclear who terminated them, the services were voluntary. There was no information that the Appellant's lack of involvement with counseling was impacting his son who was up-to-date medically and appeared well cared for.

I recognize that the age of the child and his medical issues (hearing loss) coupled with the history of violence as well the history of alcohol use is all very concerning, but as indicated earlier not neglectful in and of itself.

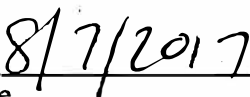
Upon review of the evidence presented, in its totality, this Hearing Officer finds that there was insufficient evidence that the Appellants' actions constituted neglect, as defined by the Department's regulations, and that the Appellant's actions or inactions placed the child in danger or posed a substantial risk to the child's safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 4.32 (2) (See Findings)

**Conclusion and Order**

The Department's decision to support the 51A report of neglect on behalf of the child (P) by the Appellant is **REVERSED**.



Lisa A. Henshall  
Administrative Hearing Officer



Date



Erica Pognon  
Fair Hearing Supervisor

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Date

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Linda S. Spears  
Commissioner