

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF

MS #2017-0251

FAIR HEARING DECISION

MS appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

Procedural History

On November 30, 2016, the Department received a 51A report alleging neglect of I by his father, MS. The Department initiated a response and, on January 19, 2017, the Department made the decision that the allegation of neglect of I by MS was supported. The Department notified MS of its decision and his right to appeal.

MS made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held at the DCF Area Office in Brockton on April 18, 2017. MS, the Department response worker and the Department supervisor testified at the hearing. The Department submitted the 51A and B reports which were entered into evidence at the hearing. (Exhibits A and B).

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

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. 110 CMR 10.05.

Findings of Fact

1. MS (hereinafter "father") is the father of I (age 16 at the time in question). I's mother lives in ██████████. I lived with her until he moved to the United States to live with father when he was about 8 years old. (Exhibit A, pp. 1, 2; Exhibit B, p. 4).
2. Father's household consists of his mother (paternal grandmother), his girlfriend, his girlfriend's 7 year old son and I. (Exhibit B, p. 2).
3. During the fall of 2016, I and father were not getting along. Father felt that I was using drugs, skipping school, missing medical appointments, lying and not following household rules such as doing chores and coming home late. (Exhibit B, pp. 2, 3, 4).
4. A few days before Thanksgiving 2016, I wanted to see his adult sister whom he had not seen for a while. She picked him up at the home early in the morning. I went out the exterior door in his bedroom and left it unlocked to he could get back in the same way. He left father a note telling him where he was going. When he returned home that night the doors to the home were locked. He knocked on the main door and tried to call father several times, but father did not answer. I left and stayed at a friend's house. (Exhibit B, pp. 2, 4).
5. Father was upset with I for not calling or texting him to say where he was that day. He felt I was being disrespectful. (Exhibit B, p. 2).
6. I called father the next day. Father told him that he did not want him in his house anymore and he hung up the phone. (Exhibit B, p. 4).

7. About a week later, I told a school staff member that father kicked him out of the house because he went to visit his sister and his father does not approve of her same sex relationship. The staff member contacted father who acknowledged that he kicked him out, but stated it was because I does not follow the rules, is defiant and does what he wants. Father was unable to specifically state what I does wrong. (Exhibit A, p. 2).
8. On November 30, 2016, the Department received a 51A report alleging neglect of I by father because father kicked I out of the home. The Department screener contacted father who confirmed that he did not know where I is staying. He said that I does not listen to him and he has to find another place to stay. Father stated that it is I's problem and he has no plans for making arrangements for another place for I to stay. The Department screened-in the report for a response. (Exhibit A).
9. The Department response worker spoke with father. He reported his concerns regarding I's behavior consistent with the above findings. He denied knowing where I was staying. The response worker discussed services that could benefit the family and their relationship; however, he declined any assistance. Father indicated that he will allow I to come home if he follows the rules, takes out the trash, cleans the dishes and kitchen and cleans up after himself. The response worker offered to be a mediator between them to resolve the issues. (Exhibit B, p. 3).
10. The Department response worker met with I at school. He reported that he feels that he is following the rules. He has tried to talk to father, but father cuts him off and does not listen. I said he has not spoken with father and he wants nothing to do with him. He said he does not want to go home, he is afraid of the consequences and he would rather go into state custody. I stated that he is living with his cousins and he wants to stay there. The response worker discussed putting services in place to help him and father communicate. (Exhibit B, p. 4-5).
11. The Department response worker spoke with the cousin with whom I was staying. He confirmed that he and father are cousins. He stated that he has no problem with I staying with him. (Exhibit B, p. 5).
12. The Department response worker contacted father to schedule a meeting with him and I. Father said he was busy and would call the worker later; however, he did not. (Exhibit B, pp. 5-7).
13. On January 19, 2017, the Department made the decision that the allegation of neglect of I by father was supported. The Department determined that father kicked I out of the home without making any alternative arrangement for his care and he was not willing to engage in any services to resolve the issues between them. Father did not know where I was staying. He did not follow through with scheduling a meeting to try to mediate the situation. He did not confirm I's whereabouts with his cousin and he left I without a legal guardian. The Department determined that I was safe staying with his cousin and that the cousin

would follow through with obtaining authorization from father to act as I's caregiver. For those reasons, the Department made the decision to close the case at the end of the response. (Exhibit B, pp. 8-10; Testimony of the Department response worker; Testimony of the Department supervisor).

14. Father testified to the following at the hearing. He acknowledged that he kicked I out of the home for the reasons noted above. He stated that he knew where he was staying although he did not approve of it. He has not talked to I since he left and he has not attempted to have him come home. Father focused his testimony on reasons why he felt justified in kicking I out of the home. (Testimony of father).

Analysis

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.

"'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 C.M.R. §4.32(2).

"[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.

As I's parent, father is his caretaker under Department regulations. 110 CMR §2.00(5).

"Neglect means 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(33).

The Department found that father failed to provide minimally adequate care for I by kicking him out of the home and failing to make an appropriate alternative arrangement for his care or work with the Department or engage in services to resolve the issues.

Father does not dispute that he kicked I out of the home and made no alternative arrangements. He essentially argues that his decision to kick I out was justified by his behavior.

Father claims that I was not following the rules at home, not doing chores, coming home late after school, lying, etc. I denies acting as father alleges. In either case, father still has an obligation to ensure I's safety and that I receives minimally adequate essential care as long as he is a minor; however, father essentially abandoned him.

The evidence shows that I left the home early one morning to visit with his sister. He left father a note telling him where he was for the day. When he returned home that night, father had locked the doors. When I knocked on the door and tried to call father, father did not respond essentially leaving him homeless for the night. I went to a friend's house that night. When I spoke with father the next day, father told him he could not come home. Ultimately, I made his own arrangement to stay with a relative who agreed to take care of him.

The Department made an effort to attempt to mediate the situation and offer services to resolve the issues so that I could return home, but father refused any services.

Father made it clear that it was I's problem and he had to find another place to stay. I find that father deliberately failed to take those actions necessary to provide I with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care and, therefore, he neglected him under Department regulations. Although the subject child did not experience injury as a result of the Appellants actions, 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).

Conclusion and Order

The Department's decision to support allegations of neglect of I by father 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, she may do so by filing a complaint in the Superior Court for the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.) 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 for the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

Anne L. Dale Nialetz

Anne L. Dale Nialetz,
Administrative Hearing Officer

12-11-17
Date

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor