

**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**

Voice: 617-748-2000
FAX: 617-261-7428

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(IN THE MATTER OF)
(C.C.)
(FH #2017-0252)
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HEARING DECISION

Procedural History

The Appellant, C.C., appeals the decision of the Department of Children and Families [hereinafter “the Department” or “DCF”], to support for physical abuse of B, pursuant to M.G.L., c.119, §§51A & 51B.

The Department received a 51A Report on January 9, 2017 containing allegations that the Appellant, while under the influence of alcohol, physically abused seventeen (17) year-old B by pushing him and putting his hands about the boy’s neck during an argument causing injury. The police responded to the home and arrested the Appellant for domestic assault and battery. The boy and his mother remained in the home. The Appellant was mother’s live-in boyfriend. The allegations were screened in and assigned for a non-emergency 51B response to response social worker, J.K. On January 30, 2017, following the response, the Department supported the allegations for physical abuse of B by the Appellant and opened the family’s case for assessment. The Department notified the Appellant of the decision and his appeal rights by letter dated February 6, 2017. The Appellant filed a request for Fair Hearing [“Hearing”] in March 2017, pursuant to 110 CMR 10.06. The Appellant’s request for Hearing was granted and held on May 2, 2017 at the Department’s South Central Area Office in Whitinsville, MA. Present were the DCF Response Supervisor, A.S; the DCF Response Social Worker, J.K.; and the Appellant. The response social worker and Appellant were sworn in and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a CD. Admitted into evidence for the Department was the DCF 51A Report of January 9, 2017 [Exhibit A] and the corresponding 51B Response Supported on January 30, 2017 [Exhibit B]. The Appellant made no submissions. The Hearing record was closed at adjournment.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and

attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

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. M.B. is the mother of seventeen (17) year-old twins; a male named, B. and a female named, D. [Exhibit A; Exhibit B, p.1]
2. Mother met the Appellant about five years ago. [Exhibit B, p.2] The Appellant was her live-in boyfriend at the relevant time. [Exhibit A, p.3]
3. The Department was involved with the family in 2013 during which time there were issues with the Appellant and mother drinking to excess. [Exhibit B, p.8; Exhibit A, p.6] The frequency and level of their drinking remains a concern, as reported by the children, when interviewed by the response social worker on January 12, 2017. [Exhibit B, pp.3-4]
4. On Monday, January 9, 2017, B had a track meet after school and got home around 8:30 p.m. His mother left his dinner on the table so he sat down to eat and put his backpack, which contained his laptop, next to the table while eating. The Appellant was in the living room watching television and drinking. B finished eating and washed his plate off at the sink. The Appellant walked by making rude comments about how B needed to do more around the house. B ignored his comment which upset the Appellant. The Appellant then picked up the backpack and threw it across the room against the wall on top of the hope chest and broke a lamp. B became angry and stood up and yelled at the Appellant for throwing his bag [because it had his laptop in it]. The Appellant approached B, pushed him in the chest backwards, and put his right hand around B's throat pushing or shoving him down to the ground. When falling, B fell into a red table, breaking two of its legs. B was scared and screaming. [Exhibit B, pp.4 & 6] Mother was upstairs and heard a bang and the yelling and went downstairs and intervened. [Exhibit B, p.3] B then got to the phone and called 911. Mother did not want B to call. Because he did not want mother to get into trouble, he hung up, but the police arrived anyway. [Exhibit B, pp. 3-6]

5. Finding #4 represents a combination of the police report, made part of Exhibit B, and the interview the response social worker had with B on January 12, 2017. [Exhibit B, pp. 3-4 & 5-6]
6. When mother arrived downstairs, the Appellant and B were yelling at each other, with the Appellant yelling at B for not helping out and B telling him he had no right. Mother had never seen the Appellant so angry. Contrary to the Appellant, Mother did not see the Appellant grab B by the throat, but noticed that the table and chair had been knocked over and the lamp had been smashed and was on the ground. [Exhibit B, p.3; Testimony of the Response Social Worker]
7. Non-reported child, D, did not see the incident. [Testimony of the Response Social Worker]
8. When the police officer responded to the scene, he heard loud banging and screaming from inside the home and entered for safety reasons to find the Appellant and mother in the dining room arguing. The officer separated them, and waited for back up. During this response, the police spoke to B about the events of the evening, and then to mother who did not want the police involved. Per the police report, the Appellant was extremely intoxicated with bloodshot and glassy eyes and there was an odor of alcohol coming from his person. The Appellant was arrested for domestic assault and battery, placed in handcuffs, put into the rear of the cruiser, and transported to the police station. He was held until court in the morning [January 10, 2017] and the Department contacted and informed of the situation to ensure the safety of B. [Exhibit B, p.6; Exhibit A, p.3]
9. B sustained some red marks on his throat and the next day was sore. [Exhibit A, p.3; Exhibit B, p.4]
10. The Appellant spoke briefly to the response social worker on January 30, 2017, but was not asked about the incident because of his pending criminal charges. [Exhibit B, p.7]
11. At his Hearing of May 2, 2017, the Appellant denied that the police heard arguing because the incident was already over; denied drinking and said his eyes were red because he had the flu and had taken Nyquil, aspirin, and Sudafed right before B got done eating; and, denied picking up and throwing B's backpack, rather he tripped over it while going into the kitchen and he booted it out of the way and it slid and hit the Christmas lights and that's what broke; nothing fell. The Appellant denied picking up and throwing the backpack against the wall as reported. He stated that B had been in the living room when this occurred. B came around into the kitchen and charged at him and was angry and said, "Did you f---ing throw my backpack?" The Appellant said, when he came at me, "I grabbed him and restrained him". When he restrained him, B put his arms back so the table went down. The Appellant denied throwing B to the ground. After that, B started screaming at him. He told the Appellant he was going to call the police. He had his phone in one hand and hit 911. Mother got in between them and pushed the Appellant away and told him to go upstairs. In the meantime, mother was telling B not to dial 911; we can settle this. The police responded and just came

in the front door. They never talked with him. He was just arrested and then bailed out the next morning. [Testimony of the Appellant]

12. According to the Appellant, mother and his attorney were at court and spoke to the DA and worked out a settlement of a “pre-trial probation for six months”. The Appellant will go before the Judge on Thursday [May 4, 2017] and “that’s what’s going to happen”. [Testimony of the Appellant]

Analysis

A party contesting the Department’s decision, to support 51A Report for physical abuse, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellant requested a Hearing, which was granted and held on May 2, 2017.

Regulations and case law applicable to this appeal include, but are not limited to, the following:

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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 caretaker, physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals, e.g., professionals, credible family members, and the social worker 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

The Appeals Court, in Edward E. v. Department of Social Services, 42 Mass. Appt. Ct [1997] where the question before the court was not whether the administrative record was based exclusively upon uncorroborated hearsay but whether the hearsay present at the Hearing was reliable.

The Supreme Judicial Court, in Covell v. Department of Social Services, 439 Mass.766 (2003), held that substantial evidence may be based on heresay, if that heresay has “indicia of reliability”.

The 51A report under appeal is supported for physical abuse. Abuse means the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury ... Physical injury means death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ and any other such non-trivial injury; or soft tissue swelling or skin bruising depending upon such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises; or addiction to drugs at birth; or failure to thrive. [110 CMR 2.00]

A Support finding means there is reasonable cause to believe that a child(ren) was abused and/or neglected, and the actions or inactions by the parent(s)/caregiver(s) place the children in danger or pose substantial risk 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. One such example is neglect that has led to a serious physical or emotional injury. **Protective Intake Policy #86-015 [2/28/16]**

The Court, in Cobble v. Commissioner of the Department of Social Services, 430 Mass. 385, 719 N.E. 2nd 500 (1999), considered the issue of "substantial risk of injury" and, in that case, determined that there was no reasonable cause to believe that the Appellant's actions created a substantial risk of physical injury to his son. The factors considered in that case included the act in question (disciplining by striking the child's clothed buttocks with a leather belt), the child's age (9), the lack of any prior injury from the same type of discipline, the frequency of this method of discipline (5 or 6 times over 7 months), the child's medical condition (a muscle condition requiring back and leg braces and physical therapy), the level of force used (a "solid smack"), the actual effect of the spankings (temporary red marks) and the likelihood that this method of discipline would continue to be used. The court determined that those factors, individually and/or collectively, were insufficient to support a finding of physical abuse.

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 the age of 18. [Protective Intake Policy, #86-015, Revised 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.

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter of physical abuse of B. See Findings #1-#12 and the below discussion.

The Appellant was a *caregiver* of seventeen (17) year-old B at the relevant time, consistent with the definition of this term as defined at 110 CMR 2.00.

On Monday evening of January 9, 2017, the Appellant, mother's live in boyfriend, engaged in a verbal and physical domestic with B while intoxicated. The Appellant denied drinking that evening. This denial lacks merit. B reported seeing the Appellant drinking in the living room while watching television. The police noted in their incident report that the Appellant's eyes were bloodshot and glassy and an odor of alcohol was coming from his person. The children, when interviewed by the response social worker, spoke of their concerns about the Appellant and mother drinking on a daily basis and becoming intoxicated.

The January 9th domestic began when the Appellant made a comment to B about not helping out around the home, which B ignored and which upset the Appellant. Whether the Appellant then tripped over and booted B's backpack or picked it up and threw it, a lamp was broken as a result. The broken lamp was seen by B and his mother. B was angry and yelled at the Appellant for throwing his back pack, presumably because his laptop was in it. At this point the situation escalated and the Appellant approached and grabbed B, pushed him in the chest backwards, and put his hand on B's throat pushing and shoving him down to the ground. While falling, B fell into a table breaking two of its legs. The Appellant claimed at Hearing that B charged at him and he grabbed him and restrained him during which time B's arms went back and the table went down. B sustained red marks on his neck, consistent with his account of being grabbed around the throat. In addition, the police arrested the Appellant and, according to the Appellant's testimony, he will face pre-trial probation for six months.

Based on the record and giving due weight to the Department social workers in this case, the Hearing Officer finds that the Department had *reasonable cause to believe* that the Appellant committed non-accidental acts, which caused and/or created a substantial risk of emotional and physical injury to B, in keeping with the definition of abuse at 110 CMR 2.00. Per the Department's Protective Intake Policy, the Hearing Officer finds that the Appellant's actions placed B in danger and compromised his safety and well-being. B sustained red marks on his neck from being grabbed by the throat and was sore the next day from his encounter with the Appellant. Reasonable cause has a relatively low threshold. See Care and Protection of Robert.

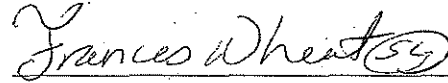
The Hearing Officer considered Cobble v. Commissioner of the Department of Social Services, and concluded that the events of January 9, 2017 were dissimilar as the Appellant, in this case was not disciplining B.

The Hearing Officer finds that the Department, in supporting for physical abuse of B by the Appellant, complied with its regulations and policies, and therefore affirms this decision. The Appellant met did not meet his burden of proof. [110 CMR 10.23]

Order

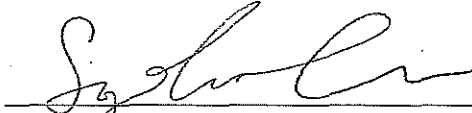
- 1. The Department's decision of January 30 2017, to support the 51A Report for physical abuse of J B by the Appellant, is AFFIRMED.**

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county in which he lives within thirty (30) days of the receipt of this decision. [(M.G.L. c. 30A, §14)]



Frances I. Wheat
Administrative Hearing Officer
Office of the General Counsel

Date: 13/28/17



Sophia Cho, LICSW
Fair Hearing Supervisor