THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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Linda S. Spears
Commissioner

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IN THE MATTER OF	)	
	)	
AC & LC	)	**FAIR HEARING DECISION**
	)	
FH # 2017-0255	)	
	)	

The Appellants in this Fair Hearing were AC and LC. The Appellants 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 10, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of G by AC and LC. A response was conducted. On February 8, 2017, the Department made the decision to support the allegations of the neglect of G by the Appellants. The Department notified AC and LC (hereinafter "AC" and "LC" or "Appellants") of its decision and their right to appeal.

Appellants made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on May 10, 2017, at the DCF Cape Cod Area Office. All witnesses were sworn in to testify under oath. The record closed on May 10, 2017.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
AC	Appellant
LC	Appellant
TG	Department Response Social Worker

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 on one compact disk.

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

For the Department:
Exhibit A: 51A Report, dated 1/10/17
Exhibit B: 51B Report, completed 2/8/17
Exhibit C: Letter of Dr. M, [redacted] dated 1/10/17
Exhibit D: Packet of Information provided to Response Worker from Appellants

Appellant
Exhibit 1: Letter to FHO from Appellants
Exhibit 2: Letter from Appellants to DCF providing corrective information, dated 3/17/17
Exhibit 3: Letter to Dr. G, dated 10/30/14
Exhibit 4: Updates on GI program of G by Dr. R
Exhibit 5: Notification of appointment at MGH for 12/29/16
Exhibit 6: [redacted] Result Information sheet
Exhibit 7: Explanation of Benefits page, Unicare, dated 1/23/17
Exhibit 8: Letter from Dr. R, dated 3/8/17
Exhibit 9: Letter from Dr. W
Exhibit 10: Picture, Winter 2015

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 whether 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. At the time of the filing of the subject 51A report, G was eleven (11) years old. G and his twin brother, W, were born on February 15, 2005, and resided with their parents, AC and LC, in [redacted] MA. (Exhibit A)

2. The Appellants are the parents of the subject child; therefore they were caregivers pursuant to Departmental policies and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

3. The C family had no history of involvement with protective services. (Fair Hearing Record)

4. In September 2014,[1] G was initially seen by Dr. K at [redacted] The Appellants had concerns regarding G's gastric track, so they sought to have G medically seen by Dr. K. G had blood tests and an upper GI series with small bowel follow through, and Dr. K believed he had Crohn's Disease. (Fair Hearing Record)

5. The upper GI series of testing revealed G had: generalized small bowel inflammation (the distal, jejunum, ileum, and terminal ileum). (Exhibit D)

6. Dr. K believed the best course of treatment for G was an aggressive medication: Remicade, which had side effects such as suppressing the immune system, and in trials had shown a slight risk of causing childhood cancer. The Appellants chose to seek other opinions and options rather than placing G on this medication to begin with. (Fair Hearing Record)

7. Dr. G, who was affiliated with [redacted], next saw G as a second opinion. Dr. G recommended alternative options for G, including a trial of antibiotics and an elimination diet. The Appellants implemented Dr. G's medical recommendations. G gained weight and exhibited less symptoms. (Exhibit 2; Exhibit 3)

8. The Appellants continued researching intestinal/GI issues in children and best treatment options. In January 2015, the Appellants consulted with Dr. M, who held a Ph.D. in nutrition and health, but was not affiliated with [redacted]. Dr. M recommended a nutritional regime and follow up for G; which the Appellants agreed and implemented. (Fair Hearing Record)

9. Also in January 2015, Dr. R, an expert in the area of digestive disease, began to treat G through telemedicine, video appointments, and parental consultation; as he was located in California. Dr. R treated G, and continued to, for digestive tract repair and support. (Exhibit 8; Fair Hearing Record)

10. G routinely saw his Pediatrician[2]. In September 2016, the Appellants obtained a new family provider, Dr. W. Dr. W advised the Appellants to continue following the diet which was effective for G, but suggested they consider stricter protocols, which they did. The protocols worked but caused G to lose weight, which had previously been stable. Dr. R corrected changes

[1] G's twin brother W had seen [redacted] in 2007 for constipation related issues.
[2] G's Pediatrician since birth retired in September 2016.

to G's diet and the Appellants made an appointment with Dr. F, the Director of [redacted] Pediatric GI. Dr. F was chosen because of his reputation in the field and his success with working with nutritional solutions. (Fair Hearing Record)

11. On December 29, 2016, G was seen by Dr. F. Dr. F recommended a Miralax cleanse and a colonoscopy. The Appellants agreed and the testing was scheduled for January 4, 2017. G had the scheduled testing and was admitted to [redacted] for observation on that day. (Exhibit B; Fair Hearing Record)

12. On January 4, 2017, G had a Magnetic Resonance Elastography (a form of a MRI), as well as the Miralax Cleanse. He was not able to eat prior to the MRE, and lost some ounces. The Appellants consulted with the admitting doctor and agreed to start G on Remicade. Remicade caused G's immune system to weaken and he did not feel well. G was started on a liquid diet of Pediasure and was able to tolerate it and began gaining weight. G was able to tolerate seven (7) cans of Pediasure and ate a banana. G had never been hospitalized before and his mother stayed with him nightly[3]. (Exhibit B, p.3; Exhibit 1)

13. On January 9, 2017, Dr. VM assumed care of G. She came to an agreement with G, who did not want to be hospitalized anymore, that if three (3) things happened he could go home the next day: his blood tests had to come back good, the MRE results had to be okay, and he needed to show a weight gain. (Exhibit 1)

14. On January 10, 2017, the family learned the MRE revealed G's small bowel was almost entirely healed, aside from two small patches of inflammation. Doctors noted the results were very good. (Exhibit 1)

15. G had gained three and three quarters pounds while hospitalized since January 4, 2017. (Fair Hearing Record)

16. On January 10, 2017, Dr. VM advised that G's weight gain was "not a real weight gain" and she wanted G to remain at the hospital for additional observation. The Appellants declined to have G remain in the hospital for observation and requested discharge paperwork. (Fair Hearing Record)

17. On January 10, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect of G by AC and LC. According to the mandate reporter, two (2) years prior G was diagnosed with Crohn's disease and since has received little to no formalized medical treatment. Approximately two (2) weeks ago the family presented at [redacted] for a medical appointment and due to severe malnutrition G was hospitalized. G was unable to participate in activities for daily living, i.e. walking, attending school at the time of the medical appointment. After two (2) weeks of being inpatient G had improved greatly but medically the team of providers felt that he needed to stay for a longer period. On January 10, 2017, AC discharged G against medical advice ("AMA") of the medical team. The reporter stated G was stabilized and had gained a minimal amount of weight. (Exhibit A)

[3] LC spent time at home and at the hospital as W needed to be cared for as well.

18. According to the mandated reporter, G was diagnosed with Crohn's disease two years prior and had not been engaged in any medical services since that time. The family used homeopathic methods they believed would help improve G. During G's two (2) week hospitalization, medical staff engaged the family who agreed to infusion treatment of Remicade.[4] The mandated reporter stated that as of January 10, 2017, they did not believe G was in crisis. G was "absolutely stable and actually had gained several ounces as of today". The reason for wanting G to remain in the hospital was to see his progress continue. (Exhibit A, p. 5)

19. G was not signed out against medical advice; rather he was discharged from [redacted] with appointments scheduled, infusion dates made, and Pediasure doses given. (Fair Hearing Record)

20. On September 16, 2016, G met with his Pediatrician, Dr. W, for the first time. G presented with diarrhea, poor appetite, fatigue, and gastro symptoms. The Appellants were concerned at that time. Dr. W discussed a need for G to be seen by a GI specialist and undergo a colonoscopy. Nutrition was discussed at length with the Appellants as G was 64lbs but had gotten up to 70lbs at one point. Dr. W reported the Appellants never missed an appointment; felt they were good parents and never considered them negligent in any way. However, they let it go too far and waited too long as G was getting worse. (Exhibit B, p.4-5)

21. TG met with G and he was observed walking around; able to go upstairs on his own; spoke clearly; and appeared articulate and intelligent for his age. G was engaging with TG. G stated there had never been a time where he couldn't get out of bed or not walk on his own. G explained that he had the best parents anyone could ask for and he had no worries for his family. G talked about the fun things his family did and future plans they had to go to Connecticut to have a meet and greet with the Red Sox. There will be a panel and autographs and he gets to meet the players. (Exhibit B, p.3)

22. On February 8, 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 by the Appellants due to the following:

a. Reported concerns for the past two (2) years that G was on the verge of being diagnosed with Crohn's Disease and received little to no formalized medical care.
b. The Appellants and G presented at [redacted] Hospital on 12/29/17 and G was admitted for severe malnutrition. As G improved while hospitalized and it was determined G would need to remain in the hospital, the Appellants discharged G against medical advice of the medical team. At that time, G was stabilized but had only gained a minimal amount of weight.
c. As the support of the allegation was not due to the Appellants leaving the hospital with G AMA but rather it was due to their lack of formal medical care for G for the past two (2) years. That it was recommended by Dr. K that due to a suspected diagnosis of Crohn's Disease he undergo an endoscopy and colonoscopy to confirm the diagnosis. However, the Appellants did not want G to start on medication and declined the medical procedures but wanted to try a

[4] Remicade is an anti-inflammatory medication that will help treat the inflammation of the intestines associated with the Crohn's disease. As the inflammation in the intestine decreased this would help G be able to take in nutrients, which would then help G gain weight. (Exhibit A, p. 5)

nutritional approach and began online medical appointments with Dr. R. Dr. R treated G with probiotic supplements, herbal medications, and to follow an Autoimmune Paleo Diet. The documentation did not indicate any in person appointments and did not have a record of G's height, weight, or medical history.

d. In Fall, 2016 when the Appellants became concerned for G and sought additional medical care they saw Dr. F. Two (2) years had passed since Dr. K's original concern. (Exhibit B, p.7)

23. The Department concluded that had the Appellants sought appropriate medical care for G when he was seen in 2014 by Dr. [redacted] he would not need the Remicade infusions he was currently receiving. G would have received a far less severe course of treatment. This was not accurate; the Remicade infusions were the exact medication that was recommended by Dr. [redacted] to start with. (Fair Hearing Record)

24. The Appellants followed through with the discharge recommendations of [redacted] for G, who has continued on Remicade. G has continued to gain weight. The Department closed the family's case after assessment. (Testimony of AC)

26. After consideration of the relevant evidence, I find the Department's decision to support the allegations of neglect by the Appellants was not based on reasonable cause. In addition, the actions or inactions by the parents did not place G in danger or posed substantial risk to G's safety or well-being. While it was reasonable for the Department to be concerned about the initial information reported, there was no evidence that the Appellants placed G in immediate danger or posed substantial risk to his safety or well-being during the two years prior to the reports as they sought minimally invasive treatment for their son.

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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

"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) 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's and supervisor's clinical base of knowledge. 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 §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 §51B. Id. at 64; M.G.L. c. 119, §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; DCF Protective Intake Policy #86-015, rev. 2/28/16

"Caregiver" means:

(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. 110 CMR 2.00; 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, or (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, or (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

It is undisputed that Appellants were caregivers pursuant to Departmental regulation and policy. 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellants contested the Department's decision to support allegations that they neglected G. The Appellants expressed their understanding that the Department based their decision to support in part by the information provided by the mandated reporter. However, the Appellants argued the reporter provided false information and inaccurate facts biased to her personal beliefs. G was portrayed as a child who was so sick that he could not ambulate and was admitted upon emergency observations by medical staff; was untreated medically for two years for his disease; and whose parents willfully failed to follow appropriate medical recommendations. The Appellants presented contradicting evidence at hearing; evidence and information that the Department did not have when they made the decision to support the report. The Appellants sought medical care for G during the time period in question (two years prior to December 2016) and further, they sought additional follow-up care by Dr. F after concern over G losing weight in the Fall 2016. Further, the mandated reporter stated she did not observe G being unable to walk as was reported. The reporter stated that she took over care of G during the last two (2) days of his two (2) week hospitalization; however G was hospitalized for six (6) days, not fourteen (14), and the reporter took over G's care for one (1) day. G was not hospitalized for severe malnutrition on December 29, 2016, as the reporter said. The reporter said there was no Pediatrician listed for G, then admitted Dr. B spoke with Dr. W twice during admission and at discharge. (Exhibit 5, Exhibit 6, Exhibit 7, Exhibit A, Exhibit B) The arguments and evidence presented by the Appellants was compelling and persuasive.

The Department has broad authority to collect information from mandated reporters and collaterals during an investigation and is obliged to obtain information to corroborate or disprove an allegation of abuse or neglect. In the instant matter, the Department availed itself of the opportunity to speak with collaterals during the investigation; that in part provided some inaccurate statements. The Departments reliance upon those statements at the time of the decision was reasonable, given they were from a professional. However, the Appellants provided additional evidence to support their initial and continued efforts with G's medical care.

This Hearing Officer is duty bound to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that AC and LC neglected G. 110 CMR 10.23; M.G.L. c. 30A, §1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691 In determining whether the Department had reasonable cause to support a finding of neglect, the Hearing Officer must apply the facts, as they occurred, to the Department's regulatory definition of neglect; new information presented at the Hearing that was not available during the investigation may be considered as well. The Appellants submitted new evidence at the hearing which tends to strongly disprove the allegations of neglect, particularly where it relates to inaccuracy of information provided to the Department. With respect to the totality of the evidence and for reasons noted in the above Findings of Fact, this Hearing Officer finds the Department's decision was not reasonable or supported by substantial evidence. 110 CMR 2.00 and 110 CMR 10.21(6)

Conclusion

The Department's decision to support the allegations of **neglect** by the Appellants was not made with a reasonable basis and therefore, is **REVERSED.**

Laureen Decas

Laureen Decas
Administrative Hearing Officer

DATE: 1/25/18

Darlene M. Tonucci

Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit

DATE:

Linda S. Spears
Commissioner