



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 Child Abuse/Neglect Report dated 12/17/16
- Exhibit B Child Abuse/Neglect Non-Emergency Response completed 1/6/17
- Exhibit C [REDACTED] Police Arrest Report dated 12/17/16

Appellant

- Exhibit 1 Copy of emails
- Exhibit 2 [REDACTED] pediatrics lab work
- Exhibit 3 Picture
- Exhibit 4 Picture
- Exhibit 5 [REDACTED] pediatrics documentation
- Exhibit 6 Letter from NW, MD, MBA
- Exhibit 7 Letter from DT, MD, PhD

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. At the time of the filing of the subject 51A report, O was seven years old. She resided in [REDACTED], MA with her mother and sister E, and visited her father, JC, in [REDACTED] MA. (Exhibit A)
2. The Appellant is the father of the subject child; therefore he is deemed a caregiver pursuant to Departmental regulations and policies. DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. On December 17, 2016, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A from a mandated reporter alleging the neglect of O by her father, JC. According to the reporter, the police were called to JC's home due to a domestic altercation between JC and AP, the mother of O. E (age 19) called her mother to come and pick up O from father's visitation because he was smoking marijuana in the home. O is a medically complex child, who is diagnosed with Cerebral Palsy and has a trachea, and requires regular medical attention and nebulizers. JC did not want AP to take O, and grabbed both O and AP to prevent them from leaving. JC was arrested and O went home with her mother. According to the reporter, JC was under the influence of marijuana and alcohol. (Exhibit A)
4. O was able to speak; however, due to cognitive limitations, she was not able to provide an account of the subject events. (Exhibit B)
5. Upon entering JC's home, the police officers noted a very strong odor of burnt marijuana emanating from the residence. (Exhibit B, Exhibit C)
6. E disclosed arriving to her paternal grandparents' home that they shared with the Appellant around noon time on December 16, 2016. E observed her father drinking a beer. After remaining on the main level with her grandparents baking cookies, E went downstairs to her father's residence and found a "wall of smoke", noting her father was "bombed". (Exhibit B, p.2)
7. E brought O upstairs to her grandparents and went back downstairs to talk with her father. E observed her father attempting to hide a bong; she made a remark to him and he proceeded to give her the middle finger. E observed her father's eyes to be half opened and that he was unsteady on his feet. After giving her father a card and the cookies she made for him, E noted her father began to cry and sob and hugged her until she became uncomfortable. Her father repeated the number five. E told her grandfather to watch her father and left the home to call her mother. E said her grandfather was unaware of what condition her father was in. (Exhibit B, p.2)
8. AP arrived to the Appellant's residence with her boyfriend and E to retrieve O. She observed the Appellant to have a red face and eyes that were half closed. AP noted the basement smelled of marijuana and there was a haze to the air. When AP was leaving with O, the Appellant attempted to grab O's legs to prevent O from leaving. AP's boyfriend called 911. AP heard the Appellant begin speaking in a British accent and said he was king of the world as he proceeded to jump on the tire of her car. (Exhibit B, p.3)
9. O was not given the medication provided to the Appellant and prescribed to O for

daily/nightly administration<sup>1</sup>. (Exhibit B)

10. The Appellant noted E was not a reliable reporter as she had told him many lies for many years, and would lie about things that she was not even in trouble for. (Testimony of JC)

11. On January 6, 2017, pursuant to M.G.L. c. 119, s. 51B, and based on the evidence gathered during its response, the Department supported the allegation of the neglect of O by the Appellant<sup>2</sup>.

12. The Appellant noted the weather conditions were poor on the day of the reported incident, including rain turning to sleet and ice. He slipped on the ice which led the police to the impression that he was under the influence. (Testimony of JC)

13. If asked to participate in a drug test, the Appellant acknowledged he would test positive for marijuana. (Exhibit B, p.5)

14. The Appellant had been charged within the past few years with Driving under the Influence. (Exhibit B, p.5)

15. The Appellant's girlfriend arrived at the home the night prior to the subject incident around 9:15 pm. She did not observe the Appellant consume alcohol and she did not consume any alcohol. If she did consume alcohol, which she did not recall doing so, it would have been wine. To her knowledge, marijuana was not used in the home on the night in question nor prior to her leaving for work at 6:30am. (Testimony of JV)

16. The Appellant testified at hearing that when E observed him holding a beer at noon, he was cleaning up from the night before when he had two beers and his girlfriend had one. The Appellant said he drank one beer with lunch on the day of the instant matter, and later burned kettle corn popcorn. (Testimony of JC)

17. Based on Findings # 15 and 16, I do not find JC to be a reliable reporter.

18. Paternal grandfather was not familiar with the odor of marijuana and could not identify it. (Testimony of PC)

19. O's urine was tested for substances on December 22, 2016, and she was negative. (Exhibit 2)

20. After consideration of the relevant evidence, I find the Department's decision to support the allegation of neglect by the Appellant was based on reasonable cause and was made in accordance with Departmental regulations. The actions of JC posed substantial risk to O's safety and well-being.

---

<sup>1</sup> The Appellant maintained he provided O with her prescribed medications but rather than use the medications provided to him by AP for that weekend he gave her medication he had kept in excess.

<sup>2</sup> The 51B document incorrectly reflects JC's role as biological mother instead of biological father. I find this to be a scrivener's error as the disposition comment clearly identified JC as the alleged perpetrator of the neglect.

## 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. 110 CMR 10.23

### Analysis

It is undisputed that Appellant was a caregiver pursuant to Departmental policy. DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant contested the Department's decision to support an allegation that he neglected his daughter O. The Appellant argued the subject incident was an attempt by his ex-wife to remove him from his daughter's life, which according to him she had been doing for months, as she identified O's father as her boyfriend to medical professionals. The Appellant also argued his older daughter, E, was not a reliable or credible reporter as she was known to lie and exaggerate. Had the Department solely relied upon E and AP's assertions of the condition of the home on December 17, 2016, the Appellant's argument might have been persuasive. However, the record reflects that was not the case in the subject matter. The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision for neglect.

In reaching a decision in the instant matter, this Hearing Officer is obliged to review the Department's decision within the context of the Department's regulatory framework and determine whether the Appellant has demonstrated by a preponderance of the evidence that the Department's decision was somehow erroneous or unreasonable. 110 CMR 10.03; 110 CMR 10.05

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, collaterals that had firsthand information. The Department did not just take E's statements as facts, rather they gathered information from her, her mother, and the responding police professionals and gave appropriate weight to the similarities of their accountings and the concerning situation. 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).

It is unknown, and will remain unknown, whether or not O received her medications on the night leading up to the subject incident. The Department did not make their decision to support the allegation of neglect based on that concern. Rather, the Department found that the Appellant was arrested for assault and battery and child endangerment for smoking marijuana in the presence of O considering her medical/breathing complications. The Department found upon an investigative response that a verbal and physical altercation occurred in O's presence while JC presented as impaired to family members and the police. The Appellant's testimony was contradicted by his girlfriend's testimony at hearing; this hearing officer gives due weight to the professional judgement and impressions of the police who responded and determined JC was impaired by some substance. Whether it was alcohol or marijuana, or both, O was in the Appellant's care at the time. Our courts have concluded that a physical or verbal altercation between caretakers, witnessed by children, constitutes neglect; it demonstrates a failure to provide a child with

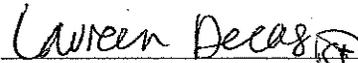
minimally adequate emotional stability and growth. John D. v. Dep't of Soc. Servs., 51 Mass. App. Ct. 125, 129 (2001).

Based on a review of the evidence presented, in its totality, this Hearing Officer finds that the Department had reasonable cause to believe that O was neglected while in the care of the Appellant, as defined by Departmental regulations. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 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 § 51B. Id. At 64; G.L. c.119, s 51B. The Department's determination of neglect does not require evidence of actual injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003)

### Conclusion

The Department's decision to support the allegation 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 

Laureen Decas  
Administrative Hearing Officer

Date: 1/17/18

Susan Diamantopoulos 

Susan Diamantopoulos  
Fair Hearing Supervisor