

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6th Floor
BOSTON, MASSACHUSETTS 02111

LINDA S. SPEARS,
COMMISSIONER

Voice: (617) 748-2000
Fax: (617) 261-7428

IN THE MATTER OF)

W. B.)

FH #2017 0261)

HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is Ms. WB (“the Appellant”). The Appellant appealed the decision of the Department of Children and Families’ (“the Department” or “DCF”) to support reports of neglect pursuant to Mass. Gen. L., c. 119, sec. 51A. Notice of the Department’s decision was sent to the Appellant on March 7, 2017, and the Appellant filed a timely appeal with the Fair Hearing Office.

The Fair Hearing was held on June 1, 2017, at the DCF Springfield Area Office. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esq.	Administrative Hearing Officer
WB	Appellant
RDS, Esq.	Appellant’s attorney
JJ	DCF Investigator
TM	DCF Supervisor

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

The Fair Hearing was recorded pursuant to DCF regulation 110 CMR 10.26.

The following evidence was submitted into the record at the Fair Hearing:

For the Department:

Exhibit 1: 1/5/17 51A Report

Exhibit 2: 2/3/17 51B Report

For the Appellant:

Exhibit A: 6/6/16 - 12/6/16 Service Plan

Statement of the Issue

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 investigation, the Department's decision or procedural action, in supporting a 51A report, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to 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 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) place the child in danger or pose substantial risk to the child's safety or well-being; or the person was responsible for the child being a victim of sexual exploitation of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject female child of this hearing is "FB", who was nine (9) days old at the time of subject 51A filing referenced below. (Exhibit 1, p.1) The Appellant is the biological mother of the children. (Exhibit 1, p.2; Exhibit A, p.1) She is a caregiver pursuant to DCF policy. DCF Protective Intake Policy #86-015 rev. 2/28/16.
2. The DCF history for this family dates back to 2005. The DCF history relates to Appellant's other children and does not pertain to the subject child FB. Prior history involved Appellant struggling with mental health, refusing treatment, and involvement in domestic violence ("DV"). (Exhibit 1, p.4, 5; testimony of investigator)
3. On January 5, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A pertaining to the alleged neglect of the child FB by Appellant due to risk of harm: The Appellant's long history with the DCF was regarding her three prior children that now reside with the Appellant's mother. Appellant had a history of mental health issues. Shortly after giving birth, a Care and Protection ("C&P") was filed on December 29, 2016, which resulted in FB being placed in foster care. The child was returned to Appellant's home with conditions on January 3, 2017. (Exhibit 1, p. 2)
4. The Department screened-in the 51A report for a non-emergency response on January 6, 2017. (Exhibit 1, p.5) FB had been removed from mother at the hospital after she was born and she was returned to Appellant after a 72-hour hearing. (Exhibit 2, p.3)

5. FB's last physical examination was the prior day: she was medically up-to-date, and possessed no notable conditions at time of the visit. (Exhibit 2, p.3)
6. After scheduled home visit, the DCF Investigator JJ had no protective concerns, no concerns with mental health because Appellant was already receiving mental health services at the time of the 51B Investigation. Based on the DCF investigation of the time, there are no circumstances where DCF would be able to support report of neglect. (Testimony of Investigator) (Exhibit 2, p.3-4; testimony of Investigator)
 - a) Appellant cared for subject child. She took FB to Baystate hospital because of labored breathing and FB recovered. Additionally, there were no issues regarding FB and she scheduled further appointments with the Pediatrician.
 - b) DJ is FB's father, incarcerated, and will not be involved in FB's life.
 - c) The Appellant possessed her current address for three months. She kept home clean and supplied with food.
 - d) Appellant is back in school, has regular therapy, and takes 10mg of Citalopram for medication.
 - e) The condition at the home visit, during the 51B Investigation, was up-to-date because eight (8) days prior to the investigation concluding. (Testimony of Investigator)
7. The DCF Supervisor TM confirmed that Appellant had not been in DV relationship with daughter's father since 2015 and that father was incarcerated. (Exhibit 3; p. 5) TM argued that a 51A report could not be unsupported solely because of the history of the case. He stated that DCF must support report of neglect based on previous supported reports and DCF involvement. (Testimony of Supervisor) TM's arguments were not persuasive. See Analysis
8. A DCF Service Plan was agreed to be followed by Appellant for a period of June 6, 2016 to December 6, 2016. She consistently attended programs while maintaining supervised visitation with her three other children. FB had not been born at the time. (Exhibit A, p. 1)
9. Appellant complied with Service plan provided by DCF (Exhibit A, p. 2; testimony of Appellant):
 - a) She signed all releases to providers and has certificates of completion from all providers.
 - b) She engaged with weekly therapy for the last two years and applied principles learned in her daily living circumstance.
 - c) She took all her medication in combination with a medical care provider.
 - d) All toxicology screens came back negative for drugs.

- e) Her domestic violence training was taken and she did not intend to have any relationship with past-DV partner or any partner for the time being.
 - f) Her child was provided for, breast fed, and she maintained appropriate housing: a 3-bedroom apartment in anticipation of her children returning.
 - g) While she was at work, FB would go to daycare or have someone to watch her.
10. Based upon a review of the evidence presented in its entirety, Appellant took those actions necessary to provide the subject child, FB, with essential care and the actions/inactions by Appellant did not pose a substantial risk to the children's safety and well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16; See, Analysis.)

Applicable Standards

A *Support* finding means: "There is reasonable cause to believe that a child was abused and/or neglected; and the actions or inactions by the parent(s)/caregiver(s) place the child in danger or pose substantial risk to the child's safety or well-being; or the person was responsible for the child being a victim of sexual exploitation of human trafficking." 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 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, s. 51B.

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.

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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. Protective Intake Policy No. 86-015 (rev. 02/28/2016)

To prevail at a Fair Hearing, an Appellant must show based upon all evidence presented at the hearing, by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies, regulations, statutes, and/or case law, which resulted in substantial prejudice to Appellant. If there is no applicable policy, regulation or procedure, Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to Appellant. If the challenged decision is a supported report of abuse or neglect, Appellant must show 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 in danger or posed substantial risk to the child's safety or well-being; or the person was responsible for the child 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 uncontested Appellant was a "caregiver," pursuant to Departmental regulation. 110 C.M.R. 2.00.

The Department made its decision to support a report of neglect by relying solely upon the Department's history with Appellant's other children, which the Department deemed to be consistent and applicable to the subject child. The Department's decision to support the 51A report under appeal heavily relied upon this DCF history nonetheless.

The Department's determination to support requires "reasonable cause to believe that some caretaker" neglected "the child in question." 110 CMR 4.32(2). The child in this hearing is FB and the history pertained to Appellant's other children. The supervisor's statement was not persuasive; the determination to support is based on factors including, but not limited to, DCF history. According to the supervisor, history could be a sole factor for support. The Department gave deference to DCF history because it indicated knowledge consistent with allegations. The history in this matter was outweighed by other factors. Other factors outlined in the regulations are "observable behavioral indicators" and the social worker's "clinical base of knowledge." 110 CMR 4.32(2). Here, the investigator had observed the Appellant eight days before concluding the up-to-date report and had no protective concerns at all. In fact, the investigator even admits that the DCF investigation provided no way to support the 51A claim.

All previous supported allegations were due to mental health issues, refusals of treatment, or issues of DV. The investigator had no concerns with mental health because Appellant already benefited from mental health treatment. This fact is further supported by Appellant's full compliance with DCF's own Service Plan, which included treatment and toxicology screens. Appellant's former DV partner was incarcerated and would not be involved in child's life. Furthermore, Appellant had no current partner at time of the Fair Hearing.

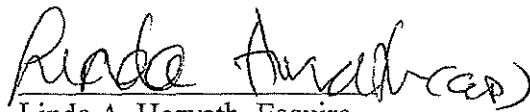
In light of the totality of evidence in this case; as discussed above and in the detailed Findings of Fact, the Appellant has shown by a preponderance of the evidence, that the Department's decision or procedural action was not in conformity with the Department's policies and regulations, has not demonstrated there is "reasonable cause to believe" that the Appellant neglected the subject child, and that the Department acted without a reasonable basis, which resulted in substantial prejudice to Appellant.

Conclusion

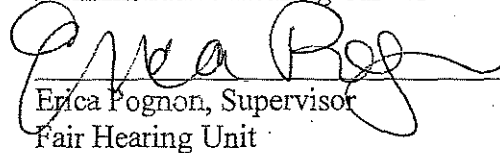
The Department's decision to support the 51B report of February 3, 2017, for neglect of **FB**, by **Appellant** is **REVERSED**.

6/5/18
Date

Date



Linda A. Horvath, Esquire
Administrative Hearing Officer


Erica Pognon, Supervisor
Fair Hearing Unit

Linda S. Spears
Commissioner