

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 )  
 )  
 DF ) FAIR HEARING DECISION  
 )  
 FH # 2017-0274 )  
 )

The Appellant in this Fair Hearing was DF. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to MGL c. 119, §§51A and B.

**Procedural History**

On January 21, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of A, Cad, Ree, R and Ca by their father, DF. A non-emergency response was conducted and on February 10, 2017 the Department made the decision to support the allegation that Ca was neglected by DF, the Appellant. The Department did not support the allegation of neglect of the remaining children by DF. The Department notified DF (DF or "Appellant") of the decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR §10.06. The hearing was held on May 11, 2017 at the South Central Area Office in Whitinsville, MA. All parties were sworn in to testify under oath. The record was closed at the conclusion of the hearing

The following persons appeared at the Fair Hearing:

JFF	Fair Hearing Officer
DF	Appellant
SG	DCF Supervisor
SS	DCF Social Worker (Observed)
RF	DCF Response 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 pursuant to Department regulations 110 CMR §10.26.

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

For the Department:

Exhibit A Child Abuse/Neglect Report dated 01/21/2017

Exhibit B Child Abuse/Neglect Non-Emergency Response completed 02/10/2017

For the Appellant:

Exhibit 1 Appellant's Written Testimony—"Conclusions of Law"

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. 110 CMR §10.05

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver 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; *DCF Protective Intake Policy #86-015, Rev. 2/28/16*; 110 CMR §10.05

**Findings of Fact**

On the basis of the evidence, I make the following factual findings:

1. At the time of the filing of the subject 51A report, A was eleven years old, Cad was eight years old, Ree was six years old, R was four years old and Ca was fifteen years old. They resided with their mother, CF and father, DF in ██████████, MA. (Exhibit A, pp. 1-2,

Exhibit B, p. 1)

2. The Appellant was the subject children's father; therefore he was deemed a "caregiver" pursuant to Departmental regulation and policy. 110 CMR §2.00; DCF Protective Intake Policy #86-015, Rev. 2/28/16
3. The Appellant has a history with the Department dating back to July 2007. On July 30, 2007 the 51A was supported for the neglect A and Ca as the Appellant DF was intoxicated while caring for those subject children. (Exhibit A, p. 7; Exhibit B, p. 1)
4. On January 21, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of the subject children by the Appellant, pursuant to M.G.L. c. 119, § 51A. According to the reporter, police responded to the home due to a call by one of the children. According to the reporter, the Appellant and his wife, CF had been having marital problems since losing a child ten years ago. The reporter alleged that the Appellant had been accusing CF of infidelity and that when CF came home that evening the Appellant went through her cell phone and observed a text message from a friend. Reportedly, the Appellant threw the phone and CF pulled on the Appellant's shirt. At some point, the Appellant pulled around and inadvertently struck CF in the face. The reporter alleges that the subject children heard the argument and altercation but were not present. The Appellant was taken into police custody and charged with Domestic Assault and Battery and later released on bail. (Exhibit A, p. 3)
5. The report was screened in and assigned for a non-emergency response, pursuant to M.G.L. c. 119, §51B. The allegation of neglect of Ca by the Appellant was supported on February 10, 2017 by the Department at the conclusion of the non-emergency response. The allegation was supported because the Department concluded that the Appellant DF was the aggressor in what began as a verbal dispute with his wife, CF. The Appellant argued with CF and broke her phone. Ca was able to overhear the argument and witness a portion of it, disclosing that CF had told that DF had struck her, prompting him to call the police due to the severity of the argument. The Department did not have reasonable cause to believe that the remaining subject children were neglected by DF and subsequently did not support that allegation. (Exhibit B, p. 13)
6. During the DCF Non-Emergency Response, the Department was able to retrieve the police report that detailed their response to the Appellant's home. It also confirmed the original allegation made on January 21, 2017. (Exhibit B, p. 2; Testimony of the DCF Response Worker)
7. The Appellant acknowledged that he and CF had engaged in an argument on January 21, 2017 prior to the police intervening but that he had not struck his wife purposefully, relating that he had lost control over the right side of his body due to a stroke several years ago and had been going to rehabilitative services. (Exhibit B, p. 5; Exhibit 1; Testimony of the Appellant)
8. The incident took place in the basement and the children were upstairs sleeping, save

for Ca. The Appellant related that the younger children did not hear anything and the Ca did not hear anything clearly because he was also upstairs. (Id.)

9. During the argument, CF had put her hand on the Appellant's shoulder causing him to turn around and striking her accidentally on the side of the face. The argument was "somewhat loud" causing Ca to be nervous or scared, prompting him to call the police. (Exhibit B, p. 5; Testimony of the Appellant)

10. When interviewed, CF related that on the day of the incident she had come home at night after picking up Ca from a friend's house. Upon arrival the Appellant accused her of cheating and demanded her cell phone. She gave the Appellant the cell phone and he observed text messages involving a friend he does not like as they were discussing possible divorce. (Exhibit B, p. 6)

11. The Appellant threw the cell phone twice to the wall, breaking it. When CF attempted to retrieve the cell phone, the Appellant struck accidentally. CF did not believe he did so purposefully. Nevertheless, it startled her and caused her to cry. Ca came down stairs and observed her cry as he exited the basement going up stairs. (Id.)

12. CF acknowledged having had placed restraining orders on the Appellant in the past because he has verbally threatened her. CF further related that the Appellant's insecurities have been the root of many arguments. (Exhibit B, pp. 5 & 6)

13. Ca could hear the Appellant and his mother yell at each other in the basement when he was upstairs. It was unclear to him as to why they were arguing. When he heard two loud bangs on the wall downstairs, he ran to see what happened. He observed his mother's cellphone on the floor, broken. When CF passed him on the stairs, she informed him that the Appellant has struck her, prompting him to call the police because he was "scared and nervous." (Exhibit B, p. 7; Testimony of the DCF Response Worker)

14. According to Ca, his siblings were all sleeping and did not wake up during the argument. The DCF Response Worker confirmed this when he interviewed the rest of the children. (Exhibit B, pp. 7 & 8)

15. There were no protective concerns reported by the children's respective schools. (Exhibit B, p. 11)

13. I find that the physical altercation between the Appellant and his wife and in particular the Appellant's actions at the time of the reported incident did create a substantial risk to Ca's well being and he neglected Ca by failing to provide him with minimally adequate emotional stability and growth. This case required further intervention by the Department for the protection of the children.

14. I find that the Department did have reasonable cause to support the allegation of neglect by Appellant. Through his actions, the Appellant did fail to provide minimally adequate care of Ca. (See, definition of "neglect" below.)

15. After review of credible evidence, I find that the Department's decision to support the allegation of neglect of the subject child, Ca, by the Appellant was made in compliance with its regulations. 110 CMR §§2.00, 4.32; *DCF Protective Intake Policy #86-015, Rev. 2/28/16*

### Applicable Standards

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.

#### 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)*

Neglect is 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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (*Id.*)

To Support a finding means:

- There is reasonable cause to believe that child(ren) was abused and/or neglected; and

- The actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being . . . (*Id.*)

Danger is a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. (*Id.*)

A Substantiated Concern means:

- There is reasonable cause to believe that the child was neglected; and
- The actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the children(ren)'s safety or well-being. (*Id.*)

Substantial evidence is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." M.G.L. c. 30A §1(6); *Protective Intake Policy No. 86-015 (rev. 02/28/2016)*

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party; . . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR §10.05

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; or (e) if the challenged decision is a listing on the alleged perpetrators list, that there is not substantial evidence indicating the person is responsible for the abuse or neglect of a child. 110 CMR §10.23

### Analysis

It is undisputed that the Appellant was a "caregiver" pursuant to Departmental regulation and policy. 110 CMR §2.00; *Protective Intake Policy No. 86-015, rev. 02/28/2016*

The Appellant disputed the Department's decision to support an allegation that he neglected Ca, his son. He argued that the Department failed to provide any substantial evidence to support a finding that there was reasonable cause to believe neglect by the

Appellant had occurred. The Appellant related that just because an argument occurred should not amount to a finding of neglect, relating that it is not uncommon that a couple has an argument during their marriage. The Appellant further argued that he is a stroke survivor and that he suffers from involuntary spasms, which in this instant matter caused him to inadvertently hit his wife in the face when she was trying to get her cellphone back. He added that Ca was not present during the argument and that he only went downstairs when his son heard his mother crying. Subsequently, the Appellant argued that the Department did not abide by applicable statutory or regulatory requirements, resulting in substantial prejudice to the Appellant.

The Hearing Officer is not persuaded by the Appellant's argument. The Department was able to show that they had reasonable cause to believe that Ca witnessed a verbal altercation between their parents and that the perpetrator of violence was the Appellant. The Appellant acknowledged that the incident occurred and he had taken his wife's cell phone, which he broke by throwing it against the wall out of anger. The loud yelling and banging prompted Ca to go down to the basement and witness his mother crying and the destruction of her cellphone. This made Ca scared and nervous, which prompted him to call the police out of fear for his mother's safety. (Fair Hearing Record) Subsequently, the Appellant failed to provide minimally adequate emotional stability and growth of the subject child as defined by the Department's regulation. (110 CMR §2.00; *Protective Intake Policy No. 86-015, rev. 02/28/2016*) Additionally, the court has ruled that a physical or verbal altercation between caretakers, witnessed by children, "constitutes a failure to provide the children with minimally adequate stability and growth." John D. v. Department of Social Services, 51 Mass. App. Ct. 125, 132 (2001)

Concerns of domestic violence cannot be ignored by the Department. Our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well-being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595 (1996). Children who witness domestic violence, especially during important developmental stages, often have serious psychological problems. Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879 (1979)

In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there is a reasonable basis for the decision (110 CMR §10.05). After review of the testimonial and documentary evidence presented, I find that the Appellant has not demonstrated any failure by the Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. 110 CMR §10.06(8)

As provided for in the regulations quoted above, the Investigator relied on available documentation, observable behavioral indicators and his clinical knowledge to support the decision made. Based on the totality of the circumstances, and the evidence gathered,


I find that the Department's determination of neglect was based on "reasonable cause" and was made in conformity with Departmental regulations.

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**Conclusion & Order**

The Department's decision to support the allegations of neglect of Ca by the Appellant 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, he may do so by filing a complaint in the Superior Court for the county in which she lives within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14

Jorge F. Ferreira 

Jorge F. Ferreira  
Administrative Hearing Officer

1-30-18

Date

Susan Diamantopoulos 

Susan Diamantopoulos  
Fair Hearing Supervisor