

**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

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IN THE MATTER OF        )  
                                  )  
                  KG            )       **FAIR HEARING DECISION**  
                                  )  
                  FH # 2017-0277    )  
                                  )

The Appellant in this Fair Hearing was KG. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of physical abuse pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On February 3, 2017, the Department of Children and Families received two 51A reports, both from mandated reporters, alleging the physical abuse of K by his father, KG. An emergency response was initiated and on February 6, 2017, the Department made the decision to support the allegation of abuse of K by father. The Department notified KG (Mr. G or "Appellant") of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on April 27, 2017, at the DCF Coastal Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for one week to allow the Appellant to submit additional evidence. Additional evidence was received and the record on this matter closed on May 5, 2017.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
KG	Appellant
ZG	Witness
NC	Department Emergency 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 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 2/3/17
- Exhibit B Child Abuse/Neglect Report dated 2/3/17
- Exhibit C Child Abuse/Neglect Emergency Response completed 2/6/17

Appellant

- Exhibit 1 [REDACTED] Public Schools Incident Report
- Exhibit 2 2012 Criminal Docket of Appellant
- Exhibit 3 5/2016 Abuse Prevention Order
- Exhibit 4 K's 2016 Fall Attendance record
- Exhibit 5 5/2016 Harassment Prevention Order
- Exhibit 6 K's attendance records from 2012-1/2015
- Exhibit 7 Recordings and pictures of 2/3/2017 altercation

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. 110 CMR 10.05

**Findings of Fact**

1. At the time of the filing of the subject 51A report, K was twelve (12) years old. He was in the sole physical custody of his father, KG, and resided with him, his wife ZG, and her son F, in [REDACTED] MA. (Fair Hearing Record)
2. The Appellant is the father of the subject child; therefore he is deemed a caregiver pursuant to Departmental policy. DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. The G family had a lengthy history of involvement with the Department due to issues of neglect; both K's mother and father had supported allegations of neglect. The Department petitioned the court for custody of K when he was four months old via a Care and Protection

Petition, however was not awarded custody. K sustained frostbite on his extremities after his father placed him in a deep freezer for five minutes in an attempt to reduce a fever. Upon examination, K was found to have four healing rib fractures in different stages of healing. Additional concerns arose over K's life regarding his mother's failing to provide him a safe environment, failing to send him to school, and issues of domestic violence arose between K's mother and father. (Exhibit C, pgs. 1, 2)

4. On February 3, 2017, the Department of Children and Families received two reports, pursuant to M.G.L. c. 119, s. 51A, both from mandated reporters, alleging the physical abuse of K by his father, KG. According to the reporters, K had been exhibiting acting out behaviors at school and at home. On that day, a physical altercation occurred between K and KG, and resulted in family intervention as well as police and ambulance services intervention. K was transported to the hospital with bruising and swelling to his left eye, had pain to the left side of his face, pain when swallowing, and pain to the right side of his ribs. These reports were screened in for an emergency response. (Exhibit A, Exhibit B)

5. It is uncontested that a verbal altercation occurred between K and KG which included K swearing at KG. (Fair Hearing Record)

6. The verbal altercation escalated to a physical altercation when K refused to go to his room, as directed by KG after being sworn at. KG escorted K to his room, K "charged at" KG, and a physical fight ensued. KG admitted to punching K in the chest before his wife pushed him into another room<sup>1</sup>. (Fair Hearing Record)

7. K maintained to the police, ambulance staff, hospital staff and social workers that his father punched him in the face and chest as well as choked him. KG denied punching K in the face or choking K, saying K choked himself. KG was not able to account for the bruising and swelling to K's face or his pain when swallowing after the altercation occurred. (Exhibit C)

8. KG acknowledged to the Department that he was upset with K for getting into trouble at school and talking back to him. He admitted he grabbed K, threw him onto his bed, and punched him a few times in the chest. (Exhibit C, p.6)

9. On February 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 that KG physically abused K. K was injured, had observable swelling and bruising to his left temple and cheek due to the non-accidental act of his father. (Exhibit C, p.6)

10. The Appellant testified at hearing that he had a recording of K choking himself (to the point that he passed out) and saying he did not want to be here anymore. The record was kept open to allow the Appellant to submit this evidence. The Appellant submitted recordings of K, which were absent any evidence of him choking himself to unconsciousness. K could be heard saying he was packing his stuff and leaving the home the next day because he did not want to be there anymore. Female voices were heard telling him to calm down, stop trying to act grown, and that they loved him even if it didn't seem like it. (Testimony of KG, Exhibit 7)

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<sup>1</sup> The Appellant's wife received injuries when she intervened including scratches and bruises. (Exhibit 7)

11. After consideration of the relevant evidence, I find the Department's decision to support the allegations of abuse by the Appellant was based on reasonable cause and made in compliance with its regulations.

### 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

"Abuse" means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

"Physical injury" is defined as "(a) death; or (b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or (c) soft tissue swelling or skin bruising depending on such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises..." 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.

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 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 uncontested that the Appellant was a caregiver. DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant disputes the Department's decision to support allegations that he physically abused his son who had been acting out at home by being disrespectful and getting into trouble at school. The Appellant argued he fought for custody of his son for ten years and would not intentionally harm him. He further argued he is a non-violent, calm person. The Appellant does not contest the essential facts of this case; he became upset with his son, a verbal argument turned into a physical altercation which resulted in a family intervention, the police and emergency services being called, and K being transported to the hospital. The Appellant appealed the decision because he does not feel the situation was abusive.

The issue is whether the non-accidental act by the Appellant caused a physical injury to K or created a substantial risk of physical injury to K. As noted above, in a case of soft tissue swelling and/or bruising all of the circumstances must be considered in order to determine whether a caretaker's actions are reasonably considered abusive. When recounting the circumstances of the incident, the Appellant acknowledged being upset with his son due to behavioral issues. He went after his son, who had walked away from him, and threw him into his bedroom. He then punched K several times in the chest, actions which far exceeded appropriate, acceptable discipline. K was later transported to the hospital for medical treatment where he was observed to have facial swelling, bruising, pain to his ribs and pain when swallowing.

The Department determined that the Appellant's actions on February 3, 2017, constituted "physical abuse," as defined by DCF regulations. 110 CMR 2.00. To meet the Department's definition of physical abuse, several factors must be present. (See above definitions of "abuse" and "physical injury") First, the act(s) must be non-accidental; it was. While angry, the Appellant struck K repeatedly. His actions were purposeful. Next, the non-accidental act must

“cause, or create a substantial risk of physical or emotional injury...” It did so. K was injured; he had swelling and bruising to his face and pain to his torso area.

The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department’s support decision for abuse. The undersigned will not pass clinical judgment on the Department’s broad discretion as delineated in theregulations. This incident was a serious one, and could not be ignored by the Department.

Based on a review of the evidence presented, in its totality, this Hearing Officer finds that there was reasonable cause to believe that the Appellant’s actions caused injuries to K, and therefore, he did physically abuse him under Departmental regulations. The Department’s decision was made in conformity with Department regulations and with a reasonable basis.

**Conclusion**

The Department’s decision to support the allegations of **physical abuse** 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: 11-27-17

Susan Diamantopoulos

Susan Diamantopoulos  
Fair Hearing Supervisor