

**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

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

IN THE MATTER OF)
)
 LF) **FAIR HEARING DECISION**
)
 FH # 20170314)
)

The Appellant in this Fair Hearing was LF (hereinafter "LF" or "Appellant"). The Appellant 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 February 7, 2017, the Department of Children and Families received a 51A report from a mandated reporter, alleging the neglect of Z, J, and K (hereinafter "Z" or "J" or "K" or "the children") by their mother, LF, and her partner, CL (hereinafter "CL"). A response was initiated and on March 2, 2017, the Department made the decision to support the allegations of the neglect of the children by LF and CL. The Department notified LF of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06¹. The hearing was held on April 26, 2017, at the DCF Cape Cod Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for two weeks to afford the Appellant the opportunity to review the Department's evidence². On May 10, 2017, the record on this matter was closed.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
LF	Appellant
TG	Department Social Worker

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this matter,

¹ At hearing the Appellant clarified she was appealing on behalf of herself and her partner, CL

² The Appellant requested in writing copies of the 51A and B on March 13, 2017, however did not receive the documents prior to the hearing.

having no direct or indirect interest, personal involvement, or bias in this case.

The Fair Hearing was recorded on one (1) compact disk pursuant to 110 CMR 10.26.

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

For the Department:

Exhibit A: 51A Report

Exhibit B: 51B Report

Appellant

None

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 51A report, Z was seventeen (17) years old, J was fifteen (15) years old and K was nine (9) years old. Z and K resided with the Appellant and CL, in S. [REDACTED] J resided with his father, but visited his mother and siblings every other weekend. (Fair Hearing Record)
2. The Appellant is the mother of the children; therefore she was deemed a caregiver pursuant to Departmental regulations and policy. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16)
3. The F family had no history of protective involvement with the Department. (Exhibit A)

4. On February 7, 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 Z, J, and K by their mother, LF, and her partner, CL. According to the reporter, on January 10, 2017, CL assaulted LF while intoxicated at the home. LF obtained a protective order which she vacated on January 20, 2017, so she could remain in the home. (Exhibit A)
5. LF reported a verbal argument occurred between her and CL regarding his desire to have her move out. LF went to call the police and CL grabbed her from behind to get the phone from her as he did not want her calling the police. LF did not sustain any injuries. (Exhibit B, p.2)
6. LF did not feel she needed a protective order; however obtained one at the encouragement of the police. On January 20, 2017, LF vacated the protective order. (Exhibit B, p.2)
7. Z was home during the incident; however he was in his bedroom in the basement with headphones on. Z did not witness the incident. Z reported no worries for either LF or CL. (Exhibit B, p.5)
8. J was not home at the time of the incident as he was with his father. J reported hearing verbal arguments between LF and CL about once a month. J never saw or heard objects being thrown; never saw the police come; and did not know what the arguing was about. (Exhibit B, p.5)
9. K was not home at the time of the incident as she was with her father. K never saw LF and CL fight; but heard arguments. K never felt scared in her home and did not see the police come. (Exhibit B, p.4)
10. K reported in April, 2016, the Appellant took the children to a hotel for two (2) days, however the children were not aware as to why they left their home, but presumed it was because the Appellant and CL had argued. (Exhibit B, pp. 4)
11. LF was previously involved in a domestically violent relationship. When arguments between her and CL became "heated" she panicked and called the police. LF was in counseling to address her past trauma and her current "overreactions". (Fair Hearing Record)
12. Collateral's involved with the children, school and medical, had no protective concerns for the children relative to LF or CL. (Fair Hearing Record)
13. On March 2, 2017, pursuant to M.G.L. c. 119, §51B, the Department supported the allegations that the children were neglected by LF and CL. The Department supported because of a concern of domestic violence in the home that the children were being exposed to, in addition to the incident on January 10, 2017, which led to the filing of a 51A report. (Exhibit B)
14. Considering the entirety of the record in this case, I find the Department did not have reasonable cause to believe that the Appellant and CL behavior constituted a failure to provide the children with minimally adequate care, emotional stability or growth. The

children were exposed to ongoing verbal disagreements in the home that sometimes made them uncomfortable and worried about their mother. While it was reasonable for the Department to be concerned about the emotional impact of these disagreements on the children, there was insufficient evidence that the Appellant or CL placed the children in immediate danger or that their actions posed substantial risk to the children's safety or well-being during the arguments. (110 CMR 2.00, 4.32(2); DCF Protective Intake Policy #86-015, rev. 2/28/16; Fair Hearing Record)

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)

"[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 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; and (e) 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

“Domestic violence” is a pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts. 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 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 the Appellant was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant contested the Department’s decision to support allegations that she and her partner, CL, neglected the children. The Appellant maintained she and CL engaged in arguments, mostly over financial stressors, but denied CL was abusive to her. The Appellant acknowledged being a past victim of domestic violence and cited this was the reason she “panics” and calls the police during arguments. The Appellant maintained there were no protective concerns for herself or her children. Based on the evidence, the Appellants argument was persuasive. As such, the facts of this case and the evidence presented do not support a reasonable cause to believe or reasonable basis to support the Department’s findings of neglect. B.K. v. Dep’t of Children and Families, 79 Mass. App. Ct. 777 (2001)

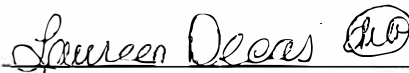
The children had been exposed to on-going verbal disagreements in the home that one time escalated to the point that the Appellant left the home for the weekend. While it was reasonable for the Department to be concerned about the emotional impact of these disagreements on Z, J, and K, there was insufficient evidence that the Appellant or CL placed the children in immediate danger or posed substantial risk to her safety or well-being during the arguments.^[1] The

^[1] Such evidence, that the child was in danger or the Appellant’s actions posed a substantial risk to the child’s safety or well-

evidence around domestic abuse of LF by CL was inconclusive. The evidence in this case was insufficient to support the Department's decision to support neglect by LF and CL. Therefore, the Department did not have reasonable cause to support and the decision was not made with a reasonable basis. The Appellants have shown by a preponderance of the evidence that the Department did not comply with its regulations and policy when it supported the allegations of neglect.

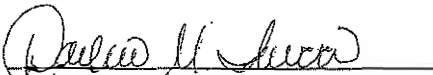
Conclusion

The Department's decision to support the allegations of **neglect** by the Appellant and CL were not made in accordance with regulations and policy and therefore, are **REVERSED**.



Laureen Decas
Administrative Hearing Officer

Date: 5/3/18



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

Date: _____

Linda S. Spears
Commissioner

being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of "concern" which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child's safety or well-being. (See DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29)