

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)
(DW & CW)
()
(FH # 2017-0325)
()

HEARING DECISION

Procedural History

The Appellants in this Fair Hearing are DW and CW (hereinafter "DW," "CW," or "the Appellants"). The Appellants appeal the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On January 11, 2017 the Department received a 51A report from a mandated reporter alleging neglect of S and B (hereinafter the "Children") by the Appellants; the allegations were subsequently supported. The Department informed the Appellants of its decision and of their right to appeal the Department's determination. The Appellants made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on May 5, 2017 at the Department of Children and Families' Arlington Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
CM	DCF Supervisor
MN	Appellants' Attorney
CW	Appellant
DW	Appellant
DI	Appellant DW's mother
WW	Appellant DW's father

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

The Fair Hearing was recorded on a digital voice recorder, 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 Response

For the Appellant:

Exhibit 1: Letter of Appointment of Guardianship for S

Exhibit 2: Letter of Appointment of Guardianship for B

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)

Statement of the Issue

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) place 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

Findings of Fact

1. DW and CW are the parents of S and B. At the time of the instant 51A report, S was twelve (12) years old and B was nine (9) years old. In accordance with the regulations and policies that govern these proceedings, I find that DW and CW are caregivers for S and B. DCF Protective Intake Policy #86-015 Rev. 2/28/16 (Exhibit A p.1-3, Exhibit B p.1, Testimony of CM, Testimony of Appellants)
2. DI and WW are the parents of DW and paternal grandparent of the reported children. They share a two-family house with the Appellants, and reside in the upstairs apartment. The grandparents are actively involved in raising their grandchildren with the parents. (Exhibit B p.4, Testimony of CM, Testimony of DI)
3. DW had a history of using prescription Percocets and progressed to heroin use. He obtained several refills of his prescription after getting his wisdom teeth removed. He

used them on and off for approximately four years due to a back injury.

Approximately one year before the instant 51A, DW began using heroin. DW's intake of heroin progressed to daily use approximately six months before the instant 51A.

DW maintained that his heroin use never progressed to IV use. (Exhibit B p.3, Testimony of CM, Testimony of DW)

4. CW had a history of opiate use. She used opiates of various forms for seven years previous to the instant 51A. For six months previous to the instant 51A, she was using heroin on a daily basis. CW maintained that his heroin use never progressed to IV use (Exhibit A p.3, Exhibit B p.3, Testimony of CM, Testimony of CW)
5. On the evening of January 10, 2017 both Appellants decided to stop using heroin. They did not consult with any medical professionals, and did not follow any prescribed or recommended treatment. This led to them experiencing withdrawal symptoms. (Exhibit B p.3-4, Testimony of CM, Testimony of Appellants)
6. On January 11, 2017, paternal grandmother, DI, was asked to come downstairs to the Appellants' home. DI came downstairs and found that DW was a "mess". DW appeared to be in pain and having repeated twitching motions. CW appeared to be having a panic attack. The Appellants told DI that they had been using heroin daily, were in withdrawal, and that they wished to go into detox together. DI drove the Appellants to a hospital, and they were admitted into a detox program. This incident gave rise to the instant 51A. (Exhibit A p.3, Exhibit B p.3-4, Testimony of CM, Testimony of DI)
7. On January 13, 2017, DI was granted temporary guardianship of I and B. (Exhibit B p.2, Exhibit 1, Exhibit 2, Testimony of CM, Testimony of DI)
8. On January 18, 2017 the Appellants were discharged from detox, and began methadone treatment. (Exhibit B p.2, Testimony of CM)
9. The children, when interviewed by DCW Response Social Worker, knew the parents were sick and needed help but did not state whether it was due to drugs. Both children denied having any concerns about their parents and feel safe in their care. They were medically up to date and collaterals did not have any protective concerns. (Exhibit B pp. 4-6)
10. I find that the Department did not have reasonable cause to believe that the Appellants neglected the children for the following reasons:
 - a. The Department did not provide evidence that the Appellants failed to provide minimally adequate care to the children. The children were taken care of by their grandparents and were not aware that the parents were engaging in heroin use. (Exhibit B pp.3-4; Testimony of Appellants; Testimony of DI; Testimony of WW)

- b. The Department did not provide evidence that the actions or inactions by the Appellants placed the children in danger or pose substantial risk to the children's safety or well-being

11. I find that the Department's determination that the Appellant's actions constituted neglect, as defined in its regulations, was not made in conformity with Department regulations and with a reasonable basis.

Applicable Standards

A "support" finding means 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) place 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." 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.

"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." 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

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

"Neglect" 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 failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition.

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

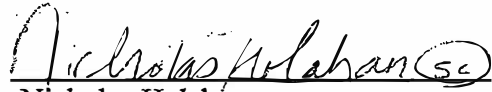
In this case, it is undisputed that the Appellants used heroin on a daily basis for approximately six months before the instant 51A filing. At some point shortly before January 11, 2017 both of the Appellants decided to stop using heroin. However, they attempted to detox without medical supervision and found it difficult and reached out for help to the Appellant's parents. The Appellant's parents provided help by driving the Appellants to a hospital and assuming temporary guardianship of the children.

I find that the Department did not have reasonable cause to believe that the Appellants neglected the children. The Department did not provide evidence that the Appellants failed to provide minimally adequate care to the children. The children were taken care of by their grandparents and were not aware that the parents were engaging in heroin use. Furthermore, the Department did not provide evidence that the actions or inactions by the Appellants placed the children in danger or pose substantial risk to the children's safety or well-being

I find that the Department's determination that the Appellant's actions constituted neglect, as defined in its regulations, was not made in conformity with Department regulations and with a reasonable basis.

Conclusion and Order

For all the reasons mentioned above, the Department's decision to support the allegation of neglect by the Appellants was not made with reasonable basis and is therefore REVERSED.



Nicholas Holahan
Administrative Hearing Officer

1/3/2018
Date



Sophia Cho, LICSW
Supervisor
Fair Hearing Unit

Linda S. Spears
Commissioner