

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

**Linda S. Spears
Commissioner**

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

IN THE MATTER OF: NC

Fair Hearing # 2017-0336

FAIR HEARING DECISION

The Appellant in this Fair Hearing is Mr. NC (hereinafter NC or Appellant). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support an allegation of neglect by the Appellant of the subject child, hereinafter N, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

Procedural Information

On February 20, 2017, the Department received a mandated 51A report alleging the neglect of the subject child by the Appellant. The report was received by the Department's Worcester East Area Office, where it was screened in for a non-emergency response. The Department completed its response on March 9, 2017. The allegation of neglect of the subject child by the Appellant was supported. The Appellant was informed of the decision and of his right to appeal the Department's determination. The Appellant filed a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was held on July 27, 2017 at the Department of Children and Families' Worcester East Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record remained open to allow for the submission of further evidence from both the Appellant and the Department. Exhibits from both the Department and the Appellant were received and the record closed on August 25, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph
NC
TF
JS

Hearing Officer
Appellant
Department Supervisor
Appellant's Attorney

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

For the Department:

Exhibit 1: 51A dated February 20, 2017

Exhibit 2: 51B dated March 9, 2017

Exhibit 3: Police report from September 21, 2016

Exhibit 4: Order of Protection

For the Appellant:

Exhibit A: Order on Support, Custody and parenting Time dated April 13, 2017

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 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 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, 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, 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) 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. The subject child of this investigation, N, was one (1) year old at the time of the subject report. The Appellant is N's biological father. (Exhibit 1)
2. N is the child in common between the Appellant and Ms. ER (hereinafter ER). (Exhibit 1)
3. The Appellant and ER were a couple for approximately three (3) months, and separated prior to N's birth. (Testimony of Appellant)

4. After ER and the Appellant separated, the Appellant began another relationship and married his now wife in September 2016. (Testimony of Appellant)
5. In the interstice between ER and the Appellant's separation and his marriage, communication was civil and the Appellant enjoyed frequent parenting time with N. (Testimony of Appellant, Fair Hearing Record)
6. The day after his marriage, ER arrived unannounced at the Appellant's home and began berating and menacing his wife. The Appellant called police, who de-escalated ER. No charges were filed. (Exhibit 3, Testimony of Appellant)
7. The Appellant has paid child support to ER and has had court ordered visitation with N since her birth. (Testimony of Appellant, Exhibit 2)
8. Since the deterioration of the relationship between the Appellant and ER, exchange of N between her parents after visitation is facilitated by N's maternal grandmother. (Testimony of Appellant)
9. The schedule for exchange of N was unpredictable and her grandmother was often unavailable at the appointed time of drop off. (Testimony of Appellant)
10. On the day of the subject report, the Appellant was unable to reach maternal grandmother, so he brought N to ER's work place, a dental office, to drop her off. Before the Appellant could get into the front door, ER confronted him, punching him in the face resulting in a fractured tooth and scratches on his neck. The Appellant was holding N throughout. (Exhibit 2, Testimony of Appellant)
11. ER approached a police officer in a cruiser within sight of the office door, with the Appellant following behind. ER relayed the she had been assaulted by the Appellant and he was arrested. (Testimony of Appellant, Exhibit 1)
12. The credibility of the Appellant is bolstered by the police report which reflected that the incident of September 2016 was initiated by ER. (Testimony of Appellant, Exhibit 3)
13. A 51A report was filed, based on the above described incident, alleging the neglect of B by the Appellant. (Exhibit 1)
14. The assigned social worker testified in a probate proceeding that there were no protective concerns with the Appellant, and further testified in favor of the Appellant receiving custody of N. (Fair Hearing Record, Exhibit A)
15. For a period of approximately three (3) weeks, N was in the Appellant's sole custody as ER's whereabouts were unknown. (Testimony of Appellant, Fair Hearing Record)

16. The Appellant filed a cross complaint of domestic assault, on which ER was arraigned. Both criminal cases were pending at the time of the Fair Hearing. (Fair Hearing Record)
17. The Department was unable to interview the Appellant during the response. (Fair Hearing Record, see analysis)
18. The Department did not retain the Appellant for ongoing case management after assessment, citing a lack of protective concerns. (Testimony of Department Supervisor, Testimony of Appellant)
19. The Appellant's version of the reported incident is credible. The Appellant had no criminal record, history of violence, or protective history with the Department. (Exhibit 2, p.1, Testimony of Appellant)
20. The Department did not produce evidence that warranted the conclusion that the Appellant did not provide minimally adequate care for N; no information was gathered during the response to corroborate the allegations as reported by ER. (See analysis, Fair Hearing Record)
21. After a review of the evidence and for the following reasons, I find that the Department did not have reasonable cause to find that N was neglected by the Appellant and that the Appellant's actions/inactions did not place N in danger or pose substantial risk to N's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

Applicable Standards

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

A support finding of abuse or neglect requires that there be reasonable cause to believe that a child(ren) was abused and/or neglected; *and* that 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). 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.

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

In making a determination, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29(2)

Analysis

The Department supported an allegation of neglect of the subject child by the Appellant, her father. The Department's support decision was predicated on the conclusion that the Appellant was the aggressor in a domestic dispute. There was reason to doubt the credibility of the purported victim of the described domestic dispute and the Department gathered no evidence to corroborate the allegations, as reported by ER.

The Appellant sustained injuries in the course of the incident, and successfully filed a cross compliant of assault. The Department closed the case after assessment, having made no recommendations for services to the Appellant, and having supported his efforts to obtain custody of N.

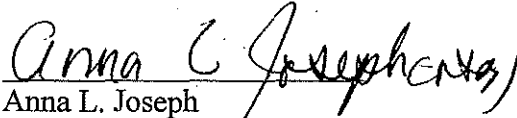
The Department had evidence and a reasonable clinical formulation as to why N was at significant risk as a result of the domestic assault, as the threshold mandates. That this one (1) year old was present and witnessed this incident was undisputed. The Department did not, however, have the requisite facts sufficient to assign culpability to the Appellant.

This Hearing Officer is obliged to consider the entire administrative record, including evidence that supports and/or detracts from the allegation made. The Department did not give sufficient weight to the Appellant's version of these events, nor to the patent lack of credibility of the child's mother. The evidence did not support a finding of neglect as defined by Department regulations and/or policies. In making a decision to support a record of abuse or neglect that Department must consider the entire record, including whatever in the record fairly detracts from the weight of the evidence supporting its conclusion. Arnone v. Commissioner of Department of Social Services, 43 Mass. App. Ct., 33, 34 (1997); the record does not reflect that the Department did so in this investigation. With respect to the totality of the evidence, including the basic undisputed facts, this hearing Officer finds the Department's decision was not made in accordance with Department policies and/or regulations. 110 CMR 10.23; M.G.L. c. 30A, 1 (6); Wilson v. Department of Social Servs., 65 Mass.App. Ct. 739, 744-745 (2006)

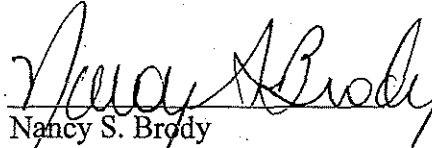
The decision of the Department to support the allegation of neglect is REVERSED.

Conclusion and Order

The Appellant has shown by a preponderance of the evidence, that the Department's decision to support the allegation of neglect of N, by the Appellant, was not in conformity with Department policy or regulations, and therefore the Department's decision is **REVERSED**.


Anna L. Joseph
Administrative Hearing Officer

Date: 4-9-18


Nancy S. Brody
Supervisor, Fair Hearing Unit

Date:

Linda S Spears
Commissioner