

**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)	
)	
HZ)	FAIR HEARING DECISION
)	
FH # 2017-0338)	
)	

The Appellant in this Fair Hearing was HZ. 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 24, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of E by her mother, HZ and father, CB¹. A non-emergency response was conducted and on February 23, 2017 the Department made the decision to support the allegation that the subject child was neglected by HZ and CB. The Department notified HZ (HZ or "Appellant") of the decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR §10.06. The hearing was held on May 30, 2017 at the Brockton DCF Area Office in Brockton, MA. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Jorge F. Ferreira	Fair Hearing Officer
RW	DCF Supervisor
HZ	Appellant

¹ CB was not a party to this hearing.

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 01/24/17
- Exhibit B Child Abuse/Neglect Non-Emergency Response completed 02/23/17

For the Appellant:

- Exhibit 1 Letter from Appellant's Psychotherapist
- Exhibit 2 Copy of Pediatric Appointment for the Subject Child (Encounter Form) dated 05/23/17
- Exhibit 3 Copy of Residential Lease Agreement

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 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

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

1. At the time of the filing of the subject 51A report, E was five months old. She resided with her mother, HZ and CB, in [REDACTED] (Exhibit A; Exhibit B)
2. The Appellant is the mother the subject child; therefore she 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 family has no previous history with the Department. However, the Appellant was opened as a child consumer in 1988. (Exhibit A, pp. 3 & 4; Exhibit B, p. 1)
4. On January 24, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of the subject child by the Appellant and her father pursuant to M.G.L. c. 119, § 51A. According to the reporter, the Appellant called 911 from a neighbor’s house to call for help. Allegedly, the Appellant had left with the subject child because she had a physical altercation with CB. It was reported that the Appellant knocked the father’s hat off and that he responded by punching the Appellant’s right side of the face and the top of the head with a closed fist. The reporter alleged that the Appellant did have visible bruising but that she refused treatment. The father, CB, was arrested and charged with domestic assault and battery. The Appellant left and went to reside with her parents in [REDACTED]. The reporter also expressed concern regarding the condition of the home, relating that there was medication and alcohol all about and that it was a “hoarding situation” and that the parents could not explain where the child slept in the home as the bedroom was full and no one could sleep in there. (Exhibit A, pp. 2 & 5)
5. During the extended screening process, the [REDACTED] [REDACTED]² were contacted and confirmed that the family had no previous involvement with them. (Exhibit A, p. 5)
6. 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 the subject child by the Appellant was supported on February 23, 2017 by the Department at the conclusion of the DCF Response. The allegation was supported because the Department had reasonable cause to believe that the Appellant compromised the safety of the subject child by exposing her to “hoarding” conditions of the home that was observed by the mandated reporter. The Department also supported on the neglect of the child by her father for exposing her to a physical altercation with the Appellant as well as the conditions of the home.³ (Exhibit B, p. 10)

² [REDACTED] is a government entity in the State of [REDACTED] and [REDACTED] responsible for child protective services, juvenile correction and detention.

³ As previously stated, CB was not a party to this hearing and the allegations that were supported against him were not under appeal in this instant matter.

7. The Appellant confirmed that she had a physical altercation with CB when he got home on the day of the incident. She related that they argued because he would not communicate when he got home from work. She acknowledged that she instigated by lifting his hat out of his face. He responded by hitting her all over her body while he held E in his hands. (Exhibit B, p. 2)
8. The DCF Response Worker was able to observe bruises on the Appellant, which included her arms, legs and face. (Id.)
9. The incident occurred in [REDACTED] but the Appellant was residing between both her parent's home in [REDACTED] and [REDACTED] with her boyfriend. (Testimony of the Appellant)
10. The Appellant filed a restraining order against CB for a year from the incident date and CB has since been prosecuted and incarcerated due to the [REDACTED] [REDACTED] (Exhibit A, p. 2; Testimony of the Appellant)
11. The Appellant related that the home was not in squalor but acknowledged that it was in disarray because they had just returned from a trip in [REDACTED] and they had not finished unpacking. (Exhibit B, p. 3; Testimony of the Appellant)
12. The Appellant acknowledged that there might be medication and other items scattered across the floor because of the altercation, relating that since things had not been put away or in the process of being put away that they were probably knocked over and scattered. (Testimony of the Appellant)
13. The Appellant related that as a musician, CB also had his equipment in their small trailer home, which added to more clutter. The Appellant related that it had been an ongoing issue and it was why they often argued and that she was in between her parent's home and the trailer home in [REDACTED] (Id.)
14. The Appellant has since engaged in treatment to address issues related to trauma and has been consistent. She has also secured appropriate housing for herself and the subject child. (Exhibit B, p. 6; Exhibit 1; Exhibit 3)
15. The Department was able to obtain a copy of the police report, which confirmed the Appellant's account of the altercation with CB. The report did cite concern regarding the condition of the home and not being suitable for an infant. (Exhibit B, p. 5)
16. The infant was reported to be healthy and up to date with her medical care and immunizations. No protective concerns were reported. (Exhibit B, p. 6; Exhibit 2)
17. When interviewed, CB also acknowledged that there had been a physical altercation with the Appellant, relating that she had instigated the argument and that she also assaulted him. He expressed concern that the Appellant had also been drinking and was

drunk on the night of the incident, which exacerbated the situation. He denied that the home was in disarray or messy but acknowledged that they had not unpacked from their trip from ██████████ (Exhibit B, p. 7)

18. The police report noted that neither parent were intoxicated or presented in an inebriated state. (Exhibit B, p. 5)

19. I find the Appellant was a victim of violence and CB to be the perpetrator of that violence.

20. I find no substantial evidence to support the Department's decision alleging that E was neglected by the Appellant. (*See definition of substantial evidence; B.K. v. Department of Children and Families., 79 Mass. App. Ct. 77 (2011)*)

21. The Department's decision to support the allegations of neglect of the subject children by the Appellant was not in compliance with its regulations. 110 CMR §4.32

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." G.L. c. 30A §1(6)

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 contested the Department's decision to support the allegation that she neglected her daughter, E. The Appellant acknowledged that the home where the altercation occurred between her and CB was in disarray, explaining that they had recently returned from a trip to visit her boyfriend's family in ██████████ and that they were in the process of putting their clothing away. The Appellant further argued that CB had much of his musical equipment in the home, limiting the living space and giving the appearance of clutter. The Appellant denied that they were living in squalor and that the Department never obtained any photographs that showed that the home was in squalor. Additionally, the Appellant argued that during the physical altercation with CB where she was assaulted and sustained marks and bruising, that items including medication that was in her purse were inadvertently knocked around, which exacerbated the physical standard of their living environment. Finally, the Appellant argued that the Department could not provide any evidence of previous concerns regarding the condition nor did any other collateral, with exception of the mandated reporter, express any concerns. Subsequently, the facts of the case do not support the Department decision/findings. B.K. v. Department of Children and Families., 79 Mass. App. Ct. 77 (2011)

The Appellant was a victim of violence who took the appropriate steps to seek help when she was assaulted by the child's father. There was no information to indicate that she was under the influence of alcohol as noted by the responding police officers. The Appellant was also able to argue and show that her boyfriend's things were a point of contention and that she and E were often between ██████████ and ██████████ due to the lack of space in their trailer home in ██████████. She acknowledged that the home in ██████████ was in disarray but far from a squalid condition. The Appellant was able to present evidence that E was healthy and up to date, that she was able to secure new and appropriate housing and that she was engaged in treatment to address issues related to the trauma she experienced. Subsequently, the Appellant was meeting the minimally adequate care of the subject child. (110 CMR §2.00; *Protective Intake Policy No. 86-015 (rev. 02/28/2016)*) I find the Appellant's argument persuasive and find that the circumstances presented in this case, viewed in light of the surrounding circumstances, did not support a finding of neglect by the Department.

In determining whether the Department had reasonable cause to support a finding of neglect by Appellant, the Hearing Officer must apply the facts, as they occurred, to the definition of neglect as defined by Departmental regulation; new information presented at the Hearing, if not available during the investigation, can be considered as well. 110 CMR §§2.00 and 10.06

After careful review of all the evidence presented, including new information offered by the Appellant at the Fair Hearing, I find that the evidence in this case, in its totality, was insufficient to support the Department's decision to support neglect by the Appellant.

Conclusion and Order

The Department's decision to support the allegation of **neglect** of the subject child by the Appellant was not made in conformity with Department regulations and therefore, the Department's decision is **REVERSED**.

Jorge F. Ferreira

Jorge F. Ferreira (BC)
Administrative Hearing Officer

Susan Diamantopoulos

Susan Diamantopoulos (MS)
Fair Hearing Supervisor

DATE: 6-21-18

Linda S. Spears
Commissioner

DATE: _____