

**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

AR

2017-0355

**Fair Hearing Decision**

The Appellant in this Fair Hearing is AR. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of A and C by Appellant pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

**Procedural History**

On February 6, 2017, the Department received a 51A report from a mandated reporter alleging the neglect of the above referenced children, A and C by Appellant; the allegation was screened in for a Non-Emergency Response by the Department and upon its completion, the Department decided to support the allegation of neglect of the children by the Appellant. The Department informed the Appellant of its decision and of her right to appeal the determination. The Appellant made a timely request for a Fair hearing under 110 CMR 10.06.

The Fair Hearing was held on May 23, 2017, at the Department of Children and Families' Area Office in Malden, MA. All witnesses were sworn in to testify under oath and the record closed officially upon conclusion of the Hearing.

The following persons appeared at the Fair Hearing:

Carmen Colón  
AR  
JL  
EF

Fair Hearing Officer  
Appellant  
Appellant Attorney  
DCF Area Program Manager

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 of February 6, 2017

Exhibit B: 51B Non-Emergency Response of March 6, 2017

For the 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)

**Statement of the Issue**

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, 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 parents(s)/ caregiver(s) placed the child (ren) in danger or pose substantial risk to 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 Appellant in this case is AR. Appellant is the mother of A and C, therefore deemed as a caregiver pursuant Departmental Regulation CMR 110 2.00, DCF Protective Intake Policy #86-015, rev 2/28/16 (Exhibit A, Exhibit B, p.1).
2. At the time of the report, A was thirteen years old and C was seven years old. Both children resided with their mother, who was their primary caregiver. (DCF testimony, Exhibit B, p. 3).
3. Appellant was married to RS and at the time of the response were in the process

of finalizing their divorce. RS has a history of alcohol abuse and participation in Intensive Outpatient Programs (IOP) but has struggled with maintaining his sobriety. Father also has a mental health history and has a medication regimen which he follows. Due to his history, RS, does not have custody of the children and had not had a visit with the children since December 2016 (Exhibit B, p. 2, 4).

4. On February 6, 2017, the Department received a 51A report alleging the neglect of the children by mother by a mandated reporter. In this report, mother was said to have been leaving the children without adult supervision for extended periods of time. A made the disclosure to guidance counselor and expressed feeling afraid as she was worried of an emergency taking place and not knowing how to respond while responsible for the care of her brother C (Exhibit A, p. 5, DCF testimony).

5. The Department began conducting their response on February 6, 2017. At the time of the response, RS, was working on maintaining his sobriety and provided the DCF Response worker (DCF RSW) with documentation. Father was not involved with the care of the children (Exhibit B, p. 3,4,8).

6. The DCF RSW contacted several collaterals and family members involved with the family. After conducting these interviews the following information was obtained:

a. No evidence was obtained from this contact that mother had a plan in place for the children's supervision/ care aside for two nights out of the week. (Exhibit B, p.2, DCF testimony)

b. Family resides across the street from the children's maternal grandfather, yet mother did not use him as a resource (Exhibit B, p.2, 3).

c. The children's father used to assist in caring for the children, but has not in several months due to being in substance abuse treatment and attempting to maintain sobriety (Exhibit B, p.4)

d. Appellant and children were involved in Probate Court and Appellant had obtained a court order granting mother permission to have A babysit C for 3 hour block periods (Appellant testimony)

7. The DCF RSW conducted an interview with the children, A and C on February 17, 2017. It was confirmed during this interview, per children's statements that A had been C primary caregiver for C during the times mother was not home (Exhibit B, p.5).

8. Appellant's attorney argued that the disclosure made by children lacked specific dates and timeframe and stated the children failed to report how close family members resided near the home. However, I find the children credible as there was no evidence gathered of possible motive to make false statements against mother. Instead children spoke about feeling safe with their mother and not liking being left alone. Children, per their own account, were able to express that they had been left alone consistently by

mother (Exhibit B, p.5)

9. After review of the documentation and testimony provided by the Appellant and DCF, I find that it was reasonable to support the allegation of neglect of A and C by Appellant for the following reasons:

- a) Children were consistent with their disclosure to multiple collaterals, including DCF RSW, that they were left alone.
- b) A had shared feeling of fear when left responsible for C as she did not have a way to reach mother
- c) Appellant did acknowledge staying out late and arriving home while the children were already asleep – arrival time is unknown.

#### Applicable Standards

In order for the Department to “Support” an allegation of neglect, the Department must find that there is reasonable cause to believe that the child(dren) was abused and/or neglected ; and that 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 Police #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. 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, 63-64 (1990) Id. at 63. 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 caretaker, 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. Protective Intake Policy #86-015 Rev. 2/28/16

"Caregiver" means: (1) a child's parent, stepparent, guardian or any household member entrusted with the responsibility for a child's health or welfare; or, (2) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under age 18). 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. 110 CMR 10.

### Analysis

After review and consideration of the evidence provided, it is undisputed that the reported children were being left at home without supervision for extended periods of time. A, the eldest and responsible for the care of C while Appellant was away was consistent with her disclosures and in expressing her feelings of fear while home alone. The allegations were corroborated by A's maternal aunt, whom DCF RSW contacted (Exhibit B, p. 2). Although the subject children did not experience injury as a result of the Appellants actions, the Court has concluded that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789(2003). "If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing physical or emotional injury." Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 795 (2003).

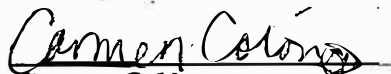
Although A did attempt to recant her initial disclosure when being interviewed by DCF RSW, her brother, C, reiterated that the two had been left alone by Appellant on an ongoing basis, at times overnight, without being able to reach mother.

Mother argued that she had a plan for the children's supervision while she was away as she had family who resided in close proximity to her family home; however, maternal grandfather was only providing the children with care for two days a week prior to the Department's involvement with the family. (Exhibit B, p.5)

### Conclusion and Order

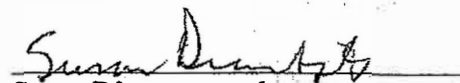
In conclusion, the Appellant failed to show by preponderance of the evidence that the Department's decision was not made in conformity with the Department's policy or regulations. As such, the Department's decision to support the 51A report of neglect of C by the Appellant is **AFFIRMED**.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or in Suffolk County, within thirty (30) days of the receipt of this decision. See, M.G.L. c.30A, §14. In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Carmen Colón  
Fair Hearing Officer

1-19-18  
Date



Susan Diamantopoulos  
Fair Hearing Supervisor