

**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)
)
 MS) **FAIR HEARING DECISION**
)
 FH # 2017-0359)
)

The Appellant in this Fair Hearing was MS. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to M.G.L. 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 S by her mother, MS. A response was conducted and on February 21, 2017, the Department made the decision to support the allegation of the neglect of S by MS. The Department notified MS (Ms. S or "Appellant") of its decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on May 17, 2017, at the DCF Taunton Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

LaureenDecas	Fair Hearing Officer
MS	Appellant
PM	Support
SS	Department Response Social Worker
SC	Department Supervisor

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 on one compact disk.

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

For the Department:

Exhibit A Child Abuse/Neglect Report dated 1/24/17

Exhibit B Child Abuse/Neglect Non-Emergency Response completed 2/21/17

Appellant

Exhibit 1 Patient Visit Information from [REDACTED] Hospital

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.

Findings of Fact

1. At the time of the filing of the subject 51A report, S was fifteen (15) years old. S was residing in [REDACTED] with a family member. MS was residing at the [REDACTED] Motel.
(Fair Hearing Record)
2. The Appellant is the mother of the subject child; therefore she is deemed a caretaker/caregiver pursuant to Departmental regulations. 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. On January 24, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A from a mandated reporter alleging the neglect of S by her mother, MS. According to the reporter, MS and S were homeless. MS was on a psych hold after calling for help while intoxicated. She presented with disorganized thoughts and impaired judgement and had a diagnosis of Major Depressive Disorder. (Exhibit A)
4. S missed twenty days of school prior to the subject report. When S was in school she had an

ongoing head lice problem. When calls were made to MS they were not returned. The school was planning to file a truancy charge. (Exhibit B, p.6)

5. S made her own living arrangement by contacting H, her stepsister (her father's adopted daughter) when she and her mother had nowhere to go after staying with an old friend in [REDACTED]. MS had not talked to H in two years; however, S reached out to her and she agreed to allow S to stay with her. (Testimony of MS)

6. MS did not communicate with H as they had "bad blood" between them. (Testimony of MS)

7. MS is diagnosed with anxiety and depression as well as PTSD. At the time of the reported incident, she had been incorrectly medicated and had been without prescribed medication for a period of time as her prescriber left the practice. (Testimony of MS)

8. On January 21, 2017, MS presented herself to the emergency room of [REDACTED] because she was unable to get her regular medications, as she had to take buses and was late for her appointment. MS was very anxious, dizzy and nauseous. MS was provided her medications, given Klonopin, and discharged. (Exhibit 1)

9. MS presented herself to the emergency room of [REDACTED] a second time within two days. She was suicidal, intoxicated and anxious. She was placed under a Section 12 and was to be seen by crisis once sober. Her Section 12 needed to be renewed as a bed search resulted in a negative finding of a bed in a psychiatric facility. After an additional day of being held, MS was no longer at hospital level of care and was discharged. (Exhibit 1)

10. S described her mother drinking vodka with cranberry juice every night, and said her mother had a problem with alcohol that she was aware of since she was ten years old. (Exhibit B, p.4)

11. A case history review showed MS had a past history of involvement with child protective services in [REDACTED]. Issues for MS in the past were her alcohol use, housing instability and her mental health issues. MS lost custody of her older children to their father. (Exhibit B, p.1)

12. On February 21, 2017, pursuant to M.G.L. c. 119, s. 51B, and based on the evidence gathered during its investigative response, the Department supported the allegation of the neglect of S by MS. The Department found reasonable cause to believe MS's mental health and alcohol abuse issues impacted her ability to provide S with a safe, stable home environment. (Exhibit B)

13. On February 21, 2017, H petitioned Probate and Family Court for temporary Guardianship of S, which she was awarded. (Exhibit B)

14. MS acknowledged she previously had a problem with alcohol. She denied alcohol was a current problem for her, citing the fact that the Patriots were playing as a reason she had a few drinks. (Testimony of MS)

15. After consideration of the relevant evidence, I find the Department's decision to support the allegation of neglect by the Appellant was based on reasonable cause and made in compliance

with its regulations. The Appellant failed to provide S with minimally adequate care, a safe, stable environment. Her inactions posed substantial risk to S's safety and well-being as she was left with finding her own appropriate living situation.

Applicable Standards

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred 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. 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).

"Reasonable cause" is "[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 "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. 110 CMR 2.00.

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 10.23

Analysis

It is undisputed that Appellant was a caretaker pursuant to Departmental regulation. 110 CMR 2.00

The Appellant contested the Department's decision to support an allegation that she neglected her daughter. She denied alcohol was a current problem for her, but did not deny that she had a few drinks and was anxious due to not being able to get her medications on time. The Appellant failed to understand the Department's broader concern of S not having a safe living arrangement until she made one for herself, taking the time at hearing to explain she had since received a large settlement and was able to obtain an apartment in [REDACTED] which S would visit her at. The Appellant acknowledged she did not communicate with H, did not make the living arrangement with H, and would not agree to H obtaining temporary custody of S even though she herself was going out of state for weeks. I do not find the Appellant to be persuasive to the point that would allow a reversal of the Department's decision.

In determining whether the Department had reasonable cause to support a finding of neglect, the Hearing Officer must apply the facts, as they occurred, to the Department's regulatory definition of neglect; new information presented at the Hearing that was not available during the investigation may be considered as well. As S's caregiver, MS had a responsibility to provide minimally adequate shelter and essential care to her. She did not do so, and the Department determined that rose to the level of neglect as her inactions posed substantial risk to S's safety and well-being. In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. (110 CMR §10.29).

Based on a review of the evidence presented, in its totality, this Hearing Officer finds that the Department had reasonable cause to believe that S was neglected while in the care of the Appellant, as defined by Departmental regulations. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 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 § 51B. Id. At 64; G.L. c.119, s. 51B. The Department's determination of neglect does not require evidence of actual injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003)

Conclusion

The Department's decision to support the allegation of neglect by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

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

Lauren Decas

Lauren Decas
Administrative Hearing Officer

Date: 11-29-17

Susan Diamantopoulos

Susan Diamantopoulos
Fair Hearing Supervisor