

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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Commissioner

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IN THE MATTER OF)
)
Ms. J.R.) **FAIR HEARING DECISION**
)
FH # 2017-0365)
)

The Appellant (Ms. J.R.) in this Fair Hearing is the mother of the child L. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On February 22, 2017, the Department received a 51A alleging the neglect of the child by the Appellant. The report was screened in and assigned for a response. On March 15, 2017, the Department made the decision to support the allegation of neglect of the child by the Appellant. The Department notified the Appellant of its 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 June 6, 2017, at the DCF Malden 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:

Ms. Lisa Henshall	Fair Hearing Officer
Ms. J.R.	Appellant (mother)
Ms. S.R.	Witness
Ms. C.P.	Response Worker

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 DCF 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 2/22/17
Exhibit B Child Abuse/Neglect Response dated 3/15/17

Appellant:

Exhibit 1 Letter from [REDACTED] Counseling dated 5/31/17
Exhibit 2 Worksheet completed by the Appellant dated 6/3/17
Exhibit 3 Letter from [REDACTED] Program not dated

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 CMR10.21

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; 110 CMR 10.05

Findings of Fact

1. The subject child of the Fair Hearing was L, who was two (2) years old, at the time of the reported incident. (Exhibit A, p.1; Exhibit B, p.1)
2. The Appellant is the child's mother; therefore, she was a caregiver pursuant to Departmental regulation. 110 CMR 2.00. (Exhibit A; Exhibit B; Testimony of the Response Worker)
3. The Department received a 51A report on February 22, 2017, pursuant to M.G.L. c. 119, §51A, alleging neglect of the child by the Appellant. The reporter alleged that the Appellant was using drugs and alcohol and that she was progressively getting worse. The reporter alleged that the Appellant drove the child to his home while intoxicated. This

was reported, screened in, pursuant to M.G.L. c. 119, §51B, and assigned for a response. (Exhibits A& B)

4. The Appellant had an open case with the Department from April 2015 until August 2015 for neglect. At that time, the Appellant was not in treatment for her mental health issues and there were concerns about her care of her child. The Appellant had a significant trauma history. The Appellant was diagnosed with Depression, Anxiety, Post Traumatic Street Disorder (PTSD), and Bipolar Disorder. When the case closed, the Appellant was doing well and engaged in services for her mental health diagnosis. (Exhibit A, p. 4; Exhibit B, pgs. 1-2; Testimony of the Appellant)
5. It was undisputed that the Appellant had significant mental health issues and trauma history. (Exhibit B; Testimony of the Appellant)
6. When the Department responded, they learned that the Appellant had been hospitalized on February 23, 2017. This was her second hospitalization since an incident that occurred in her home on or about February 14, 2017, the details of which are as follows:
 - a. The Appellant had been caring for her daughter at the maternal grandparents' home, where she resided, while they were on vacation prior to February 14, 2017;
 - b. The Appellant had invited her friend to the home and she, in turn, invited people over that the Appellant did not want there. These people ended up stealing various items from the home and stole the grandfather's gun;
 - c. The Appellant was uncomfortable with these people in her home and she was unable to get the people out of her home for four days;
 - d. The Appellant was on the third floor of the home with her daughter while "these people" were doing what they wanted in the home and using drugs, "Adderall", in the home.
 - e. The Appellant felt trapped and powerless during this time and took her child upstairs to the third floor and was pacing and not sleeping. The Appellant was concerned about calling the police as she did not want to be called a "cop caller." The Appellant's mental health began to deteriorate during this time. (Exhibit B, pgs. 1-2; Testimony of the Response Worker; Testimony of the Appellant)
7. The Appellant was distressed about the entire situation as reflected in the fair hearing recording. The Appellant acknowledged that there was more she could have done to get these people out of her home. The Appellant's testimony was difficult to follow. (Testimony of the Appellant; Fair Hearing Record)
8. The Appellant was in therapy during the response but the Department was unable to connect with the Appellant's therapist who Appellant had recently "fired." (Testimony of the Response Worker; Exhibit B, p. 8; Testimony of the Appellant)
9. The Appellant's urine screen was negative at the time of her first hospital admission, after the incident at the maternal grandparents' home. The Appellant tested positive for Amphetamines, Cocaine and Marijuana at the time of her second hospital admission,

February 23, 2017. (Exhibit B, p. 2; Testimony of the Appellant)

10. It was undisputed that the Appellant used cocaine in her room in the families' home before her second hospitalization. The child was in the home at the time as were the maternal grandparents. (Testimony of the Appellant; Exhibit B, p. 8)
11. The Appellant was discharged from the second hospital stay during the DCF response and subsequently attempted suicide in her bedroom in the family home while the child was in another part of the house. The Appellant was upset about the robbery and upset that people that she thought were her friends, were not. The Appellant believed the child would be better without her. The Appellant was in the Intensive Care Unit (ICU) in a coma for a short time as a result of this attempt. (Exhibit B, p. 8; Testimony of the Response Worker; Testimony of the Appellant)
12. The Appellant disputed that she used drugs or abused alcohol while she was caring for her child during the time of the incident at the maternal grandparents' home. The Appellant testified that she would have a couple of glasses of wine while getting the child ready for bed. (Testimony of the Appellant)
13. The maternal grandmother (S) reported finding empty "nips" (small bottles of alcohol) in the Appellant's room in her home. The room was described as "filthy" and as a result the rugs had to be professionally cleaned. (Exhibit B, p. 10)
14. The Appellant disputed that she has ever been under the influence while picking up her daughter or driving. (Testimony of the Appellant; Testimony of the Witness)
15. The Appellant disputed that there was drug paraphernalia in her room as indicated in the 51A report. (Testimony of the Appellant; Testimony of the Witness)
16. At the Appellant's second hospitalization, February 23, 2017, the Appellant reported that "she was abusing stimulants like Ritalin or Adderall," but she did not test positive for these. The Appellant was "angry" that the prescribing Doctor would not give her Adderall. The Appellant tested positive for Amphetamines, specifically Adderall, at the time of her third hospitalization when she attempted suicide. (Exhibit B, pgs. 2 & 3)
17. When the Department met with the child, she was well cared for and the maternal grandparents were her primary caregivers. They obtained guardianship on March 7, 2017, during the DCF response. The child was up-to-date medically according to the Appellant, and there was no evidence to dispute this. (Exhibit B, pgs. 6, 8 & 12)
18. The Appellant was discharged from her third hospitalization on March 13, 2017 and discharged to a friend's home with follow-up day treatment in place. (Exhibit B, p. 10; Exhibits 1, 2 & 3)
19. At the conclusion of the response, the Department determined that the child had been neglected by the Appellant for poor decision making. The Appellant permitted people to

come into her home while she was caring for her daughter. These people refused to leave the home and were using drugs (Adderall) and stealing from her as her mental health continued to decline. The Appellant had positive urine screens for Cocaine and Adderall and there were concerns about her alcohol use as well as her mental health. (Testimony of the Response Worker; Exhibit B, pgs. 12-14)

20. Based on the credible evidence, I find that the Department did have reasonable cause to believe that child was neglected and that the Appellant's actions did place her in danger and posed a substantial risk to her safety per the Department's definition. 110 CMR 2.00.
- a. It was undisputed that the Appellant had significant mental health issues;
 - b. The Appellant was the primary caregiver for the child despite residing in the same home with the maternal grandparents who secured guardianship of the child at some point during the DCF response;
 - c. The Appellant permitted people to stay in the home who then refused to leave and were using Adderall throughout the next four days;
 - d. Following this, the Appellant was hospitalized three times in a short amount of time (February- March);
 - e. On one occasion she tested positive for Cocaine, which she did not dispute;
 - f. The Appellant disclosed that she abused Amphetamines, such as Adderall, and tested positive for those at the time of her third admission after she had attempted to commit Suicide;
 - g. For all of these incidents the child was in the home, perhaps not in the same room as the Appellant, but in the same house;
 - h. The child was two years old at the time and the Appellant's actions placed her at substantial risk. (Fair Hearing Record; See Analysis)

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. Protective Intake Policy #86-015 Rev. 2/28/16

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.*)

"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 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 § 51A. Id. At 63. This same reasonable cause standard of proof applies to decisions to support allegations under §51B." Id. At 64; G.L. c.119, s 51B

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child's health or welfare, and (e) 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 baby-sitting), a foster home, a group care facility, or any other comparable setting. As such, "caregiver" includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The "caregiver" 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 himself/herself a child (i.e. baby-sitter). 110 CMR 2.00

"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. Protective Intake 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 10.23

Analysis

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I affirm the Department's neglect support decision.

The Appellant, the mother of the child, was a "caregiver," pursuant to Departmental regulation. 110 CMR 2.00

The Appellant appealed the decision to support the allegation of neglect on behalf of her daughter L. The Appellant argued that the 51A report was a false report that was filed out of spite. The Appellant was understandably distressed and acknowledged that she's made some mistakes but does not feel that she was a neglectful mother. The Appellant acknowledged that the situation in the maternal grandparents' home, when people were using drugs and she could not get them to leave, was traumatic for her. I did not find the Appellant's argument persuasive.

The Department argued that the Appellant neglected her child by poor decision making. In addition, they cited concerns with her mental health, alcohol use and positive drugs screens for Cocaine and Amphetamines.

The Department had reasonable cause to believe that the child was neglected. Clearly the Appellant had significant mental health issues which impacted her functioning. However, the evidence demonstrates that the Appellant contributed to these issues when she added alcohol and drugs to her already precarious state.

The Appellant resided in the same home with the child and was the primary caregiver for all intents and purposes. The Appellant did not dispute that she used Cocaine in the home, or that she invited others who abused drugs (Adderall) into the home and that she was unable to get them to leave for about four days. This placed her child in an unsafe position and resulted in her deteriorating mental health. The Appellant also self-disclosed on one of her three psychiatric admissions, within a short amount of time, that she was abusing Adderall, and later tested positive for it. All of these events cumulated with the Appellant's attempting to commit suicide while her child was in the same home with her. Fortunately, the child was not injured as a result of these events and a court ruling determined that a determination of neglect does not require evidence of actual injury to a child. Lindsay v. Department of Social Services, 439 Mass. 789, 795 (2003). It was not only reasonable for the Department to determine that the Appellant neglected the child but the evidence that was presented demonstrated that the Appellant's actions posed a substantial risk to her safety and well-being.

Based on a review of the evidence, presented in its totality, the Department had reasonable cause to believe that the Appellant's actions constituted neglect and her actions placed the child in danger as well as posed a substantial risk to her safety. 110 CMR 2.00; DCF Protective Intake Policy #86-015 Rev. 2/28/16(See Findings)

Conclusion and Order

The Department's decision to support the 51A report for neglect of the child J (age 6 months) by the Appellant is **AFFIRMED**.

This is the final administrative decision of the Department. If the 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 within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.)

Lisa Anne Henshall
Lisa Anne Henshall
Fair Hearing Officer

12-11-17
Date

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor