

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

KC

#2017-0367

Fair Hearing Decision

The Appellant in this Fair Hearing was KC (hereinafter "KC" or the "Appellant"). The Appellant is appealing the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of her granddaughters, J and Jo, pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On July 7, 2016, the Department became involved with the Appellant and her family, after receiving a 51A report from a mandated reporter alleging the neglect of J and Jo (hereinafter "J," "Jo," or the "Children") by KC. This allegation was screened in for an emergency response by the Department. Upon completion of its response period, the Department supported the allegation of neglect. The Department informed the Appellants of its decision and of their right to appeal the Department's determination. The Appellant's made a timely request for a Fair Hearing under ~~110 C.M.R. 40.06~~

The Fair Hearing was held on June 13, 2017, at the Department of Children and Families' Area Office located in Chelsea, MA. All witnesses were sworn in to testify under oath. The record officially closed upon conclusion of the Hearing.

The following persons appeared at the Fair Hearing:

Carmen Colón
KC
TMC
LA
JD

Fair Hearing Officer
Appellant
Attorney for Appellant
DCF Emergency Response Worker
Witness

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 July 10, 2016

Exhibit B: Emergency Response of July 12, 2016

For the Appellant:

Exhibit 1: Request for Fair Hearing.

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 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

1. The Appellant is the grandmother and legal guardian of J, Jo; therefore, KC is deemed the child's caretakers pursuant to Departmental policy. DCF Protective Intake Policy # 86-015 Rev. 2/28/16.
2. The Appellant resided on the top floor of her residence with the reported children as well as their sibling E, who was visiting his grandmother in [REDACTED] on the night of the reported incident. (Exhibit B, p. 2, 3).

3. KC's adult son, JC, and her daughter SP were also staying in the home. They were staying in the top floor of the residence. SP is the mother of J, Jo and E and has been involved with the Department in the past. (DCF Testimony, Appellant testimony, Exhibit B, p. 2)
4. The Department has been involved with SP since June 2016 for concerns of her use of substances and noncompliance in treatment. (Exhibit B, p. 2)
5. SP's history with substances led to the Department developing a safety plan for her children which required that SP not have access to the children. Appellant was granted temporary custody of the children and instructed by DCF to not allow SP in her home. (DCF Testimony)
6. On July 10, 2016, the local police department obtained a search warrant and raided the family home after having obtained reports of drug activity in the home. On this date, the police recovered 9 grams of cocaine, a scale, and plastic bags all belonging to SP, who was staying in the Appellant's home intermittently. On this specific weekend, SP arrived to the home two days prior to the event and had been sleeping on the couch. The Appellant did not inform DCF that SP was frequenting the home, even though she was not supposed to allow SP access. (Exhibit B, p. 2, 3)
7. All drug paraphernalia was found in a toy chest which the children used and was stored behind the main door of the house (DCF testimony, Exhibit B, 2)
8. DCF RSW responded to the home after 6pm. At this time, SP and JC had been arrested and the Department RSW informed the Appellant that a decision to take emergency custody of the children had been made. (Exhibit B, p.2)
9. DCF RSW interviewed the Appellant, who reported not being aware of the drug activity in the home. Appellant was unable to provide a separate address for SP and personal items such as clothing belonging to SP were noticed in the home. Appellant did not have an explanation for this during the response, aside from stating that SP was visiting the children. During the Fair Hearing, Appellant denied that SP was staying in the home, recanting her disclosure to DCF RSW on the day of the event (DCF testimony, Exhibit B, p.2)
10. On July 12, 2016, the Department supported the allegation of neglect of J and Jo as the Appellant allowed SP to stay in the family home, violation of DCF Safety Plan designed for the children as well as SP storing substances in the home. (DCF testimony, Exhibit B, p. 2-4).
11. After review of the documentation and testimony provided by the Appellant and DCF, I find that there was reasonable cause to support allegation of neglect of the children by the Appellant:

- a) The Appellant's argument was not persuasive. The information gathered by the Department during the response period was able to corroborate the reported allegations of concern for the neglect of the children.
- b) The Appellant did not follow through with DCF recommendation or previously designed safety and allowed SP to be in her home and have access to the children.
- c) SP, the mother of the children, stored cocaine inside the children's toy chest which posed substantial risk to the children's safety and well-being (DCF testimony)

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." 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 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; malnutrition; or failure to thrive. Neglect cannot result solely from inadequate economic resources or solely to the existence of a handicapping condition. Protective Intake Policy #86-015 Rev. 2/28/16.

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 other person entrusted with responsibility for a child's health or welfare, whether in the child's home, a 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. The "caregiver" definition should be construed broadly and inclusively to encompass any person who at the time in question is entrusted with a degree of responsibility for the child. This specifically includes a caregiver who is a child such as a babysitter under age 18. DCF 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 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

Analysis

The Appellant disagreed with, and disputed, the Department's finding of neglect as she stated having taken all measures necessary to ensure the children's safety throughout the time they were in her care.

After review of the evidence provided, it is undisputed that there have been ongoing concerns by the Department of SP's ability to parent the children which led to the Appellant obtaining their temporary custody. Appellant argued via her counsel that she was unaware of any substance use or misuse by her daughter in the home or the selling of any substances. Appellant also remained firm that SP was not residing with her full time yet provided no evidence that could corroborate her statements. During the fair hearing it was argued that SP was "couch surfing" by Appellant's counsel and not residing with her yet Appellant informed the DCF RSW during her interview that SP had been in her home for several days. SP then stored drug, Cocaine, and drug paraphernalia in the children's toy chest which was used by the children.

Based on the totality of the circumstances, and the evidence gathered, I find that the Department's determination that the Appellant's actions constituted neglect, as defined in its regulations, was made in conformity with Department regulations and with a

reasonable basis. And that the Appellant's actions/inactions posed substantial risk to the children's safety and well-being. 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 § 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.

Conclusion and Order

In conclusion, the Department's decision to support the 51A report of neglect of E by the Appellant 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.



Carmen Colón
Fair Hearing Officer

1/2/2018
Date



Sophía Cho, LICSW
Supervisor
Fair Hearing Unit