

**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

Voice: (617) 748-2000  
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IN THE MATTER OF )  
 )  
Mr. D.C. ) **FAIR HEARING DECISION**  
 )  
FH # 2017-0368 )  
 )

**Procedural History**

Mr. D.C. has appealed a decision of the Department of Children and Families, pursuant to G. L. c. 119 §§ 51B, to support a report of his sexual abuse of a child, M. The Department's decision to support the allegation of sexual abuse was rendered on March 1, 2017, and notice of the Department's decision was provided on that same date. Thereafter, on March 27, 2017, Mr. DC filed a timely request for a fair hearing with the Fair Hearing Office of the Department of Children's and Families.

A hearing on the matter was convened on June 6, 2017. Mr. DC was present along with his son and attorney as well as witnesses. The Department's Response Worker, JC and her Supervisor JL were also present. The record remained open to allow the Appellant's Attorney time to submit a written closing, which was submitted and the record closed on June 9, 2017.

The following persons appeared at the Fair Hearing:

Ms. Lisa Henshall	Fair Hearing Officer
Mr. D.C.	Appellant
Atty. M.K.	Appellant's Attorney
Mr. A.C.	Support for the Appellant
Ms. J.C.	DCF Response Worker
Ms. J.L.	DCF Supervisor
Ms. D.F.	Witness 1
Ms. J.C.	Witness 2

In accordance with 110 CMR 10.03, the hearing office attests to impartiality in this case, having had no direct or indirect interest, personal involvement or bias in the 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:

The Department:

Exhibit A            51A dated 2/8/17  
Exhibit B            51B dated 3/2/17

The Appellant:

Exhibit 1            Pictures of the playroom pgs. 1-6  
Exhibit 2            Characters references, 6 letters

The Hearing Officer need not strictly follow the rules of evidence... Only evidence which is relevant and material may be admitted and may 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**

1. The reported child in this Fair Hearing was M who was 14 years old at the time of the filing of the 51A. At the time of the incident that child was said to be approximately 10-11 years old. (Exhibit A)
2. At the time of the incident the child lived with her family on the first floor of the house. The Appellant was the owner of the building and at the time lived in the second floor unit. (Exhibit B, pgs. 2 & 4)
3. On February 8, 2017, a 512A was filed that alleged that M was sexually abused by the Appellant. This report was screened in, a referral was made to the District Attorney and it was assigned for a response. (Exhibit A, pgs. 2)
4. The events of this incident were contested by the Appellant. (Exhibit B, Testimony of the Appellant)

5. The child denied that the Appellant was ever a caregiver for indicating her family "was around." (Exhibit B, p. 4)
6. The child's family denied that the Appellant was a caregiver for the child. (Exhibit B, p. 13)
7. The Department supported the allegations as the child disclosed that the Appellant would "force her to touch his private area" and that this occurred in the family play room. The Department made a referral to the District Attorney and the case closed. (Exhibit B, p. 5)
8. At the hearing it was unclear if the Department believed that the Appellant was a caregiver. (Testimony of the Response Worker; Testimony of the Supervisor; Exhibit B)
9. The Appellant was not entrusted with any caregiving responsibilities for the child. (Testimony of the Appellant; Testimony of the Response Worker; Exhibit B)
10. After considering all of the evidence, I find that the Department did not have reasonable cause to support the allegation of sexual abuse by the Appellant DC for the following reasons:
  - a. Appellant DC was the owner of the "triple decker" where the child resided with her family on the first floor;
  - b. Appellant was in the child's home but was never a caregiver;
  - c. There was no evidence that the child's parents ever entrusted the Appellant with responsibility of M;
  - d. All of the parties disputed that the Appellant was ever a caregiver for the child;
  - e. Appellant was not a caregiver as defined by the Department Regulation 110 CMR 2.00
  - f. As there was no reasonable cause to believe the Appellant was a caregiver the response should have been unsupported and referred to the District Attorney's office as indicated in 100 CMR 4.33.

### 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

"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

"Abuse" is defined as the non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse to a child; or the victimization of a child through sexual exploitation or trafficking whether or not the person responsible is a caregiver. 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

Prior to making any factual determination in this matter, the Department must consider an issue raised by counsel, at the hearing and in his post-hearing memorandum, specifically whether the procedures utilized by the Department in screening and responding to these allegations were in accordance with its regulations

The Department is the government agent charged with responding to complaints of child abuse and neglect G.L. c. 119 § 51A, 51B. However, the Department has through validly promulgated regulations limited its response and/or decisions solely to the allegations of abuse and neglect perpetrated by a child's "caregiver." The Department has defined "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

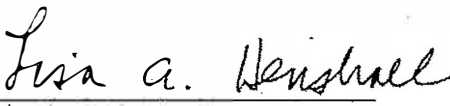
The Department has regulations which limit its responses and/or decisions solely to allegations of abuse or neglect perpetrated by a child's "caregiver." 110 CMR 4.21; 4.33

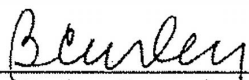
In this case the Appellant DC was not a caregiver for M. Appellant DC was the owner of the residence where the family was residing at the time of the alleged incident. The child indicated that her family was around when the Appellant was at the home. There was no evidence that the Appellant was entrusted with any responsibilities for the care of M. The Appellant resided in a separate unit in the same building on a different floor. The Department indicated that the Appellant was not a caregiver in the response and at the Fair Hearing.

As such, the decision to support the allegation of sexual abuse was not made in conformity with the Department regulation and will be reversed. In reaching this conclusion, the Department has considered solely the issue of "caregiver" and makes no factual findings as to the validity of the underlying allegation regarding sexual abuse.

### Conclusion and Order

The Department's decision to support the 51A report for sexual abuse of the child (M) by the Appellant is **REVERSED**.

  
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Lisa Anne Henshall  
Fair Hearing Officer *BC*

  
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Barbara Curley, Supervisor  
Fair Hearing Unit

May 8, 2018  
Date

\_\_\_\_\_  
Date

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Linda S. Spears  
Commissioner