

**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
FAX: (617) 261-7428

IN THE MATTER OF)	
)	
NP)	FAIR HEARING DECISION
)	
FH # 20170369)	
)	

The Appellant in this Fair Hearing was NP (hereinafter "Mr. P" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of physical abuse pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On February 13, 2017, the Department of Children and Families received a 51A report filed by a mandated reporter, alleging the physical abuse of D by his father, NP. A response was initiated and on March 10, 2017, the Department made the decision to support the allegation of abuse of D by father. The Department notified NP of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on May 23, 2017, at the DCF Plymouth 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:

Laureen Decas	Fair Hearing Officer
NP	Appellant
NP	Witness
II	Department Response Social 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 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 2/13/17

Exhibit B Child Abuse/Neglect Non-Emergency Response completed 3/10/17

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

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. At the time of the filing of the subject 51A report, D was eleven (11) years old. He resided in [REDACTED] with his mother, JL, and visited in [REDACTED] with his father, NP, every other weekend. (Fair Hearing Record)
2. The Appellant is the father of the subject child; therefore he is deemed a caregiver pursuant to Departmental policy. DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. NP has some cognitive limitations; he received special education services when in school and does not read or write. (Fair Hearing Record)
4. NP has court ordered visitation (unsupervised) with D. (Exhibit B, p.4)
5. On February 13, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, s. 51A, filed by a mandated reporter, alleging the physical abuse of D by his father, NP. According to the reporter, D presented with bruising under his left eye, on his deltoid, and smaller fingerprint markings in various places and stages of healing throughout his body. He reported his father regularly hit him on his back, arm, and leg with a closed fist and had "anger

issues". (Exhibit A)

6. JL disclosed she had observed injuries on D for quite some time, and believed they were from the two horsing around. JL regularly received phone calls from NP during his visitation with D reporting a problem or issue. NP and D did not get along, and D was often brought home early from his visits. (Exhibit B, p.2)

7. On February 10, 2017, D went to his father's home for his visit with no marks or injuries. JL observed him at his basketball game on February 11, 2017, and noted he had a black eye. She asked D what happened and he told her to ask his father, which she did, and he did not know how the injury occurred. NP resided with his mother, D's paternal grandmother, who JL asked about the injury to D's eye as well. She did not provide an answer. (Exhibit B, p.2)

8. D disclosed being at a friend's home with his father, and father pushing him into the snow three times. After the third time his father tackled him, pushed him back and held him by his throat. D got mad at his father's actions and went back into the apartment. (Exhibit B, p.3)

9. D also disclosed a recent occasion when he had asked his father if he could play a video game and his father said yes. His father later saw him playing the game and punched him in the arm. D said every weekend they are together his father hits him somehow. (Exhibit B, p.3)

10. The Department does not think NP purposefully tried to harm D; however they believe he had anger issues, would become frustrated with D while horse-playing, which caused injuries to D. (Testimony of SM)

11. On March 10, 2017, pursuant to M.G.L. c. 119, s. 51B, and based on the evidence gathered during its response, the Department supported the allegation that NP physically abused D. (Exhibit B, p.7)

12. The Department found D was clear, consistent, and credible in his reporting. D was not known to tell stories or exaggerate, and he had no reason to harm his father. (Testimony of SM)

13. After consideration of the relevant evidence, I find the Department's decision to support the allegations of abuse by the Appellant was based on reasonable cause and made in compliance with its regulations. NP's actions posed substantial risk to D's safety and well-being.

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

"Abuse" means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

"Physical injury" is defined as "(a) death; or (b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or (c) soft tissue swelling or skin bruising depending on such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises..." 110 CMR 2.00.

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

Analysis

It is uncontested that the Appellant was a caregiver. DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant disputed the Department's decision to support an allegation that he physically abused his son. He argued he never put his hands on D intending to hurt him. He does not deny D had bruising on his face and body. The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision for abuse. The undersigned will not pass clinical judgment on the Department's broad discretion as delineated in the regulations.

The issue in this case is whether the non-accidental act/acts by the Appellant caused physical injury to D or created a substantial risk of physical injury to D. As noted above, in a case of soft tissue swelling and/or bruising all of the circumstances must be considered in order to determine whether a caregiver's actions are reasonably considered abusive. D received injuries caused by his father. The rough playing of an adult man with anger issues with an eleven (11) year old child creates a substantial risk of physical injury in the future. The credible evidence here amounts to a "collection of facts, knowledge, or observations which tend to support or are consistent with the allegations that a substantial risk of injury is present," *Cobble v. Department of Social Services*, 430 Mass. 385, 394 (1999), where substantial risk of injury is defined as an "act by a caretaker upon a child which ... creates a substantial risk of physical or emotional injury." 110 CMR 2.00. The instant case is dissimilar to *Cobble v. Commissioner of the Department of Social Services* (1999). The Appellant was not disciplining D by spanking him with a belt in a controlled fashion on his bottom for the purpose of educating him about his behavior. Rather, the Appellant would often have a hard time handling D, would become upset and frustrated with his behaviors, and would become physical with D routinely, which caused numerous marks on his body. 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).

Considering the entirety of the record in this case, I find that there is no evidence that the Department acted unreasonably when supporting this report, the Appellant was not substantially prejudiced by the Department's decision, and the Appellant has not shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of abuse.

Conclusion

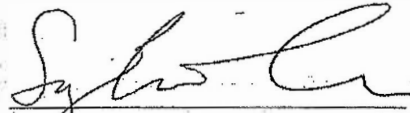
The Department's decision to support the allegations of **physical abuse** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

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.



Laureen Decas
Administrative Hearing Officer

1/21/2018
Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit