

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)
(DB)
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(FH # 2017-0370)
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HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is DB. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of physical abuse pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On February 6, 2017 the Department received a 51A report from a mandated reporter alleging physical abuse of M ("Child") by DB; the allegation was subsequently supported. The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on May 30, 2017 at the Department of Children and Families' Malden Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
DB	Appellant
AB	Appellant's mother
JT	DCF Supervisor

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 2/6/2017

Exhibit B: 51B Response 2/28/2017

For the Appellant:

The Appellant did not submit any documentary evidence.

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

Findings of Fact

1. DB is the father of M. At the time of the instant 51A report, M was ten years old. In accordance with the regulations and policies that govern these proceedings, I find that DB is a caregiver of M. (Exhibit A p.1-2, Exhibit B p.1, Testimony of JT, Testimony of DB)
2. M resides with her mother, PB. She visits with her father DB on certain weekends. (Exhibit A p.2, Exhibit B p.1-2, Testimony of JT, Testimony of DB)
3. The family has a history with the Department. Both the Appellant and PB have previously been found to have either neglected or physically abused M. On 5/12/2015 the Appellant was found to have physically abused M after he tore her sandals off her feet, hit her ankles with the sandals, punched her in her stomach area, slapped her on her arms and shoulders, and threw her on the couch. (Exhibit A p.4-10, Testimony of JT)

4. On February 6, 2017 a 51A was filed alleging the Appellant had physically abused M. The report stated that PB contacted the police after M returned from a visit with the Appellant. PB informed the police that M had told her the Appellant had hit her with a belt. The reporter noticed a dime sized bruise on M's arm and attributed the injury to being grabbed too tightly, rather than any impact from a belt. (Exhibit A p.2, Testimony of JT)
5. During the Department's subsequent 51B response, the Appellant denied that he had hit M or that he had physically disciplined her. (Exhibit B p.3, Testimony of JT)
6. During the Department's subsequent 51B response, M provided a detailed and consistent account of her father becoming angry with her and ripping apart her purse. He then grabbed her and began to hit her with a belt over her clothes. I find M's statements to the Department were consistent with the account provided in the 51A and were sufficiently detailed to be reliable. (Exhibit B p.4-5, Testimony of JT)
7. At the Fair Hearing, the Appellant testified that M has a history of making up stories that complicate his visitation with her and impact probate court matters between him and PB. However, the Appellant had no explanation for the bruise injury on M's arm. Further, the Department did not allude to any particular statements or evidence collected by the Department and assert that they were made as a result of coercion. Therefore, I find there is no evidence that M's statements were the result of coercion or rehearsal by PB or any other party. (Testimony of Appellant)
8. At the Fair Hearing, the Appellant's mother testified that M had previously told her that the maternal grandmother had told her to lie about someone "touching her"; however the Appellant's mother did not provide any timeframe for this conversation and did not indicate if this account was to apply to the matter at hand, or other, previous 51B responses conducted by the Department regarding this family. (Testimony of AB)
9. I find that there is reasonable cause to believe that M was physically abused by the Appellant for the following reasons:
 - a. M had an observable bruise on her arm that she stated was from the Appellant grabbing her.
 - b. M made clear, consistent statement about DB angrily hitting her with a belt over various parts of her body while she was clothed.
10. I find that the Appellants actions posed a substantial risk to M's safety and well-being when he grabbed his daughter with significant force to bruise her and when he used a belt to hit her on various parts of her body.

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. 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.

"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. 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 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

"Caregiver". A caregiver is a child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or 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.

"Abuse" Abuse is 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 human trafficking, whether or not the person responsible is a caregiver. This definition is *not* dependent upon location. Abuse can occur while the child is in an out-of-home or in-home setting.

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.

Analysis

Here, the Department has reasonably relied on the clear, consistent and detailed account of the incident provided by M. While there is an ongoing probate matter between the Appellant and M's mother, there is no evidence that M's statements to the 51A reporter and Department Response Worker were coerced or rehearsed. M also had an observable bruise for which the Appellant did not provide any explanation. Instead, the Appellant denies any physical abuse or physical discipline of M. Since it is reasonable to infer that M received her injury under her father's care, the Appellant's denial undermines his credibility in regards to the incident.

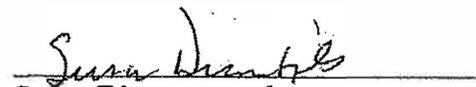
Conclusion and Order

The Department's decision to support an allegation of physical abuse of M by her father DB is hereby AFFIRMED.

This is the final administrative decision of the Department. If 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, or in Suffolk County, within thirty (30) days of the receipt of this decision. *See*, M.G.L. c.30A, §14. In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Nicholas Holahan
Administrative Hearing Officer

2-28-18
Date


Susan Diamantopoulos
Fair Hearing Supervisor