

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)
(EM)
(
(FH # 2017-0374)
(

HEARING DECISION

Procedural History

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

On March 6, 2017, the Department received a 51A report from a mandated reporter alleging neglect of W ("Child") by EM; the allegation was subsequently supported. The Department informed the Appellant of its decision and of her 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
EM	Appellant
KL	Witness
KD	DCF Response Worker

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 received 3/6/2017
Exhibit B: 51B Response completed 3/21/2017

For the Appellant:

Exhibit 1: Letter from Appellant
Exhibit 2: Letter from Appellant's mother
Exhibit 3: Letter from JL
Exhibit 4: Letter from JD

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. EM is the biological mother of W. At the time of the instant 51A filings, W was seven years old and residing with EM. In accordance with the regulations and policies that govern these proceedings, I find that EM is a caregiver for W. (Exhibit A p.1-2, Exhibit B p.1-2, Testimony of KD, Testimony of Appellant)
2. On March 5, 2017, EM attended a funeral of a high school friend's grandfather. She and W then attended the reception and slept over at the friend's house. (Exhibit B p.2-3, Testimony of KD, Testimony of Appellant)

3. On March 6, 2017, a 51A report was filed indicating that EM had driven her son W to school and then drove to probate court. At the probate court, it was observed that EM's breath smelled of alcohol. She was given a breathalyzer test which registered a BAC of .042. EM then stated that she had not actually driven W to school, but her mother had. (Exhibit A p.2)
4. During the course of the Department's subsequent 51B Response, EM's mother, MM, stated that a friend of EM had dropped her and W off at MM's home, and that MM had subsequently driven W to school. W confirmed this account to the Department's Response Worker. At the Fair Hearing, the response worker testified that she determined the Appellant had not driven W on the morning of March 6, 2017. I find that the Appellant did not drive W on the morning of March 6, 2017. (Exhibit B p.2-4, Testimony of KD)
5. At the Fair Hearing, the Department's Response Worker clarified that the basis for supporting the allegations against the Appellant were for "lack of minimally adequate supervision" on the evening of March 5, since the Appellant had a BAC of .042 on a breathalyzer test the following day. I find that the Department did not cite any particular behaviors that the Appellant did or did not show on the evening of March 5, 2017 that exhibited a failure to provide minimally adequate care for W. (Exhibit B, Testimony of KD)
6. At the Fair Hearing, the Appellant testified that she had attended a funeral service for a friend's grandfather on March 5, 2017. She confirmed that she had been consuming alcohol on that evening. However, she testified that she checked up on her son on a regular basis through the evenings. She also testified that there were other adults present at the reception. (Exhibit 1, Exhibit 3, Testimony of Appellant)
7. I find that there is not reasonable cause to believe that the Appellant neglected her son, W, for the following reasons:
 - a. The Appellant did not transport her son on March 6.
 - b. The Appellant testified that during the evening of March 5, she regularly checked in and supervised her son. There is no evidence to contradict this testimony.
 - c. The Department does not have any evidence of any actions or inactions by the Appellant which demonstrated that she failed to provide minimally adequate supervision to W.
 - d. The Appellant provided letters from those present, and character reference letters in support of her parenting abilities.

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.

"Neglect". Neglect is 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.

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

It appears that the initial concerns contained in the instant 51A were the assumption that the Appellant had driven her son to school in an intoxicated state. However, during the course of the subsequent 51B Response, the Appellant provided the Department with sufficient information that led the Department to conclude the Appellant had not been responsible for driving her son on the morning of March 6, 2017.

Thus the Department rests its support decision on an unclarified concern that since the Appellant was likely in a state of some level of intoxication on the evening of March 5, she failed to provide minimally adequate supervision. However, the Department does not cite any particular actions the Appellant did or did not take that justify supporting this allegation. W did not subsequently receive any injuries, and it would appear that his account of that evening and the following morning does not contain any information that could lead to a reasonable cause to believe that he had been neglected.

Conclusion and Order

The Department's decision to support an allegation of neglect of W by his mother EM is hereby REVERSED.

6-25-18
Date

Nicholas Holahan
Nicholas Holahan
Administrative Hearing Officer

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner