

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF

MP #2017-0378

FAIR HEARING DECISION

MP appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B, to remove the foster children from her home and to revoke her foster care license.

Procedural History

On February 20, 2017, the Department received a 51A report alleging neglect of M and B by their adult brother, K. The Department screened-in the report for a response. The Department response worker filed a 51A report alleging neglect of M, B and A and foster children, I and J, by their mother/foster mother, MP, based upon information learned during the course of the response. On March 14, 2017, the Department made the decision that M and B had been neglected by K and that M, B, A, I and J had been neglected by MP.

On March 23, 2017, the Department notified MP of its support decision and a decision to remove I and J from her home. On March 31, 2017, the Department notified MP of its decision to revoke her license to provide foster care.

MP made timely requests for fair hearings to appeal the Department's support decision and decision to remove I and J.

A hearing was held on June 13, 2017, at the DCF Plymouth Area Office. The Department response worker and a supervisor from the residential program where B lives testified at the hearing. MP was present, but did not testify. MP was represented by an attorney.

The matter was continued for further hearing. A second hearing was held on September 12, 2017, in the Department Plymouth Area Office. The Department response worker, MP's family resource liaison, MP, the Department social worker assigned to work with MP's family and the family resource supervisor testified at the hearing. MP was represented by her attorney.

At the hearing, MP made a request that the decision to revoke her license also be considered based upon the evidence in the hearing record. Her request was allowed.

The hearings were digitally recorded and transferred to compact discs.

The Department submitted the following exhibits.

- Exhibit A: 51A report, dated February 20, 2017.
- Exhibit B: 51A report, dated March 14, 2017.
- Exhibit C: 51B report completed March 14, 2017.
- Exhibit D: 51A report, dated March 30, 2016.
- Exhibit E: 51A report, dated April 7, 2016.
- Exhibit F: 51B report completed April 12, 2016.
- Exhibit G: 51A report, dated March 9, 2016.
- Exhibit H: 51B report completed March 28, 2016.
- Exhibit I: 51A report, dated February 12, 2016.
- Exhibit J: 51A report, dated February 13, 2016.
- Exhibit K: 51B report completed March 22, 2016.

MP submitted the following exhibits.

- Exhibit 1: Letter from I's daycare provider, dated June 12, 2017.
- Exhibit 2: Handwritten notes of MP's family resource liason.
- Exhibit 3: Copy of e-mail message, dated March 27, 2017.
- Exhibit 4: Case closing notice, dated August 9, 2017.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

Issue to be Decided

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, the Department's decisions or procedural actions 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. 110 CMR 10.05.

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05.

Findings of Fact

1. MP (hereinafter "mother") has been a licensed foster parent for 21 years. She has had approximately 90 foster children placed in her care since becoming licensed. (Testimony of mother).
2. Mother has adopted 5 children including K (age 24), M (age 20), A (age 17), B (age 13) and M (age 11). The ages noted were the ages of the children at the time that the decisions under appeal in this case were made. (Exhibit C, p. 1; Testimony of mother).
3. At the time in question, mother had two foster children placed with her. They were I (age 3) and J (age 3 months). (Exhibit B, pp. 1-3).
4. Mother was a caregiver for A, B, M, I and J at the time in question. 110 CMR 2.00; DCF Protective Intake Policy #86-015 Rev. 2/28/16
5. B has significant mental health and developmental issues. He has been diagnosed with mood disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, post traumatic stress disorder, pervasive development disorder (autism spectrum) and intellectual disabilities. (Exhibit C, p. 11; Exhibit K, pp. 4, 15; Testimony of mother).
6. B has a history of sexualized and aggressive behavior. He has sexually assaulted peers and staff at his residential placements and younger children. He has exposed himself to others. He engages in sexualized conversation. He masturbates in front of others. He exhibits self-injurious behavior, ingests non-edibles, bangs his head against objects and he has tied objects around his neck. He acts out aggressively toward peers and staff including hitting, kicking, hair pulling, biting, spitting along with prolonged yelling, screaming, crying and destruction of property. (Exhibit C, pp. 9, 10; Exhibit D, p. 3; Exhibit H, pp. 5, 6, 7, 8, 9, 10; Exhibit J, p. 3; Exhibit K, pp. 4, 10, 13, 14, 15).
7. B has lived in residential programs for several years. He has been at his current placement since approximately March or April 2016, after he was terminated from his previous placement for sexually assaulting his roommate. (Exhibit H, p. 8; Exhibit K, pp. 3, 9).

8. B goes home on the weekends. (Exhibit C, p. 2).
9. Although mother was aware of B's sexualized behaviors, mother did not inform her Department family resource worker that B had a history of sexualized behavior including sexually assaulting others. (Exhibit C, pp. 8, 9, 10).
10. M's adult son K has a history of alcohol abuse. Since at least 2016, the Department has told mother that K is not allowed to be at mother's home or be around the foster children. Mother was aware of this restriction and that K could not be a caregiver for the children. She was also aware that the Department must be made aware of and approve all frequent visitors to her home. (Exhibit C, pp. 6, 7, 11; Testimony of mother; Testimony of the family resource supervisor).
11. A, B and M were all aware of K's alcohol use/abuse. B and M have talked about him drinking Hennessey and Coke. B told staff at the residential program where he lives that his brother drinks vodka. A has complained to her therapist that K struggles with alcohol abuse and that is why she does not like to interact with him. (Exhibit C, pp. 3, 9, 10)
12. Despite the restriction that K not be in the home or around the foster children, K was at mother's home on a regular basis. He attended weekly family dinners at mother's home. He was at the home on the weekends. He would help with yard work and take B and M with him to the dump. He dropped off his laundry for mother to do. K had a bedroom at mother's home and he stayed at her home often enough that I considered him to be a household member. (Exhibit C, pp. 3, 5, 6, 7, 8).
13. Mother did not inform J or I's social workers or her family resource worker that K was living in or frequently visiting her home. (Exhibit C, pp. 6, 7).
14. On February 14, 2017, mother had K pick up I at her daycare. Mother informed the daycare provider that K would be picking her up. She did not inform I's social worker that K picked I up at daycare. (Exhibit C, pp. 5, 6).
15. On February 18, 2017, mother went out to dinner with family members for her brother's birthday at about 5:30pm and she left M and B in the care of K. K was supposed to take them to the [REDACTED] Mall and he was supposed to be home with them by 8:30pm. While K and the children were out, K was drinking and he became highly intoxicated. Sometime before 8:45pm, he was driving on the wrong side of the road in [REDACTED]. Someone who saw him called the police and apparently provided police with the license plate number of mother's truck, the vehicle K was driving. At 8:45pm, police went to mother's home looking for her truck. Mother told them that K was driving it. K was located by police on Rt. 6 in [REDACTED] at 10:36pm. The car was on the side of the road. K was in the middle of the highway lunging at cars. B and M were in the car. Police noted that K had an overwhelming odor of alcohol, his speech was slurred and he was speaking very repetitively. His eyes were glossy and bloodshot. He apparently did not know where he was because he told police he was only "up the road" from his home in [REDACTED]. He gave mother's address as his

home address. He was belligerent, aggressive and violent and he threatened to harm himself. He said he would "take a .22 to his head" if he could not see his brothers. His first breathalyzer test showed a blood alcohol level of .219. His second breathalyzer showed a blood alcohol level of .226. K was arrested and charged with OUI, negligent operation of a motor vehicle, child endangerment while operating under the influence and assault and battery on a police officer. B and M reported to police that K was drinking Hennessey and Coke. They also said that their sister has given them shots of Hennessey in the past. They were also talking about guns. They said that K was taking care of them because mother went out for their uncle's birthday. They said that K takes care of them on a regular basis. (Exhibit A, p. 3; Exhibit C, pp. 3-4, 7; Testimony of mother).

16. Police called mother to pick up B and M. Mother picked up B and M and bailed K out. (Exhibit C, p. 7).
17. On February 20, 2017, the Department received a 51A report alleging neglect of B and M by K due to the above incident. The Department screened-in the report for a response. (Exhibit A).
18. The Department response worker spoke with the reporter and another police officer who was involved with the February 18, 2017, incident, mother, I, I and J's daycare providers, mother's family resource worker, I and J's Department social workers, A's therapist, A and M's guidance counselors, staff at B's residential placement, the children's pediatrician's office and she reviewed the Department's records involving the family. (Exhibit C).
19. Mother would not allow the response worker to interview her children. (Exhibit C, pp. 2, 3, 5, 8, 10).
20. The response worker was unable to obtain any contact information for K during the response. (Exhibit C, pp. 3, 6, 8).
21. The information gathered was consistent with the above findings. (Exhibit C).
22. I find mother's credibility to be highly questionable. Mother's statements during the response and in her testimony were somewhat inconsistent, vague and evasive. Mother told the response worker that K had not "been in trouble" (referring to his drinking) for 1 year and 3-4 months. Mother testified that K had been sober for only 6 months before his relapse on February 18, 2017. Mother initially denied knowing any details regarding the reported incident including K's blood alcohol level and his suicidal statement. She then acknowledged that police told her that K wanted to kill himself. In her interview with the response worker, mother denied that K picked up I at daycare. She said A picked up I and K was with her. Several days later when the response worker spoke with her again, she said that K went to pick up I, but he was not a caregiver because M was with him. Despite overwhelming evidence to the contrary, mother denied that B has a history of sexualized behavior and sexual assault of others. Despite having no personal knowledge, mother denied that B and M were

being truthful when they told police about K drinking Hennessey and Coke or that their sister gave them shots of Hennessey. (Exhibit C, pp. 7, 8; Testimony of mother).

23. On March 13, 2017, the Department response worker spoke with the guidance counselor at M's school. She reported that she does not usually work closely with him, but in the last 2 weeks he has been "a little off" and she has met with him a lot. She noted that he has talked about wanting to end his life. She did not say what was upsetting him. She described mother as very responsive and she attends all school meetings. (Exhibit C, p. 9)
24. The response worker spoke with A, B and M's pediatrician's nurse. She stated that the children are up to date and they have no protective concerns. (Exhibit C, p. 9).
25. On March 14, 2017, the Department response worker filed a 51A report alleging neglect of I, J, B, M and A by mother based upon information learned during the course of the response including that K has a history of alcohol abuse and criminal conduct, mother failed to inform the Department that K is residing in or frequently visiting her home and the concern that she has allowed him to be a caregiver for the children. The report was consolidated with the first report. (Exhibit B).
26. On March 14, 2017, the Department made the decision that the allegations of neglect of B and M by K and allegations of neglect of I, J, B, M and A by mother were supported. The Department determined that mother failed to provide minimally adequate essential care and supervision by allowing K to be a caregiver and failing to inform the Department of B's history so that a safety plan could be developed. (Exhibit C, pp. 14-17).
27. On or about March 23, 2017, the Department made the decision to remove I and J from mother's home. (See the Department's written notice to mother dated March 23, 2017).
28. On or about March 31, 2017, the Department made the decision to revoke mother's license to provide foster care. (See the Department's written notice to mother dated March 31, 2017).
29. Considering all of the credible evidence, I find that the Department's decisions were made in conformity with Department policies and regulations and with a reasonable basis.

Analysis

Allegation of Neglect

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.” 110 C.M.R. 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 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. DCF Protective Intake Policy #86-015 Rev. 2/28/16.

The Department found that mother neglected the children by allowing K to be a caregiver for I, M and B despite his history of alcohol abuse and aggressive behavior and allowing him to be in the home on a regular basis placing the children at risk of being exposed to his alcohol abuse. The Department also determined that mother placed the children at risk by not informing the Department of B's history of sexualized behavior to ensure that a safety plan was put in place.

Mother denies that K lived in her home. She does not dispute that he was in the home often. She argues that he had been sober for "a long time." She was not aware that K had relapsed again. He had been sober for the 6 months prior to the reported incident and he had been sober for a year except for the relapse 6 months ago. Regarding B's history of sexualized behavior, she claims that she was not "fully aware" of his sexualized behavior.

The evidence shows that mother was aware that K struggled with alcohol abuse and that he was not supposed to be around the foster children or in the home since at least sometime in 2016. The evidence shows that, despite this, he either lived in the home or visited it frequently and he was asked by mother to be a sole caregiver for B and M on the night of the reported incident as well as for I a few days earlier. According to what B and M told police, K regularly took care of them. I do not believe that 6 months of sobriety followed by a relapse and then another 6 months of sobriety is reasonably considered "a long time" so that he could be expected not to abuse alcohol around the children and mother should have known that he posed a risk to the children.

The evidence shows that B has a significant history of serious sexual acting out including sexual assault. There have been several investigations/responses by the Department addressing the issue. The residential placements he has been in have extensive records of his behavior and I find it extremely unlikely that his behavior was not communicated to mother. Nevertheless, mother did not inform the Department staff of the risk that he presented to any child placed in the home so that the Department would be able to make a safety plan or an informed decision about whether any given foster child would be safe in her home.

It is highly concerning that mother would not allow the Department to interview the children during the response. I find it reasonable to infer that the reason she did not allow them to be interviewed is because she was concerned they would say something that she knew would be concerning to the Department. Department regulations contemplate a situation where a parent or caregiver obstructs an investigation by refusing to allow the Department to view the children. See 110 CMR 4.27 In that case, the Department is authorized to make a determination about whether to support the allegations based only upon the 51A report and information obtained from others. This is a similar situation. Although mother allowed the response worker to view the children, she refused to allow her to interview them thereby preventing the response worker from obtaining information to corroborate or disprove the allegations and I find it reasonable that the Department made a decision based only upon the 51A report and information obtained from other sources.

Considering all of the evidence, I find that mother failed to provide the children with minimally adequate supervision and essential care including a safe environment by exposing them to potential alcohol abuse by K and sexualized behavior by B and, therefore, she neglected them under Department regulations. I also find that mother actions/inactions placed the children in danger and posed a substantial risk to their safety and well-being.

Decision to remove I and J from her home and to revoke her foster care license.

Whenever the Department supports a 51A report of abuse or neglect of any foster child by the foster parent, the foster home shall be closed to any future placements of children. 110 CMR 7.116(3).

Whenever the Department supports a 51A report of abuse or neglect of any child by the foster parent or a household member of the foster home, the Department shall conduct a limited reassessment. 110 CMR 7.113A(1), 110 CMR 7.116(4)

Whenever the Department supports a 51A report of abuse or neglect of any child living in the foster home by someone who is not a household member, the Department may conduct a limited reassessment. 110 CMR 7.113A(2)(f).

When the Department supports a 51A report under any of the above circumstances, the Department may immediately remove any foster children from the home or allow any foster children to remain pending the completion of the limited re-assessment. The limited reassessment must determine whether all foster children will be removed from the home and the foster care license will be revoked or whether it is in the best interest of any foster child to remain in the foster home and the home will become a child specific home for that child only. 110 CMR 7.113A, 7.113B, 7.116(2), 7.116(3), 7.116(4) and 7.116(5).

The Department's decisions to remove the foster children from mother's home and revoke her license to provide foster care are essentially based upon the same factors.

The Department made the decision to remove I and J from mother's care due to the supported 51A report and her failure to assure that a child placed in her care experiences a safe, supportive and stable family environment free from abuse and neglect, her failure to provide adequate supervision and other essential care and her failure to carry out all responsibilities of a foster parent as outlined in the agreement between DCF and foster parents.

More specifically, the Department was concerned about mother allowing K to be in the home and around the foster children and allowing him to pick up I from daycare when she knew K should not have been around the foster children, failing to inform the Department about B's history of sexualized behavior so that the Department could assess the risk to foster children and failing to cooperate with the investigation.

Mother makes no claim that the Department's decisions violated any regulation policy or procedure. Essentially, mother argues that the allegations of neglect of the children by her should not have been supported.

As noted above, there is reasonable cause to believe that mother neglected the children and the allegations were properly supported, therefore, the issue is whether the Department's decision to remove I and J and revoke her license were made with a reasonable basis.

The foster children in question were only 3 months (J) and three years old (I) at the time in question and highly vulnerable. The evidence shows that the level of the potential harm to them is extremely high. K has a significant history of alcohol abuse. He has been unable to maintain his sobriety for more than 6 months. Despite being directed not to allow him around the foster children, mother ignored this directive and allowed him to be in the home and around the children on a regular basis. She allowed K to pick I up at daycare. B has a history of sexualized behavior and sexual assault. Mother's failure to inform the Department of K's presence in the home and B's sexualized and sexually aggressive behavior as well as not allowing the children to be interviewed significantly compromises the Department's ability to rely upon her to make sound judgments and ensure the safety of foster children in her care.

Considering all of the credible evidence, I find that the Department's decisions to remove I and J and to revoke mother's foster care license were made in conformity with Department regulations and policy and with a reasonable basis.

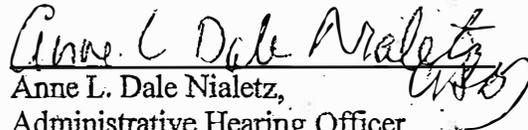
Conclusion and Order

The Department's decision to support allegations of neglect of A, B, M, I and J by mother was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

The Department's decision to remove I and J from her home was made in conformity with the Department's regulations and with a reasonable basis and, therefore, the Department's decision is AFFIRMED.

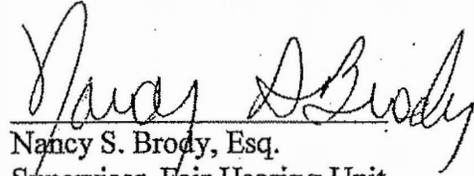
The Department's decision to revoke mother's license to provide foster care was made in conformity with Department regulations and with a reasonable basis and, therefore, the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for Suffolk County, or the county in which she lives, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.)


Anne L. Dale Nialetz,
Administrative Hearing Officer

Date

11-22-17


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