

**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 )  
 )  
Mr. J.V. ) **FAIR HEARING DECISION**  
 )  
FH # 2017-0397 )  
 )

The Appellant (Mr. J.V.) in this Fair Hearing is the father of the subject child. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On January 30, 2017, the Department received a 51A alleging the neglect of the child (A) by the Appellant. The Department conducted a non-emergency response and, on February 21, 2017, the Department made the decision to support the allegation of neglect of the child by the Appellant. The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on June 8, 2017, at the DCF Lowell Area Office. All witnesses were sworn in to testify under oath. The record remained open until June 16, 2017, to allow the Appellant time to submit additional evidence.

The following persons appeared at the Fair Hearing:

Ms. Lisa Henshall	Fair Hearing Officer
Mr. J.V.	Appellant/father
Ms. E.C-P.	DCF Response Worker
Ms. B.W.	DCF Area Program Manager

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 pursuant to DCF regulations. 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A Child Abuse/Neglect Report dated 1/30/17  
Exhibit B Child Abuse/Neglect Non-Emergency Response dated 2/21/17  
Exhibit C Police report from the [REDACTED] Police Department

Appellant:

- Exhibit 1 Pictures

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. The subject child of the Fair Hearing was A, who was three (3) years old at the time of the reported incident. (Exhibits A & B)
2. The Appellant is the child's father; therefore he was a caregiver pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16. (Exhibit A, p. 6; Exhibit B, p. 1)
3. On January 30, 2017, a 51A report was filed alleging the neglect of the child by the Appellant. The report alleged that the Appellant attacked the child's mother, pushed her to the ground, got on top of her and held her down. The Appellant allegedly grabbed the mother by the mouth to prevent her from screaming. The child entered the room and the Appellant stopped. The mother had minor injuries; a scratch to her mouth and some redness. The Appellant was arrested. The report was screened in, pursuant to M.G.L. c. 119, §51B, and the report was assigned for a non-emergency response. (Exhibit A, pgs. 2

& 4; Exhibit B)

4. At the time of the response the Appellant was being held at the ██████ House of Corrections. (Exhibit B, p. 1; Testimony of the Response Worker)
5. The Appellant was not interviewed by the Department and a DCF Entry Letter was sent to the Appellant. (Exhibit B, p. 4; Testimony of the Response Worker)
6. At the time of the reported incident, the Appellant arrived at the mother's house where she resided with their child. The Appellant had been waiting in the hallway of the building and when she opened the door he was able to gain access. (Exhibit B, p. 2; Exhibit C)
7. The Appellant and the mother had been separated for about 6 months and the Appellant was described as "very jealous" and accused her of seeing other men as he entered her apartment. (Testimony of the Response Worker; Exhibit C; Exhibit B)
8. The Appellant was angry that mother would not give him the code to access her phone. The Appellant pushed the mother to the ground, placed his knee on her stomach and grabbed her face to keep her from screaming. When the mother attempted to call 911 and the Appellant threatened to kill her. The Appellant bent her right index finger back and at this time the child entered the room and the Appellant stopped assaulting her. (Exhibit B, p. 2; Exhibit C, p. 2)
9. The child walked in on the Appellant assaulting the mother. The child attends day care and has demonstrated some behaviors of hitting in the classroom. The child was up-to-date medically and there were no other concerns noted. (Testimony of the Response Worker; Exhibit B, pgs. 2-3 & 5)
10. The Appellant disputed that he hit the mother and stated that he grabbed her face to keep her from screaming. (Exhibit C; Testimony of the Appellant)
11. The mother sustained redness on both of her arms, a minor scratch above her upper lip and a minor cut on the inside of her mouth. Medical assistance was provided at the scene but she refused treatment. The Appellant stated that he sustained injuries as well however there was no evidence of this. (Testimony of the APM; Exhibit C; Testimony of the Appellant)
12. The Appellant was arrested and charged with Assault and Battery, Intimidation of a Witness and Threatening to Commit a Crime. As the Appellant was on probation for prior Driving while Under the Influence Charges (DUI), he was held. The mother was granted a restraining order. (Testimony of the Response Worker; Testimony of the Appellant; Exhibit B, p. 3; Exhibit C)
13. At the end of its investigation, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department based this determination on the injuries that the child witnessed the physical altercation between the Appellant and the mother. The child attends day care and has shown behaviors of hitting in the classroom an

indicator that the child witnessed domestic violence. (Testimony of the Response Worker; Exhibit B, p. 6) The Department concluded this constituted neglect as defined by its regulations. 110 CMR 2.00

14. Based on the credible evidence, I find that the Department did have reasonable cause to believe that child was neglected per the Department's definition, and the Appellant's actions placed the child in danger or posed a substantial risk to the child's safety or well-being.
  - a. The Appellant physically assaulted the mother while the child was in the home. The Appellant stopped assaulting the mother when the child walked into the room where the incident occurred. Our courts have found that witnessing verbal and physical conflict constitutes failure to provide children with minimally adequate emotional stability and growth. John D. v. Department of Social Services, 51Mass.App. 125 (2001);
  - b. The Appellant's action posed a substantial risk to the child's safety and well-being. 110 CMR 2.00; Protective Intake Policy #86-015 Rev. 2/28/16

#### 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

Danger is a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. (*Id.*)

"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

Neglect is defined by failure by a caregiver, either deliberately or through negligence and 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 solely to the existence of a handicapping condition. Protective Intake Policy #86-015 Rev. 2/28/16

Domestic Violence is defined by a pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts.

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

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I affirm the Department’s neglect support decision.

The Appellant contested the Department’s decision to support the allegation that the Appellant had neglected his child. The Appellant provide me with a picture of him and his son at the hearing. (Exhibit 1) While the Appellant acknowledged that he and the mother had an argument, he described it as being mutually aggressive; however there was no evidence to support this assertion. The record remained open to allow the Appellant to submit additional evidence to support his claim but he failed to do so. The Appellant’s argument was not persuasive.

The Department did present evidence that there was "reasonable cause" to believe that the child had been neglected. As indicated in the findings, our courts have found that witnessing verbal and physical conflict constitutes failure to provide children with minimally adequate emotional stability and growth. John D. v. Department of Social Services, 51Mass.App. 125 (2001). The child witnessed the argument and the physical altercations that occurred in the home at the time in question. The Department was able to present evidence to illustrate this. The child was witness to the events at the time of the reported incident, which resulted in the arrest of the Appellant. The child's exposure to the Appellant assault on his mother placed the child in danger and posed a substantial risk to his safety and well-being. (Protective Intake Policy #86-015 Rev. 2/28/16)

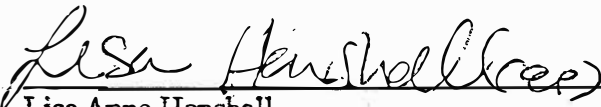
Although there was no evidence that the child was harmed by Appellant's actions, the Department need not wait for an actual injury to occur to intervene. The Department's decision was made in conformity with its policies and with a reasonable basis. See definitions of "reasonable cause" "caregiver" and of "neglect" above. A determination of neglect does not require evidence of actual injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003) The Department does not need to wait for a disastrous outcome in order to support an allegation of neglect.


Based on a review of the evidence, presented in its totality, this Hearing Officer finds that there was reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulation, and the Appellant's 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. (See Findings)

#### Conclusion and Order

The Department's decision to support the 51A report for neglect of the child (A) by the Appellant 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 the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, MGL c. 30A, s. 14.

  
Lisa Anne Henshall  
Fair Hearing Officer

  
Erica Pognon  
Fair Hearing Supervisor

6/4/18  
Date