

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 )  
 )  
M. T. )  
 )  
FH # 2017 0402 )

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Ms. M.T. (hereinafter "the Appellant"). The Appellant appeals the Department of Children and Families' ("the Department" or "DCF") decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On February 22, 2017, the Department received a 51A report alleging neglect of J ("J" or "the child") by the Appellant; the allegations were 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 CMR 10.06.

The Fair Hearing was held on May 16, 2017 at the Department of Children and Families' Greenfield Area Office. All witnesses were sworn in to testify under oath. The record closed at the end of the Hearing.

The following persons appeared at the Fair Hearing:

Anastasia King	Administrative Hearing Officer
Ms. M.T.	Appellant
Ms. K.A.	DCF Supervisor <sup>1</sup>

In accordance with 110 CMR 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 pursuant to DCF regulations 110 CMR 10.26.

<sup>1</sup> The DCF Supervisor, Ms. K.A. ("Supervisor") provided testimony on behalf of the Department.

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

For the Department:

Exhibit 1: 51A Report

Exhibit 2: 51B Response

For the Appellant:

The Appellant did not offer documentary evidence at the Fair Hearing.

Pursuant to 110 CMR 10.21, 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.

**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) 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. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)

**Findings of Fact**

1. The subject child of this Fair Hearing is J ("J" or "the child"); a male child who was 13 years old at the time the 51A report was filed. (Exhibit 1, p.1)
2. On February 22, 2017, the Department received a 51A report alleging neglect of the child by the Appellant. According to the report, while in New York, the Appellant was arrested for operating under the influence of alcohol. The child was also present in the vehicle. (Exhibit 1; p.2; Testimony of Supervisor)
3. The 51A report was screened in for a Non-Emergency Response and assigned to DCF Response Worker, Ms. P.L., ("Response Worker" or "RW") to complete a 51B Response. (Exhibit 2, p.1)
4. The Appellant is the subject child's maternal grandmother. (Exhibit 2, p.5; Testimony of Appellant)

5. The child resides with his parents, Mr. J.R. ("the father") and Ms. J.R. ("the mother"). The Appellant does not reside in the child's home. (Exhibit 1, p.1; Testimony of Appellant)
6. The family has no prior DCF history. (Exhibit 2, p.1)
7. On the night of reported incident, the Appellant, the child, and the mother were traveling in the same vehicle and returning home after attending a family birthday party in New York State. (Exhibit 2, p.2; Testimony of Appellant)
8. The Appellant was initially driving the vehicle, but due to the unfamiliar back roads and the difficulty the Appellant had driving at night, the Appellant pulled into a gas station to purchase snacks and allow the mother to drive the remainder of the trip home. (Exhibit 2, p.2; Testimony of Appellant)
9. The mother was sitting in the driver's seat of the vehicle and the Appellant was coming out of the gas station when police approached, stating that someone had contacted police reporting that the driver of the vehicle had been swerving. (Exhibit 2, p.2)
10. The Appellant and the mother deny that the Appellant was under the influence of alcohol at the time of the reported incident; they instead reported that it was dark and the Appellant was unfamiliar with the roads, which affected her driving. The Appellant reported driving slow, with a trail of cars behind her. (Exhibit 2, p.2; Testimony of Appellant)
11. On March 16, 2017, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the child by the Appellant. The Department made its determination based on information obtained during the 51B response. (Exhibit 2, p.6; Testimony of Supervisor)
12. Upon a review of the evidence presented in its entirety, and after consideration of all the facts and circumstances, I find that the Appellant was not a caregiver pursuant to Departmental policy and regulations. (110 CMR 2.00) The child's mother and the child were traveling in the Appellant's car. The mother was present throughout the reported incident and remained the child's caregiver. Therefore, while the Appellant was responsible for the safety of all the passengers in the vehicle, she was not a caregiver, as defined by the Department's regulations and policies. J's mother remained responsible for J and had no concerns about his safety in the car. (See, definition of "caregiver" below and Analysis)

### Analysis

#### 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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. DCF Protective Intake Policy No. 86-015 (rev. 02/28/2016.)

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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (Id.)

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (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))

"[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

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

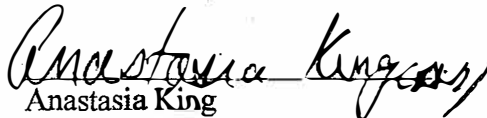
The Appellant was not a caregiver to J, pursuant to Departmental regulations. (110 CMR 2.00) The Appellant is the child's maternal grandmother and did not reside in the child's household. No evidence was presented that the Appellant had been entrusted with the health and welfare of the child on the day of the reported incident. The mother was present and traveling with the child and the Appellant throughout the day and was present when the reported incident occurred. Therefore, the mother, not the Appellant, remained responsible for the child's health and welfare. (See, definition of "caregiver" above)

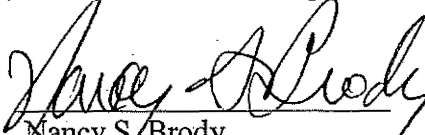
The Appellant has shown by a preponderance of the evidence that the Department acted without reasonable basis or in a reasonable manner, and resulted in substantial prejudice to the Appellant.

**Conclusion**

The Department's decision to support the allegation of **neglect** of the child by the Appellant was not made in accordance with the regulations and policies and is therefore, **REVERSED**.

Date: 3-12-18

  
Anastasia King  
Administrative Hearing Officer

  
Nancy S. Brody  
Supervisor, Fair Hearing Unit

Date: \_\_\_\_\_

\_\_\_\_\_  
Linda S. Spears,  
Commissioner