

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

Voice: 617-748-2000  
FAX: 617-261-7428

(  
( IN THE MATTER OF )  
( MA )  
( )  
( FH # 2017-0418 )  
( )

**HEARING DECISION**

**Procedural History**

The Appellant in this Fair Hearing is MA. 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 February 18, 2017 the Department received a 51A report from a mandated reporter alleging neglect of J by MA. On March 13, 2017 the Department received a second 51A report from a mandated reporter alleging neglect of M and J by MA. 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 C.M.R. 10.06

The Fair Hearing was held on June 13, 2017 at the Department of Children and Families' Dimock Street Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
DB	Parent Support
MA	Appellant
AA	Grandparent
MF	Godmother/cousin
FD	Witness
CC	DCF Social Worker
MR	Previous DCF ongoing Social Worker
CL-S	DCF Intake Social Worker
EF	DCF Intake Social Worker
JP	DCF Response Worker
GG	DCF Area Program Manager

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 dated 2/18/2017
- Exhibit B: 51A Report dated 3/13/2017
- Exhibit C: 51B Response

For the Appellant:

- Exhibit 1: "Free Jeremy" packet
- Exhibit 2: Grievance letter
- Exhibit 3: Medication Reconciliation document
- Exhibit 4: Attempted contact letter from MR
- Exhibit 5: "Free My Son Jeremy" packet
- Exhibit 6: Diet Goodstart document
- Exhibit 7: DCF Support letter dated March 13, 2017

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. MA is the biological mother of M and J. At the time of the instant 51A filing, M was eight years old and J was one month old. I find that MA is a caregiver for M and J in accordance with the regulations and policies that govern these proceedings. (Exhibit A p.1-2, Exhibit B p.1-2, Exhibit C p.1-2, Testimony of JP, Testimony of Appellant)
2. From birth until the filing of the instant 51A reports J was being cared for in a hospital. J was born at ██████████ Hospital, but on February 15, 2017 he was transferred to ██████████ Hospital. The hospital staff was concerned with J's condition and was recommending that he undergo diagnostic testing in addition to being given particular types of formula and other medications and supplements. The Appellant was opposing the hospital's recommendations for testing and treatment. (Exhibit A p.2-7, Exhibit C p.2, Exhibit 2 p.4, Testimony of JP)
3. On February 18, 2017 a 51A was filed alleging neglect of J by the Appellant. J was a month old at the time. The reported concern was that MA was refusing to follow Franciscan's Hospital recommendations for medications and feedings for J. In particular, the report indicated that MA was not providing J with the recommended formula and was not providing the hospital with J's daily caloric intake statistics. The report indicated that MA was concerned that the hospital was adding other ingredients to the formula and not informing her. The report further indicated that MA was not allowing the hospital to perform diagnostic tests to be completed, as of the day prior, February 17, 2017, which was prohibiting the medical staff from providing the child necessary medical care. (Exhibit A p.2, Testimony of JP)
4. No specific information was gathered or documented by the Department regarding what J's feeding plan was, how MA failed to comply with the plan, or what, if any impact MA's actions had or would have on J, such that J's care was compromised. (Fair Hearing Record)
5. J was transferred to ██████████ Hospital on February 21, 2017 when J had a high fever and high heart rate. (Exhibit C, p. 1)
6. During the course of the Department's ensuing 51B Response, the Appellant refused to allow the Department to enter her home or to interview her older child, M. She refused to provide the Department with a current address. The Department obtained the Appellant's address from J's medical records. (Exhibit C p. 3, Testimony of JP)
7. The sole collateral the Department contacted in regards to M was her school; the principal and the school nurse. The principal stated that M attends school regularly, does her homework and is doing well in school. The nurse stated that she was medically up to date. The principal informed the Department's Response Worker that the school did not have any protective concerns for M. (Exhibit C p. 11, 12, Testimony of JP, Testimony of Appellant)

8. At the Fair Hearing, the Appellant testified that she did not allow the Department to enter her home because the initial 51A was regarding her son J, who had never actually been in her home. (Testimony of Appellant)
9. After J was transferred to ██████████ Hospital, the Appellant was appropriate with hospital staff, the child was doing well medically, the hospital started a feeding regimen and the child gained weight. (Exhibit C, p. 7)
10. On March 8, 2017 the child was due to be discharged one day later; the Appellant was doing well with feeding J, once she saw that J was not able to drink all of his formula from a bottle, and therefore the rest of the formula was put in J's feeding tube. (Exhibit C, p. 9)
11. Also on March 8, 2017, the nurse recounted that the Appellant was on board with the feeding tube, and the company that supplied the feeding tube equipment was going to meet with the Appellant to show her how to use the equipment and give her supplies. Referrals were going to be made to Early Intervention, VNA and Healthy Baby Healthy Child. (Exhibit C, p. 9)
12. I find that the Department did not have reasonable cause to believe that the Appellant neglected J for the following reasons:
  - a. While ██████████ Hospital was recommending diagnostic testing and a particular feeding plan for J at the time the 51A report was filed, over the course of the response there was no evidence that the Appellant continued to impede medical testing for J, or that the Appellant was non-compliant with J's feeding plan; to the contrary, the child was doing well medically, the Appellant was on board with J's feeding tube and the hospital was prepared to discharge J to the Appellant. (Exhibit C, p. 7, 9)
  - b. No information was obtained by the Department during the course of its response which confirmed the allegations alleged in the 51A report relative to the Appellant's failure to provide minimally adequate care to J.
13. I find that the Department did not have reasonable cause to believe the Appellant neglected M for the following reasons:
  - a. The Department did obtain any information during the course of its investigation that showed the Appellant was failing to provide minimally adequate care for M.
  - b. The sole collateral contacted in regards to M, her school, both the principal and nurse, had no protective concerns.

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

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

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

The Department received a report on February 18, 2017 alleging that the Appellant failed to provide adequate medical care to her son, J at F██████████ hospital; specifically, the Appellant was noncompliant with a feeding plan for J, and was refusing to allow the hospital to perform diagnostic testing on J, prohibiting the medical staff from providing the child with necessary medical care.

The Appellant argued that the Department's response was insufficient, and that no information was gathered by the response worker to support the allegations. Indeed, the argument made by the Appellant is persuasive. The 51B lacks any information to corroborate the initial allegations, including what the feeding plan was for J, and how the Appellant failed to follow that plan such that she failed to provide J with minimally adequate care. Other than the initial report received from Franciscan's Hospital, and a c██████████ indication that the child was transferred from F██████████ Hospital to ██████████ Hospital, no information was gathered by the response worker from any medical personnel at F██████████ Hospital to obtain and document any details regarding their report of neglect, nor was any consultation done with DCF medical staff relative to the allegations of neglect or condition of J, to inform the Department's decision.

Shortly after the 51A report was received, J was transferred from F██████████ hospital to ██████████ Hospital. While the Appellant declared it was her right to refuse treatment regarding her son, there is no evidence that said refusal ever occurred. The Appellant provided documentation that the hospital billed her insurance for the supplements and medicine recommended for her son. J was described as doing well medically, and was deemed ready for discharge to the Appellant during the course of the Department's response, as the Appellant had been appropriate at the hospital and was complying with the course of treatment that ██████████ Hospital was providing to J.

As to the Appellant's older child, M, the sole collateral the Department contacted regarding M was M's school principal and nurse. The school principal had no protective concerns regarding M and the nurse reported M was medically up to date. While it is true that the Appellant was not cooperative with the Department's Response Worker in terms of allowing access to the home and providing other collateral contacts, this type of resistance does not, by itself, constitute neglect.

Based on the totality of the circumstances, and the evidence gathered, I find that the Department's determination that the Appellant's actions constituted neglect, as defined in its regulations and policy, was not made in conformity with Department regulations or with a reasonable basis.

