

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
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**IN THE MATTER OF  
JM and AM #2017-0431**

**FAIR HEARING DECISION**

JM and AM appeal 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.

**Procedural History**

On February 6, 2017, the Department received a 51A report alleging physical abuse of W by an unknown perpetrator and neglect of W and J by their parents, JM and AM. On February 7, 2017, the Department received a 51A report alleging physical abuse of J by JM. The Department screened-in the reports for a response. On March 2, 2017, the Department received a 51A report alleging physical abuse of J, A, W, N and S by their mother's boyfriend, JV. The Department screened-in the third report and incorporated it into the pending response.

On March 10, 2017, the Department made the decision that J, A, W, N and S had been neglected by their parents, JM and AM. The Department notified JM and AM of its decision and their right to appeal.

JM and AM made timely requests for a fair hearing to appeal the Department's decision. A hearing was held on June 13, 2017, at the DCF Plymouth Area Office.

JM, AM and a Department supervisor testified at the hearing.

The Department submitted the three 51A reports and the 51B report at the hearing. (Exhibits A, B, C and D).

The hearing record was held open for two weeks to allow JM and AM the opportunity to submit documentary evidence. On June 28, 2017, AM requested an extension of time until July 7, 2017. The hearing record was closed on July 7, 2017, with no further submission by JM and AM.

JM and AM submitted the following exhibits at the hearing.

Exhibit 1: Pages 2 and 3 of a [REDACTED] Police Department narrative entered January 28, 2017.

Exhibit 2: Letter entitled [REDACTED]

Exhibit 3: Partial copy of a newspaper article, undated.

Exhibit 4: Page 1 of a [REDACTED] Police Department Officer's Report dated June 16, 1993.

Exhibit 5: Criminal history of [REDACTED]

The hearing record was closed on July 7, 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, 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. 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. JM (hereinafter "father") and AM (hereinafter "mother") are the parents of five boys, J (age 8), A (age 7), W (age 6), N (age 5) and S (age 3). (Exhibit A, pp. 1-2).
2. The family has an extensive history of involvement with the Department. The Department received twenty six (26) 51A reports between November 2009 and December 2016. Ten of the reports led to an investigation or response that resulted in a finding that the allegations were "supported." Two of the reports were screened-in for an initial assessment and in both cases the Department found there were concerns. The remaining reports were either screened-out or resulted in a finding that the allegations were unsupported. (Exhibit A, pp. 3-18).
3. The Department had an open case with the family from May 2011 until June 2013. The Department re-opened the case in August 2013, and the case has remained open since then. (Exhibit A, pp. 3, 5, 8, 10, 12, 14, 16).
4. In general, the concerns identified by the Department were inadequate supervision, injuries to the children due to lack of supervision and mental health issues. Only the more recent supported allegations in 2016, are described in any detail in the hearing record. In January 2016, allegations of physical abuse of S by mother's boyfriend were supported after he yanked S's arm causing a fracture. In April 2016, allegations of neglect of the children by mother and her boyfriend were supported after the boyfriend locked them in the bathroom, put hot sauce in their mouths and slammed them to the ground. At that time, the staff at the children's schools were reporting concerns about the children coming to school dirty and smelling of urine, N being dropped off and picked up late, the parents not following through with setting up N's transportation and not following through with responding to documents sent home by the school. In October and November 2016, allegations of neglect were supported after S accessed a lighter and set fire to his bed and concerns about the parents' inability to maintain a healthy and safe home environment and manage the complex needs of their children. (Exhibit A, pp. 18-19).
5. J, A and W have special needs and receive special education services. In 2016, mother attended only 1 of 4 meetings for W's individual educational plan. She did not attend any 504 meetings for J. J never does his homework. Forms sent home for the parents to return are never returned to the school. School staff have had to provide supplies for the children because they do not have what they need. A has a lot of behavioral issues and he can be violent. He attends an out of district school due to his behavioral and other needs. A bangs his head and frequently makes statements about wanting to die. He requires 1-1 attention at school. A has a history of poor hygiene, wearing the same clothing for 3 days in a row and wearing shoes that are too small causing sores on his feet. The school staff have concerns about supervision of

the children by the parents. W often comes to school with multiple injuries, bruises and cuts. (Exhibit D, pp. 3, 5).

6. Mother and father have continued to fail to provide adequate supervision of the children or to intervene and redirect aggressive behavior by them toward each other or other risky behavior which has resulted in harm to them and/or placed them at risk of harm. The boys throw toys at and hit each other. J, A and W push and kick N. When they play with their cousins, their cousins hit them and hurt them. W recently sustained scratches on his face and a black eye when the boys were "rough housing." On one occasion, N climbed out a second floor window. On another occasion, N fell into a space heater and got burned. (Exhibit D, pp. 2, 3, 4, 5, 6).
7. Mother and father have had problems in their relationship that began well before the report in question here. Mother had a boyfriend who visited her at the home while the children were home and father was at work. Mother lived with the boyfriend for about a year and a half in 2015-2016. Mother and her boyfriend broke up around December 2016. She lived with the children and father thereafter; however, she filed for divorce on January 17, 2017. Shortly thereafter, mother was angry with father and she told father she was going to kick him out of the house and bury him alive in the backyard. She then shouted that she was going to go out to her van and kill herself. At least J and W were present and heard mother's threats to harm father and herself. Mother also told the children that she threatened father because he is lazy and does not care for them. (Exhibit A, p. 3; Exhibit D, p. 3; Testimony of mother).
8. On Monday, February 6, 2017, W went to school with scratches on his face and a bruise to his eye. He was sent to the nurse's office. He told the nurse, the guidance counselor and the school resource officer about mother's threats to harm father and herself. He said that his father told the children that they should not report it to the school. On that date, the Department received a 51A report alleging physical abuse of W due to the scratches on his face and a bruise to his eye and neglect of W and J due to their reports that the parents were fighting and mother threatened to kick father out of the home and bury him alive in the backyard and she threatened to kill herself. (Exhibit A, pp. 1-3).
9. During the screening process, the Department made the decision to remove the children from the parents' care on an emergency basis and file a Care and Protection petition on behalf of all five children. (Exhibit A, pp. 19-20; Exhibit D, p. 2).
10. The Department screened in the report for a response. (Exhibit A, p. 20).
11. During the response/removal, J said that father hit him in the forehead with an open hand on Saturday, February 4, 2017, because he was not listening. He said that it hurt really bad and he was scared. He said that father also hit his brothers. (Exhibit B, p. 3).

12. On February 7, 2017, The Department received another 51A report based upon what J said about father hitting him and his brothers. The Department screened-in the report and consolidated it with the first for a response. (Exhibit B).
13. The Department response worker attempted to interview N. When asked if anyone put his or her hands on him, he replied that W, J and A push and kick him. When asked if anyone else did, he did not reply. The response worker was unable to engage him in any further conversation. (Exhibit D, pp. 2-3).
14. The Department response worker spoke with J. He denied being physically abused by anyone. He reported that the scratches and bruise on W's face were caused by the dog when they were playing and the dog jumped on him and scratched him and bumped his face. The only concerns he mentioned were that it makes him mad when his brothers run around and he cannot stop them and it made him mad and worried when mother told his father she was going to kick him out and bury him alive. He identified no other concerns or worries. The Department response worker did not observe any injuries on J. (Exhibit D, p. 3).
15. The Department response worker spoke with W. She did not observe any marks or injuries on W. When asked how he got scratches on his face and a black eye, he said that the dog scratched him and A pushed a kitchen chair by accident that hit his face. When asked if he felt safe or if anyone hits him, he talked about his brothers and cousins throwing things at him and hitting him. He reported that his parents do not care and he indicated they do not do anything when one of the other children hurts him or if he misbehaves. (Exhibit D, p. 4).
16. The Department response worker spoke with mother and father. They denied using physical discipline with the children. They denied failing to adequately supervise the children. They acknowledged that the children rough house and sometimes accidents have happened. They did not address the allegation that mother threatened to kick father out and bury him in the backyard or threaten to kill herself. (Exhibit D, pp. 4, 5).
17. The Department response worker spoke with staff at the older children's schools. They provided information consistent with the above findings. (Exhibit D, pp. 3, 4, 5).
18. During the course of the response, on March 2, 2017, the Department received a 51A report filed by an anonymous reporter. The reporter alleged physical abuse of the children by mother's boyfriend. The Department screen-in the report and incorporated it into the pending response. The Department response worker spoke with mother again to address the additional allegations which she denied. The Department response worker also spoke with the boyfriend who admitted the allegations to some extent. (Exhibit C; Exhibit D, pp. 7, 8).
19. On March 10, 2017, the Department made the decision that the allegations of neglect of the children by mother and father were supported. The Department also made the

decision that the allegations of physical abuse by mother's boyfriend were unsupported. (Exhibit D, pp. 8-14).

20. Considering all of the evidence, I find that there is reasonable cause to believe that mother and father neglected the children and placed the children in danger or posed substantial risk to their safety or well-being. DCF Protective Intake Policy #86-015 Rev. 2/28/16.

### Analysis

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.

As the parents of J, A, W, N and S, mother and father are their caregivers under Department regulations. DCF Protective Intake Policy #86-015 Rev. 2/28/16

The Department found that mother and father neglected the children due to lack of adequate supervision leading to injuries at times, the children's exposure to the parents marital discord, failure to adequately respond to the children's educational needs and failure to ensure the children have adequate hygiene and clothing.

Mother and father argue that all of the allegations are hearsay and/or are based upon prior concerns that were addressed in prior 51A/B reports. They also argue that none of the children had injuries when the response worker met with them. They contend that they do supervise the children and that it is possible for children to be injured even when they

are supervised and the Department should not find them neglectful just because the children sometimes get injured. Mother contends that she did not neglect W when he bumped his face. She attended to his injury by putting ice on it. Mother acknowledges that she did make the comments about killing father and burying him in the backyard. She argues that she made the comment when the children were in bed and she did not realize they overheard her. She denied saying she was going to kill herself. In addition, they contend that the 3rd report was filed vindictively by a known criminal.

Regarding the parents' hearsay argument, neither the Department response worker nor the hearing officer are precluded from considering hearsay statements as long as the statements are determined to be reliable.

It is undisputed that there has been a lengthy history of concerns raised in prior reports that are similar to concerns raised in this case. The fact that an issue has been raised and addressed in a prior report does not necessarily mean that the Department may not address the same issue in a later report if it is determined to be an on-going issue.

In this case, the evidence shows that there continues to be concerns about lack of supervision leading to the children being hurt or placing them at risk of harm. The parents have 5 boys between the ages of 3 and 8 which, in any case would require a high level of supervision. In this particular case, the three oldest children have identified special needs and A in particular has significant behavioral issues including violent behavior and he requires 1-1 supervision at school. J reported feeling mad when his brothers run around and he cannot stop them. W clearly indicated that he is hit and hurt by his brothers and cousins and his parents do not intervene or care. The school adjustment counselor expressed concern that W often comes to school with multiple injuries. It is reasonable to infer that, as an elementary school adjustment counselor, s/he is well aware of what would be considered typical childhood injuries and what is considered excessive. It was also reported by father that N was burned by a space heater in the home.

The schools also noted current concerns about the children not doing homework, being unprepared and not having supplies that they need and the parents failure to respond to communication by the school and attend meetings. A's school reported that he had sores on his feet because his shoes were too small.

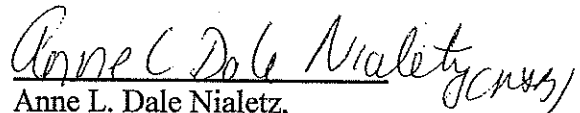
The evidence also shows that the children continue to be exposed to the parents discord. Mother made comments about killing father and burying him in the backyard. Both J and W reported hearing her comments. They also reported that she said she was going to kill herself. According to J, she also said that she was going to kick him out of the house and she told J that father was lazy and he did not care for them.

The parents claim that the third report that was filed anonymously was filed vindictively by a known criminal is irrelevant since the allegations made in that report involved abuse by mother's boyfriend and they were "unsupported."

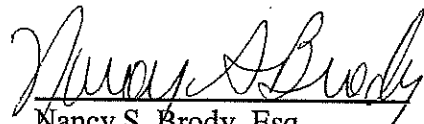
Considering all of the evidence, I find that there was reasonable cause to believe that mother and father failed to provide minimally adequate supervision, emotional stability and growth and other essential care for J, A, W, N and S and that their actions or inactions place the children in danger and posed a substantial risk to the children's safety or well-being.

**Conclusion and Order**

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

  
Anne L. Dale Nialetz,  
Administrative Hearing Officer

11-22-17  
Date

  
Nancy S. Brody, Esq.  
Supervisor, Fair Hearing Unit