

**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)
(M.T.)
(FH #2017-0488)
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HEARING DECISION

Procedural History

The Appellant, Mr. T., appealed the decision of the Department of Children and Families [hereinafter “the Department” or “DCF”], to support for physical abuse of M, pursuant to M.G.L., c.119, §§51A & 51B.

On February 27, 2017, a reporter filed a 51A Report with the Department alleging physical abuse and neglect of M by the Appellant, his father, in connection with an incident that occurred on February 15, 2017. The allegations were screened in and assigned for a non-emergency 51B response to response social worker, S.F. On March 17, 2017, a mandated reporter filed a 51A Report also alleging physical abuse and neglect of M by the Appellant. On March 27, 2017, following the response, the Department supported the allegations for physical abuse, unsupported the allegations of neglect, and opened the case for a comprehensive assessment.

The Department notified the Appellant of the decisions and his appeal rights by letter dated March 27, 2017. The Appellant filed a request for Fair Hearing [“Hearing”] on April 25, 2017, pursuant to 110 CMR 10.06 & 10.08. The Appellants' request for Hearing was granted and held on June 14, 2017 at the Department’s Hyde Park Area Office in Hyde Park, MA. Present were a DCF Response Supervisor, S.F.; the DCF Response Social Worker, S.F.; and, the Appellant. The response social worker and the Appellant were sworn in and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a compact disk [CD].

Admitted into evidence for the Department were the DCF 51A Report of February 27, 2017 [Exhibit A-1], the DCF 51A Report of March 17, 2017 [Exhibit A-2], and the corresponding 51B Response Supported on March 27, 2017 [Exhibit B]. Admitted into evidence for the Appellant was the Appellant’s Request for Hearing and the DCF Notice to the Appellant of the Findings [Exhibit 1] and Email Correspondence from M’s School Re: Attendance and Behavior Issues [Exhibit 2]. The Hearing record was closed on June 14, 2017.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

The issue presented in this Fair 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 51B 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 [110 CMR 10.05] 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 Revised 2/28/16]

Findings of Fact

1. The Appellant and his wife, M.T., are the parents of a seventeen (!7) year-old son, M, and two daughters aged sixteen (16) and fourteen (14). The family is intact. [Exhibit A-1, p.2; Exhibit B, pp.1-2 & 4]
2. The family has no DCF history of record. [Exhibit A-1, p.3]
3. M's parents reported that their son did not follow house rules. He had been skipping and been tardy for [some] school classes. He skipped school to hang out with friends. He left school without permission to go to the Patriot's Parade and on another occasion was disrespectful to a teacher when he chose to leave class and eat his pizza rather than stay without eating it. Homework was not completed and his grades were also declining. In addition, he bought a [cell] phone without permission. His account was down by \$300 and he lied [about the phone] by telling them he was buying food for the kids at school. When mother looked at the phone, she saw that M was up until 5:00 a.m. talking to a girl, texting her, and swearing. Although the parents talked to M many times, he did not listen. His graduation from high school was scheduled for May 2017. His parents were concerned that M was ruining his future for college. [Exhibit 1; Exhibit 2; Exhibit B, pp.2-4; Testimony of the Appellant]

4. On February 15, 2017, M's parents found out that M had bought a [cell] phone, which he was not allowed to have, and were upset. The Appellant hit M with a belt and did not stop hitting him until the Appellant saw tears. The child protected himself, when the Appellant hit him on his rear end and the Appellant hit him on his arm. M's arm was red and swollen and there were also cuts. He was also hit on his butt and it was hard to sit down. After the incident, M stayed at a friend's house; returning home on February 20, 2017. [Exhibit A-1, p.2; Exhibit A-2, p.2; Exhibit B, p.3]
5. There were scars on M's arm stemming from the February 15th incident, when viewed by the response social worker on March 2, 2017. [Exhibit B p.3]
6. The February 15th incident was not isolated. M stated that the Appellant hit him with a belt about twice a month on average, and as long as he can remember. When he was seven (7), he got a scar on his arm from the Appellant. He messed up a lot and got hit for any reason. His sisters told on him a lot. [Exhibit A-2, p.2; Exhibit B, p.3]
7. Per M, using a belt was the Appellant's way of disciplining him. [Exhibit B, p.3]
8. For discipline, his mother yelled and hit M. She hit him with an open hand on his face and on the arm; the last time was in November 2016. [Exhibit B, p.3]
9. M was the only one, who was [predominately] hit in the family. [Exhibit B, p.3] According to the Appellant and mother, their girls did not give them a hard time. [Ibid, p.4] According to the girls, they sometimes got slapped on their hands with an open hand, but otherwise privileges were withdrawn. [Ibid, p.5]
10. M was scared of his parents sometimes. He felt like he did not belong in the family, and he did not want to live in the home because he felt stressed out a lot. Exhibit B, p.3]
11. The Appellant and mother corroborated that the Appellant used a belt on M on February 15th. [Exhibit B, p.12] The Appellant was remorseful about the February 15th incident. He reported that leaving marks on M's arm was an accident because he was aiming for his buttocks, but M blocked the hits with his arms. The Appellant was sorry that it went that far. M lied to them about leaving school, having a phone, and talking to a girl. The Appellant reported hating spanking M, but did not know what else to do to improve his behavior.[Exhibit B, p.4; Testimony of the Appellant]
12. The Appellant acknowledged that he used to slap M with his hand before this incident; [Testimony of the Appellant] however, M reported being hit with a belt regularly before this; that this is how the Appellant disciplines him. [Exhibit B, p.3; Exhibit A-2, p.2]
13. The Appellant and mother reported that using physical discipline was cultural as they were both born in [REDACTED]; the Appellant coming to the United States in 1998 and mother in 2003. They were also Jehovah witnesses. [Exhibit B, p.4]

14. On February 26, 2017, there was an altercation between M and his mother and on February 27, 2017, M was spanked in the morning because his homework was not handed in and he did not have permission to use the cell phone. [Testimony of the Appellant]
15. On February 27, 2017, a 51A Report was filed with the Department containing allegations of physical abuse and neglect of M by the Appellant. When filed, it was reported that M had bruises on his arms; that he was injured about two weeks ago [February 15, 2017] from the Appellant hitting him with a belt, and that the Appellant often used physical discipline on him. The reporter also indicated that M came to school depressed. He was wearing his hood, not talking to people, not laughing at things he thought were funny before, wanted to be left alone, and expressed a wish to move out of his home and go away. [Exhibit A-1]
16. The Appellant and mother reported understanding the difference between physical abuse and physical discipline and safety planned with the response social worker on March 2, 2017 that they would not use physical discipline anymore. [Exhibit B, p.4]
17. On March 16, 2017, there was a heated verbal argument between the Appellant and M, and M packed his things and left the home and stayed with a friend/classmate, and then went to his aunt's home where he worked on doing make up for some of his classes. [Exhibit A-2, p.2; Exhibit B, pp.7-10]
18. On March 17, 2017, the Department received a second 51A Report alleging physical abuse and neglect of M by the Appellant. The 51A Report contained similar information previously reported on February 27th and, in addition described the incident of March 16, 2017. [Exhibit A-2]
19. On March 27, 2017, the Department supported for physical abuse of M by the Appellant and unsupported the allegations of neglect. M was struck repeatedly with a belt on his buttocks and arm on February 15, 2017 and received injuries to his arm. This was not an isolated incident. There was a pattern of physical discipline of M in the home. [Exhibit B, pp.11-12; Testimony of the Response Social Worker]
20. To date, M has graduated from high school and will be attending college at [REDACTED]. [Testimony of the Appellant]
21. The Appellant apologized for what happened to M. [Testimony of the Appellant]
22. The Hearing Officer found that the Department had reasonable cause to believe that the Appellant, in using a belt to discipline M causing injuries, created a substantial risk of physical and emotional injury to M, pursuant to 110 CMR 2.00 & 4.32, and placed the child in danger in that the Appellant actions, as a caregiver, resulted in harm to M, in keeping with the Department's Protective Intake Policy. [DCF Protective Intake Policy #86-015 Revised 2/28/16] *See Analysis.*

Analysis

A party contesting the Department's decision, to support 51A Report for physical abuse, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellant requested a Hearing, which was granted and held on June 14, 2017.

Regulations, policies, and case law applicable to this appeal include, but are not limited to, the following:

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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 and supervisor's clinical base of knowledge. [110 CMR 4.32]

"[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

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 children 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. One such example is neglect that has led to a serious physical or emotional injury. **Protective Intake Policy #86-015 [2/28/16]**

Substantial Risk of Injury: A situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child. **Protective Intake Policy #86-015 [2/28/16]**

Danger: 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. **Protective Intake Policy #86-015 [2/28/16]**

The 51A report under appeal is supported for physical abuse. Abuse means the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury ... Physical injury means death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ and any other such non-trivial injury; or soft tissue swelling or skin bruising depending upon such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises; or addiction to drugs at birth; or failure to thrive. [110 CMR 2.00]

Caregiver is defined as:

- (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 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 an 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 the age of 18. [Protective Intake Policy, #86-015, Revised 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 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Upon review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter under review. See Findings #1-#22 and the below discussion.

The Appellant is M's father and entrusted with responsibility for his health and welfare. As such, the Appellant is his *caregiver*, in keeping with the definition of these terms seen herein, and at 110 CMR 2.00 and the Department's Protective Intake Policy, #86-015, Revised 2/28/16.

Based on the record and giving due weight to the Department social workers in this case, the Hearing Officer finds that the Department had *reasonable cause to believe* that the Appellant committed a non-accidental act on his seventeen (17) year-old son, M, on February 15, 2017, by

hitting him with a belt on his buttocks and arm, the latter of which resulted in injuries to his arm still seen by the Response Social Worker on March 2, 2017. M also found it hard to sit down. The Appellant did not dispute having used a belt on M. He reported that he was aiming for his buttocks, but M blocked that area with his arms. He was sorry it went that far. "Reasonable cause" implies a relatively low standard of proof which, in the context of a 51B response, serves a threshold function in determining whether there is a need for further assessment. See Care and Protection of Robert.

The February 15th incident was not an isolated incident. Although the Appellant testified that he slapped M with his hand in the past, M said that using a belt was the Appellant's method of disciplining him; that it occurred about twice a month as long as he could remember, and that at age seven (7) he received a scar on his arm from such punishment. In addition to the Appellant, mother also physically disciplined M by hitting him with an open hand across the face and on the arm; the last time being in November 2016. Both the Appellant and mother reported that using physical discipline was cultural as they were born in [REDACTED].

The Hearing Officer has no reason to doubt the clinical experience and judgment of the Department in the instant matter. The Hearing Officer did not find any information offered by the Appellant to be substantial or compelling to such an extent that the Department acted unreasonably and/or abused its discretion in making a decision to support for physical abuse of M by the Appellant. In point of fact, the Appellant did not dispute hitting his son, M, with a belt on February 15, 2017 or using physical discipline on him previously. Although there is evidence of school related issues of concern to the parents in this case, their use of frequent physical discipline made M scared of his parents sometimes, feeling like he did not belong in the family and wanting to move out, and depressed.

The definitions set forth herein and at 110 CMR 2.00 for abuse and physical injury have been met in this case. The Appellant's acts of physical discipline to address M's behaviors created a substantial risk of physical and emotional injury to M.

Pursuant to the Department's Protective Intake Policy, 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 children in danger or pose substantial risk to the child(ren)'s safety or well-being ... 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. Consistent with these policy definitions, the Appellant, by using a belt resulting in injuries and emotional distress, placed M in danger and adversely affected his safety and well-being.

The Appellant did not meet his burden of proof. [110 CMR 10.23]

The Hearing Officer finds that the Department, in supporting for physical abuse, complied with its regulations and policies, and therefore affirms this decision.

Order

1. The Department's decision to support the 51A Report for physical abuse of M by the Appellant is AFFIRMED.

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



Frances I. Wheat
Administrative Hearing Officer
Office of the General Counsel

Date: 2/5/2018



Sophia Cho, LICSW
Fair Hearing Supervisor
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