

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET 6<sup>TH</sup> FLOORS  
BOSTON, MASSACHUSETTS 02111**

**Linda S. Spears  
Commissioner**

**Voice: (617) 748-2000  
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**IN THE MATTER OF: AE-D**

**Fair Hearing # 2017-0497**

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing is Ms. AED (hereinafter AED or Appellant). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support allegations of neglect by the Appellant of the subject children, hereinafter A and T, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

**Procedural Information**

On March 16, 2017, the Department received a mandated 51A report alleging the neglect of the subject children by the Appellant. The report was received by the Pittsfield Area Office where it was screened in and assigned for non-emergency response. The Department completed its response on March 28, 2017. The allegations of neglect of the subject children by the Appellant were supported. The Appellant was informed of the decision and of her right to appeal the Department's determination. The Appellant filed a timely request for a Fair Hearing under 110 C.M.R. 10.06 (8).

The Fair Hearing was held on June 13, 2017 at the Department of Children and Families Pittsfield Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record closed concurrent with the Hearing session on June 13, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph  
JL  
AED  
SN

Hearing Officer  
Department Investigator  
Appellant  
Department Supervisor

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

For the Department:

Exhibit 1: 51A dated March 16, 2017

Exhibit 2: 51B dated March 28, 2017

For the Appellant:

None

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 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 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, 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, 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 children of this investigation are T, age eleven (11) and A, age nine (9). (Exhibit 1)
2. The Appellant has a significant protective history with the Department, as both a child and adult consumer. The Appellant was in the Department custody when T was born,

and signed on voluntarily as a young adult for continued Department services. (Exhibit 1, Testimony of Appellant)

3. The Appellant's adult Department history consists of 10 51As, six (6) investigations, resulting in three (3) supported findings, two (2) unsupported findings and one minimal concern finding after initial assessment. (Exhibit 1)

4. Protective issues in previous Department interventions have included neglect due to domestic violence perpetrated against the Appellant by multiple intimate partners. (Testimony of Appellant, Exhibit 1)

5. In 2009, in an attempt to secure a safe environment for her family, the Appellant moved from the ██████ metro area to the ██████. A long time friend, hereinafter JD, followed and the two became intimate partners in 2015. (Testimony of Appellant)

6. In April of 2016, the Appellant was assaulted by JD in their shared home. Both subject children were present and witnessed the assault. Both the Appellant and T, then age ten (10), called police in the immediate aftermath, and JD was arrested. (Testimony of Appellant, Exhibit 2)

7. In April 2016, as a result of the criminal charges against him, JD was incarcerated pending trial for approximately three (3) months. The Appellant declined both an order of protection and to participate in JD's prosecution. He was released and returned to their shared home in July 2016. (Testimony of Appellant)

8. The April 2016 domestic assault of the Appellant was not reported to the Department. (Exhibit 1, Testimony of Appellant)

9. The Appellant claims some responsibility for the assault on her in 2016, attributing JD's violent conduct in part to her own shortcomings in the relationship. The Appellant further asserts that the children "exaggerated" how serious the 2016 incident was, and that it was far less grave than they portrayed. (Testimony of Appellant, See analysis)

10. After JD returned to the family home in July 2016, JD and the Appellant reached an agreement wherein they would physically "take space" from each other if a verbal argument began. (Testimony of Appellant)

11. On March 14, 2017, a violent argument occurred between the Appellant and JD. The subject children were home, and heard their mother yelling "Stop", and pleading for T to call the police. (Exhibit 2, Exhibit 1)

12. The Appellant's assertion that T misunderstood her when she cried out is not credible. T clearly understood her mother to be at risk, and acted accordingly. (Testimony of Appellant, Exhibit 1)

13. The Appellant, both at the time of the Department's response, and at fair hearing, minimized the threat JD posed to her and the subject children's' safety. (Fair Hearing Record, see analysis)

14 . The Appellant asserts that the subject children exaggerated the severity of the subject events, just as they did in 2016. (Testimony of Appellant)

~~15. I do not credit this assertion. Both T and A witnessed the Appellant holding a knife in an attempt to defend herself, and both attempted to physically intervene on the Appellant's behalf to spare her injury. (Exhibit 2, p. 3, see analysis)~~

16. Since the subject investigation, the Appellant has engaged in services as recommended by the Department, including counselling for both she and T. (Testimony of Appellant)

17. The Appellant is a Certified Nursing Assistant, working primarily with the elderly. The Department's intervention and subsequent support decision has not adversely impacted her nursing license. (Testimony of Appellant, Fair Hearing Record.)

18. After a review of the evidence and for the following reasons, I find that the Department had reasonable cause to find that T and A were neglected by the Appellant, and that the Appellant's actions/inactions placed T and A in danger. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

19. T and A consistently described a pattern of domestic violence by their mother's intimate partner. AED undertook no acts of protection to prevent further violence in the home after being assaulted in 2016, and allowed JD back in the home after declining to participate in his prosecution. In so doing, AED placed T and A in danger or posed substantial risk to their safety or well-being. The Department's decision to support the allegations of neglect by Appellant AED was made in conformity with its policies and regulations. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

### **Applicable Standards**

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred 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. 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 caregiver; 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

"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; 110 CMR 2.00

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 investigation, 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, 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, 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

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

### Analysis

The Department supported allegations of neglect of the subject children by their mother, the Appellant. These girls, ages eleven (11) and nine (9), have been exposed to an ongoing pattern of violence between their mother and her partner. Despite her continued minimization of the risk to the subject children, the Appellant does not deny that police responded twice within a five (5) month period to calls for help due to domestic violence. The subject children recounted details of the assault of the Appellant.

The Appellant's denial of the violent nature of these events is worrisome and not credible. That the Appellant is engaged in clinical services is surely positive, but does not mitigate the Appellant's responsibility for failing to protect the children from exposure to the violent behavior. The Appellant's continued minimization of the risk to the subject children, even in the face of the overwhelming evidence otherwise, is cause for concern.

Our courts have long recognized that domestic violence has a damaging impact on the development and well-being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595, 664 N.E. 2d 434, 437, (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication evidence that the child has been injured, either physically or emotionally by the domestic violence, the State need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 337 Mass. 870, 389 N.E. 2<sup>nd</sup> 68, 73, (1979).

Although the subject children did not experience injury as a result of the Appellants actions, the Court has concluded that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789(2003). "If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing physical or emotional injury." Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 795 (2003).

Considering all the evidence, I find the Department's concerns to be valid and to rise to the level of "reasonable cause to believe" that neglect did occur as the Appellant failed to take actions necessary to provide the reported children with minimally adequate supervision, and emotional stability and growth.

Based upon the evidence presented both at the time of the investigation and at the Fair Hearing, the decision of the Department to support the allegations of neglect by AED, as defined in its regulations, was reasonable, and made in conformity with Department regulations, policies and procedures. Therefore, the decision of the Department to support the allegations of neglect is AFFIRMED.

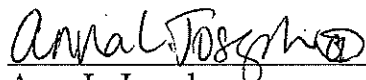
**Conclusion and Order**

The Appellant has failed to show by a preponderance of the evidence, that the Department's decision to support the allegations of neglect was not in conformity with Department regulations nor that such was done without reasonable basis, and therefore the Department's decision is **AFFIRMED**.

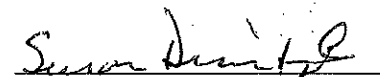
**Orders**

1. **The Department's decision to support the allegation of neglect of T by her mother AED, is AFFIRMED.**
2. **The Department's decision to support the allegation of neglect of A by her mother, AED, 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 within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

  
Anna L. Joseph  
Administrative Hearing Officer

Date: 1-19-18

  
Susan Diamantopoulos  
Fair Hearing Supervisor