

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

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IN THE MATTER OF

YN

#2017-0513

FAIR HEARING DECISION

The Appellant in this Fair Hearing is YN. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of the physical abuse of her daughter, A, pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On March 6, 2017, the Department received a 51A report from a mandated reporter alleging physical abuse of J. The allegations were screened in for a non-emergency response by the Department. Upon completion of its response period, the Department supported the allegations and 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 15, 2017 at the Department of Children and Families' Area Office located in [REDACTED], MA. All witnesses were sworn in to testify under oath. The record officially closed upon conclusion of the second date.

The following persons appeared at the Fair Hearing of June 15, 2017:

Carmen Colón
YN
PVR
RU
MD

Fair Hearing Officer
Appellant
Attorney for the Appellant
DCF Response Supervisor
DCF Response Social Worker

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 Intake Report of March 6, 2017

Exhibit B: 51B Child Abuse/ Neglect – Non Emergency Response of March 31, 2016

Exhibit C: Pictures of Injury of March 10, 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)

Statement of the Issue

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, 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 parents(s)/ caregiver(s) placed the child (ren) in danger or pose substantial risk to 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

On the basis of my assessment of all the evidence, I make the following factual findings:

1. YN is the mother of J and therefore deemed as a caregiver pursuant Departmental Regulation CMR 110 2.00, DCF Protective Intake Policy #86-015, rev 2/28/16 (Exhibit A, Exhibit B, p.1).

2. J was five years old at the time of the reported incident (Exhibit B, p. 1). J and his mother, the Appellant live together. J's older brother D, who was sixteen years old, also resides with them. At the time of the hearing, Appellant was having a miscarriage while caring for her sons (DCF Testimony, Appellant Testimony, Exhibit B, p.1).

3. The Appellant and her family have a history with the Department dating back to 2007 for the alleged physical abuse of D by appellant and in 2008 for the abuse of D by his uncle. (DCF Testimony, Exhibit B, p. 1)

4. J was a kindergarten student and had a history of having difficulty following directions and containing his behavior while in school. J resorted to derogatory name calling of peers, while experiencing difficulty with comprehension and speech (Exhibit B, p.2).

5. On March 6, 2017, J disclosed having been physically abused by his mother to a mandated reporter. In his disclosure, J stated that he and his brother were playing over the weekend¹ and during their play time, he became upset and spat at his brother, which upset the Appellant. J then disclosed having been hit with a belt as a consequence by his mother (DCF Testimony, Fair Hearing Record, Exhibit A ,p. 3, Exhibit B, p.3).

7. On March 10, 2017, DCF Response Social Worker conducted an interview with J at his school. A detective from the local police department was also present. During this interview with J the following information was obtained:

- a. Appellant has resorted to using implements in the past when hitting J
- b. Appellant resorts to hitting J with an open hand when upset with child or when child is not behaving.
- c. J and his brother were arguing, Appellant resorted to using J's belt to hit child after learning he spat on his brother, D.
- d. Police detective was able to view a linear injury on J's thigh measuring "three inches in length and very visible".
(DCF Testimony, Exhibit B, p. 3)

8. Following the interview with J, an interview was conducted with J's older brother, D at the local high school. D corroborated his brother's disclosure and confirmed that Appellant has resorted to hitting his brother in the past and on the day of

¹ Exact date of when injury occurred was not made clear to this Hearing Officer during Hearing.

the reported event. Appellant was reported to have used both her hands and a "looped belt". (Exhibit B, p. 4)

9. Appellant was also interviewed on this date, she confirmed having used J's belt to hit him, while child was reportedly under a comforter. Appellant confirmed that J was not wearing pants at the time of the incident and she had been under the impression that she hit the comforter not the child (Appellant testimony, Exhibit B, p.6)

10. After considering all the evidence, I find that the Department had reasonable cause to support the allegation of physical abuse of S by Appellant, NB, for the following reasons:

- a. YN acknowledged hitting J, causing a six inch linear bruise/mark;
- b. As a result of being hit, J sustained bruising to his thigh; said bruising constitutes a "physical injury" as defined in Department regulations; See 110 CMR 2.00;
- c. This is not the first time the Appellant has resorted to using implements
- d. The Department referred the matter to the District Attorney's Office;

Applicable Standards and Analysis

In order for the Department to "Support" an allegation, the Department must find that there is reasonable cause to believe that the child(dren) was abused and/or neglected ; and that 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 Police #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. 110 CMR 4.32(2)

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §51A" Care and Protection of Robert, 408 Mass. 52, 63-64 (1990) Id. at 63. This same reasonable cause standard of proof applies to decisions to support allegations under § 51B. Id. at 64; M.G.L. c. 119, § 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

"Abuse" is defined as (1) the non-accidental commission of any act by a caregiver which causes or creates a substantial risk of physical or emotional injury or sexual abuse to a child; or (2) the victimization of a child through sexual exploitation or human trafficking,

whether or not the person responsible is a caregiver. The definition is not dependent upon location. Abuse can occur while the child is in an out-of-home or in-home setting.

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.

Physical Injury

Death; or fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such factors as the child's age, the circumstances under which the injury occurred, and the number and location of bruises.

Emotional Injury

An impairment to or disorder of the intellectual or psychological capacity of a child as evidenced by an observable and substantial reduction in the child's ability to function within normal range of performance and behavior.

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

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.*)

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. (*Id.*)

Risk is defined as the potential for future harm to a child. (*Id.*)

"Caregiver" means a child's: (1) a child's parent, stepparent, guardian or any household member entrusted with the responsibility for a child's health or welfare; or, (2) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under age 18). 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.

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I uphold the Department's decision.

The burden is on Appellant to show, by a preponderance of the evidence that the Department's support decision was not in conformity with Department regulations and/or policy. The Appellant has not presented persuasive evidence in this matter to allow for a reversal of the Department's physical abuse support decision. As stated above, 'reasonable cause' implies a relatively low standard of proof which, in the context of the 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 § 51A" *Id.* at 63. This same reasonable cause standard of proof applies to decisions to support allegations under §51B. *Id.* At 64; G.L. c.119, s 51B.

The Department's decision that the Appellant physically abused her son, J, was based on disclosures made by J and D. Both children were able to provide a history of Appellant's use of objects when hitting J and were found credible by the DCF Response Worker and the police detective involved in the matter.

The Appellant argued that although she did use J's belt to hit the child, she did not believe she had hit him as child allegedly was hiding under the covers at the time of the event. Appellant's account of the events did not prove to be accurate as child arrived to his school and immediately disclosed the event to a mandated reporter and did sustain and injury.

Per review of the record and testimony gathered at Fair Hearing, it is undisputed that J suffered an injury to his thigh, which was caused by Appellant, constituting abuse. 110 CMR 2.00; Appellant's explanation of the event was not supported by the evidence and was not persuasive. The Department's decision was based on credible evidence provided and J's consistency in his disclosure of the reported event.

Conclusion and Order

The Department's decision to support the allegations of physical abuse of J by Appellant, YN, was made in conformity with Department regulations and with a reasonable basis. Therefore, the Department's physical abuse support decision is **AFFIRMED**.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellant lives within thirty (30) days of the receipt of

this decision. (See, M.G.L. c.30A, §14). In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

Carmen Colón
Carmen Colón
Fair Hearing Officer

February 26, 2018
Date

Barbara Curley
Barbara Curley, Supervisor
Fair Hearing Unit