

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111

Linda Spears
Commissioner

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IN THE MATTER OF

JK #2017 0517

FAIR HEARING DECISION

Appellant, JK ("Appellant"), appeals the Department of Children and Families (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On March 21, 2017, the Department received a report via the DCF Child at Risk Hotline ("Hotline") which alleged neglect of R and E by the Appellant, their father, after the Appellant arrived at the children's school to pick up the children, seemed to act oddly and then hugged the children's teacher and told her he was drunk. The Hotline screened-in the report and the [REDACTED] Area Office conducted a non-emergency response. On April 11, 2017, the Department made the decision to support an allegation of neglect of R and E. The Department notified the Appellant of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06(4)(b). A hearing was held at the DCF [REDACTED] Area Office on June 13, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; RM, DCF Supervisor; JK, Appellant.

In accordance with 110 CMR 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 digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be

admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

- Exhibit A: 51A Report of March 21, 2017
- Exhibit B: 51B Report completed on April 11, 2017 by LG

For the Appellant(s):

No Documentary Exhibits were submitted by Appellant

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. 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. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The Appellant is the father of R and E; the children's mother is AO. The Appellant and AO were married and resided together with the children in ██████████ MA. At the time of the report in question, R and E were 6 and 5 years old, respectively. (Exhibit A; Exhibit B; Testimony of RM and Appellant)
2. The Appellant was R and E's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. The Appellant was not involved with the Department. The Appellant was a stay at home parent and primary caregiver for the children and AO was a ██████████ ██████████ at a local hospital, where she frequently worked long hours. (Exhibit A; Exhibit B, p. 3; Testimony of Appellant)
4. R was in in the first grade at an elementary school and E was in a pre-k program at

Community Center, which is located within a 10-house distance of the family's home. The children both attended after school activities at the until 5:30PM. The Appellant relied on for after school care and supervision, where he had no other hired or family supports. (Exhibit B, p. 3; Testimony of Appellant)

5. Eighteen (18) months prior to the report in question, the Appellant and AO began counseling to address marital issues. In part, the Appellant was resentful of AO's lack of support and lack of acknowledgement of his contribution to the maintenance of the household and care of the children. Concurrently, the Appellant experienced depression and was prescribed medication, which did not work well and was discontinued by the Appellant under the guidance of his psychiatrist. On Monday March 20, 2017, the Appellant started a new medication. The Appellant was not informed not to consume alcohol with his new medication. (Exhibit B, pp. 2, 3; Testimony of Appellant)
6. On Tuesday March 21, 2017, the Appellant picked-up R after school and returned home; E remained at the, where he was expected to remain until picked up by AO for a hair appointment. When he arrived home, the Appellant had a beer before he brought R to the for try-outs for a play. Before the Appellant left home with R, he made a drink with vodka and orange juice ("screwdriver"). The Appellant took the drink with him when he took R to the. (Exhibit B, p. 2; Testimony of RM and Appellant)
7. AO had a haircut appointment on March 21, 2017. The Appellant decided that she would have to leave her office earlier and care for the children; to have her experience "a little inconvenience" to compel her understanding of what he regularly did to coordinate and provide care in her absence. The Appellant intended to remain on site for R's try-out and E would remain in the care of the until AO arrived.¹ (Testimony of Appellant)
8. When the Appellant arrived at the, R went to the playground with friends and the Appellant went into E's classroom. One of E's classmates asked the Appellant what he was drinking and the Appellant stated "orange juice and fermented potatoes", which the teacher overheard. Another staff member spoke with the Appellant about his remark and the Appellant hugged her and told he was "intoxicated". Given the Appellant's statements, the staff asked and the Appellant agreed to leave the children at the; the children went off to play on the playground. The Appellant contacted AO, who arrived earlier than anticipated and brought the children home. By 6PM, AO observed the Appellant "had normalized". (Exhibit B, p. 4; Testimony of RM)
9. On March 21, 2017, the Department received a report via the DCF Child at Risk Hotline ("Hotline") which alleged neglect of R and E by the Appellant, their father, after the Appellant arrived at the to pick up E, seemed to act oddly and then hugged the children's teacher and told her he was drunk. The Hotline screened-in

¹ The Appellant testified that AO had a hair appointment and was going to take E with her and the children were to remain under the supervision of staff at until then.

the report and the [REDACTED] Area Office conducted a non-emergency response. (Exhibit A)

10. During the response, the Department spoke to the staff at the [REDACTED]. There were no concerns for the Appellant's care of the children. The staff stated the Appellant's behavior was "out of character" for him and the staff who spoke with the Appellant stated "she would not have known" the Appellant was intoxicated if his comment about his drink was not overheard and he had not shared that he was intoxicated. (Exhibit B, p. 4; Testimony of RM)
11. The Department spoke with R's elementary school; there were no concerns for R. The adjustment counselor at the school was aware of the Appellant and AO's conflictual relationship and observed the Appellant "speaking down" to AO. The Response Worker observed the Appellant was dismissive of AO when she spoke to them together. (Exhibit B, p. 4)
12. The Department interviewed the children. Neither child reported concern for the Appellant's care. Neither child was aware that the Appellant was intoxicated on March 21, 2017. R knew what alcohol was, that it was for adults and referred to it as "silly juice". R denied she ever saw the Appellant act differently after he had silly juice. (Exhibit B, p. 3)
13. On April 11, 2017, the Department determined the allegation of neglect was unsupported. In part, the Department it was likely that the Appellant had an unanticipated reaction to his new medication and the alcoholic beverages he consumed and the incident appeared isolated. (Exhibit B, p. 6; Testimony of RM)
14. Following an administrative review of the response decision, the Department determined the allegation would be supported but that the case would not open for services. The Department determined that "the drinking coupled with his prescribed medications could cause a heightened behavioral change impacting his parenting." (Exhibit B, p. 6; Testimony of RM)
15. M discontinued the new medication following the reported incident. (Testimony of Appellant)
16. After a review of all the evidence and for the following reasons, I find the Department did not have reasonable cause to support an allegation of neglect of R and E by the Appellant:
 - a) The Department did not demonstrate that the Appellant failed to provide minimally adequate care for R and E (110 CMR 2.00 and 4.32), and;
 - b) The Department did not demonstrate that the Appellant's actions or inactions placed the children in danger or posed a substantial risk to the children's safety or well-being, as required to support an allegation of neglect. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

Applicable Standards

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. 110 CMR 2.00 and 4.32; 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 means 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition." 110 CMR 2.00

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. 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. 110 CMR 10.23

Analysis

The Appellant was R and E's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

The Department initially determined that allegations of neglect were not supported. Following an administrative review of the decision, the Department determined the Appellant neglected the children. The Department determined that "the [Appellant's] drinking coupled with his prescribed medications could cause a heightened behavioral change impacting his parenting."

The Appellant argued that the Department did not demonstrate neglect, particularly where the children were under the care and supervision of an after-school program. In part, the Appellant candidly admitted he consumed alcohol with the intention that his wife would take responsibility for the children after they finished their activity at school.

In the instant case, the evidence suggests that the Appellant was growing increasingly resentful of his wife's long hours and her lack of availability to spend time with him and the children. The Appellant, in effect, wanted to teach his wife a lesson and find time to relieve him of his child care responsibility for an afternoon. To that end, the Appellant had two alcoholic beverages, one after he picked up R from school, and a second that he made and consumed after he took R to the [REDACTED] to try-out for a play. The Appellant's plan was complicated by an unanticipated interaction between his new medication and the alcoholic beverages.

When the Appellant disclosed that he was "drunk", the staff at the [REDACTED] asked him to leave the children, which he agreed to do. The Appellant contacted his wife, who arrived to the school and collected the children. Considering the evidence collected during the response, the Response Worker and her supervisor determined that the incident was isolated, the Appellant's intoxication was likely the result of a medication interaction, and that the Appellant did not neglect the children, who had remained under the care and supervision of [REDACTED] staff. The Area Program Manager who reviewed the decision and the same set of facts determined the Appellant neglected the children; however, that no other services or assessment was necessary, which suggests that while finding neglect by the children's primary caregiver, the Department still did not determine that the Appellant's actions placed the children in danger or posed substantial risk to their safety and well-being. For these reasons and those enumerated in the above Findings of Fact,

this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by substantial evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691. Additionally, there was no evidence that the Appellant's actions or inactions placed S in danger or posed a substantial risk to S's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support allegations of neglect on behalf of R and E was not in conformity with Department regulations or made with a reasonable basis; therefore, the Department's decision is REVERSED.

11/10/17
Date

Maura Bradford (ep)
Maura E. Bradford
Administrative Hearing Officer

Erica Pognon
Erica Pognon
Fair Hearing Supervisor

Date

Linda Spears
Commissioner