

**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)
(NL)
()
(FH # 2017-0521)
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HEARING DECISION

Procedural History

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

On March 8, 2017 the Department received a 51A report from a mandated reporter alleging physical abuse of N (hereinafter "N" or "the child") by the Appellant. The Department conducted an investigation and, on March 29, 2017 the Department made the decision to support the allegation of physical abuse. The Department notified 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 27, 2017 at the DCF [REDACTED] Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

Nicholas Holahan
NL
MB
JS
GL

Administrative Hearing Officer
Appellant
DCF Response Worker
DCF Ongoing Social Worker
DCF Ongoing 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 Report
Exhibit B: 51B Response
Exhibit C: Photos of N

For the Appellant:

The Appellant did not submit any documentary evidence.

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 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 child of this Fair Hearing was N. At the time of the 51A report, N was six (6) years old and residing with NL. NL is the biological mother of N. NL was a caregiver for N pursuant to the Department regulations and policies 110 CMR 2.00

and DCF Protective Intake Policy #86-015, rev. 2/28/1. (Exhibit A pp.1-3; Exhibit B pp.1-2; Testimony of MB)

2. On March 8, 2017 N was at school and was observed to have scratches on this face. He was brought to the nurse's office; more scratches as well as hand prints were found over his chest. The child was initially quiet and then stated his mother grabbed him all over his body, scratched, and slapped him because she was mad at him. NL told him not to tell anyone how he got the marks on his body. (Exhibit A p.3; Exhibit B pp. 2-3; Exhibit C; Testimony of MB)
3. On March 29, 2017 the Department supported an allegation of physical abuse of N by NL. In reaching its decision, the Department gave significant weight to the consistent statements by N that NL had scratched, slapped and grabbed him in addition to photographs depicting scratches on N's face and chest as well as red marks on his chest. (Exhibit B pp. 8-9; Testimony of MB)
4. The family pastor, [REDACTED], voiced concern that the family was "toxic" as the children, N and C, were not trusting of their father. (Exhibit B p.7)
5. N was up to date with well-child visits and immunizations. (Exhibit B p. 4)
6. N's teacher, ME, reported that N "tells tall tales" which can be believable at times, but are usually false. (Exhibit B p. 4)
7. At the Fair Hearing, NL denied using physical discipline with N. NL remembered a confrontation between she and N regarding bedtime and that she grabbed him as he was jumping on the bed; however did not know how N became injured. I do not find the Appellant's testimony persuasive. (Exhibit B pp.3-4, Testimony of MB, Testimony of Appellant)
8. I find the Department conducted the investigation in accordance with Department regulations and applicable statutes. 110 CMR 4.27; M.G.L. c. 119, §51B et seq.
9. In light of the totality of the evidence, I find the Department did have reasonable cause to support an allegation of physical abuse of N by NL for the following reasons:
 - a. A finding of physical abuse requires that the Department have reasonable cause to believe that a caregiver's actions caused or created a substantial risk of physical or emotional injury (110 CMR 2.00);
 - b. On the evening of Marcy 7, 2017, NL had a confrontation with N; whereby NL grabbed N and inflicted injuries on her son N;
 - c. NL's actions caused N's resultant injuries which included scratches on his face, chest and hand print on his chest;
 - d. NL denied using physical discipline on N and stated she did not know how N's injuries occurred;

- e. There was evidence that the Appellant's actions caused or created a substantial risk of injury to N;
- f. The totality of the evidence, supports a finding of abuse as defined by Department policies and/or regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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 CMR 4.32(2) 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)

"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. 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; M.G.L. c. 119, § 51B

"Caregiver" means a child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or 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 any 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 age 18. 110 CMR 2.00; DCF Protective Intake Policy #86-015 Rev. 2/28/16.

"Abuse" means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury

or sexual abuse to a child; or the victimization of a child through sexual exploitation or human trafficking, whether or not the person responsible is a caregiver. This definition is not dependent upon location. Abuse can occur while the child is in an out-of-home or in-home setting. 110 CMR 2.00; 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, or (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, or (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

In this case, the Department had reasonably relied on the account of what occurred that was provided by the mandated reporter from N and from N himself. There were visible indications of injury as a result of the Appellant's actions. There were numerous scratches and one red mark noticeable hours after the incident. NL asked N not to tell how they occurred however N was able to describe what occurred and how the injuries came about. The Appellant had denied use of physical discipline on N but the evidence of the facial and other marks on N contradict her version of what occurred with N. This hearing office does not find NL to be persuasive. N provided consistent details of what the Appellant did to multiple persons as well as there being visible marks that corroborate the Appellant's actions.

As held in Cobble v. Comm'r of the Dep't of Soc. Servs., 430 Mass. 385, 392-393 (1999), a finding of physical abuse is indicated when there is a substantial risk of injury to the child. In this case, the Appellant's actions posed a substantial risk to N's safety and well-being.

Conclusion and Order

The Department's decision to support an allegation of physical abuse of N by the Appellant is hereby **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 in which she lives, or in Suffolk County, 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.

Nicholas Holahan (del)

Nicholas Holahan
Administrative Hearing Officer

1/16/18

Date

Darlene M. Tonucci

Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit