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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF

RD #2017-0538

FAIR HEARING DECISION

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

Procedural History

On March 6, 2017, the Department received three 51A reports alleging neglect of M by his father, RD and one 51A report alleging physical abuse of M by RD. The Department screened-in the reports for a non-emergency response. On March 22, 2017, the Department made the decision that the allegations of neglect of M by RD were supported. The physical abuse allegation was found to be "unsupported." The Department notified RD of its decision and his right to appeal.

RD made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held at the DCF Area Office in Hyde Park on September 26, 2017. RD, TD (RD's wife), the Department response worker and the Department supervisor testified at the hearing. RD was represented by an attorney.

The Department submitted the following exhibits at and after the hearing.

Exhibit A: 51A report filed March 6, 2017, 3:20pm.

Exhibit B: 51A report filed March 6, 2017, 4:36pm.

Exhibit C: 51A report filed March 6, 2017, 5:20pm.

Exhibit D: 51A report filed March 6, 2017, 6:31pm.

Exhibit E: 51B report

Exhibit F: Family Assessment

Exhibit G: Case Dictation report, April 21, 2017 to September 21, 2017.

Exhibit H: Dictation notes May 30, 2017, June 16, 2017 and July 13, 2017.

Exhibit I: Dictation note September 20, 2017.

RD submitted proposed findings.

The hearing record was closed on October 11, 2017.

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

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. 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; 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 Rev. 2/28/16, 110 CMR 10.05.

Findings of Fact

1. RD (hereinafter "father") and TD (hereinafter "mother") are the parents of M (d.o.b. January 1, 2008). (Exhibit A, p. 1).
2. Mother was born in [REDACTED]. Mother's aunt introduced her to father when mother was working in [REDACTED]. Mother and father married in 2004. Thereafter, mother moved to the United States with father. Mother speaks English well and she is currently a US citizen. (Exhibit F, pp. 2, 6, 15).
3. The family had no history of involvement with the Department. (Exhibit A, p. 5).
4. Mother's mother (maternal grandmother) came to the United States in 2010. Maternal grandmother lives with mother, father and M and she helps take care of M. (Exhibit F, pp. 2, 9, 12).

5. Mother has a large extended family in the [REDACTED]. She, father and M regularly go to the [REDACTED] to visit them. (Exhibit F, pp. 5, 7-8, 9, 14).
6. Father has family in [REDACTED]. He, mother and M go to [REDACTED] to visit with them about twice a month. (Exhibit F, p. 8, 9, 14).
7. Both mother and father are [REDACTED] employees. Mother works for the [REDACTED] father works for the [REDACTED]. They are financially stable. (Exhibit B, p. 2; Exhibit F, p. 9).
8. M is thriving in school academically and socially. He has no history of behavior problems or risky behavior at home or at school. He participates in sports and other activities. (Exhibit F, pp. 7, 12, 13, 14; Testimony of mother).
9. Mother and father primarily discipline M verbally. Father yells at M at times and mother sometimes spanks M on the buttocks with an open hand. Father has only spanked M once about three years ago. (Exhibit E, pp. 4, 5, 9; Exhibit F, pp. 4, 7, 16).
10. Father usually speaks to others in a loud tone and he often interrupts. Mother and father argue at times and they both can be loud when they argue. (Exhibit E, pp. 5, 6, 9; Testimony of mother; Testimony of father).
11. Father has a glass of wine occasionally during the week after work. He has a few glasses of wine on the weekends. When father drinks, he tends to be louder and interrupt more than he usually does. Neither mother nor maternal grandmother drink and they don't particularly like the fact that father drinks alcohol at all. (Testimony of mother; Testimony of father; Exhibit E, pp. 4, 5, 6, 9).
12. On August 21, 2016, mother and father had a verbal argument. Father left the home and mother called the police. When police responded, mother told them they only had a verbal argument and the police left. (Exhibit E, p. 10; Exhibit F, p. 7; Testimony of mother).
13. Over the weekend of March 4-5, 2017, father learned that his brother withdrew a large amount of money from a bank account they shared. Father was angry with his brother. Father drank a bottle of wine that weekend and he was verbalizing his anger. As father was writing an e-mail to his brother, he was saying out loud what he was writing. (Exhibit E, p. 9; Testimony of father).
14. On March 6, 2017, M became upset and/or frustrated in class. He said something to a classmate to the effect that he couldn't take it anymore and he did not want to live. He had no actual intent to harm himself. (Exhibit F, p. 1, 15, 16; Testimony of mother).
15. M's teacher overheard his comment and referred him to the school counselor. (Exhibit F, p. 16).

16. M told the counselor that father drinks everyday. He said father gets angry and yells and makes him afraid. (Exhibit A, p. 2).
17. The school staff called father and told him that M wanted to hurt himself. Father said he would come to the school. Father went to the train station, but he missed the train and had to wait for the next one. (Exhibit A, p. 2; Testimony of father).
18. In the meantime, the school staff called mother and she went to the school. The school told her what M had said. Mother started crying and said that father drinks and gets angry. She said his language is offensive and she has called the police in the past. She denied that father is physically abusive. (Exhibit A, p. 2).
19. The school wanted M to go to the hospital to be evaluated. Mother did not feel that it was necessary, but the nurse coordinated with M's pediatrician and arranged for an ambulance to take M and mother to [REDACTED]. (Exhibit A, p. 2; Testimony of mother).
20. EMS picked up M and mother and brought them to [REDACTED]. Father texted mother and she told him where they were going. Father was still waiting for the next train. (Exhibit A, p. 2; Testimony of father).
21. On March 6, 2017, the Department received a 51A report alleging neglect of M by father based upon M's disclosure to the school staff. The Department received a second 51A report shortly afterward. The second reporter stated that M said that father is a heavy drinker and he physically abuses M and mother. The reporter stated that M said father grabbed his arm, but he had no marks or bruises. The Department screened-in the reports for a non-emergency response. (Exhibit A; Exhibit B).
22. Shortly thereafter, the Department received a third 51A report alleging neglect of M by father. That report was apparently generated as a result of the [REDACTED] Hospital social worker calling the Department hotline to obtain more information regarding the previous 51A reports. (Exhibit C).
23. M was evaluated at [REDACTED] Hospital. He denied any intent to harm himself. M reported that father was drinking over the weekend, he was angry and yelling at mother. M reported he was fearful and he stayed in his room the entire weekend. M reported that his statement that he wanted to harm himself was taken out of context. He made the statement due to struggling in school and not because of father. He and mother denied any physical abuse by father. Mother declined substance abuse or domestic violence services. The hospital staff determined that M did not require hospitalization and he was discharged. (Exhibit D; Exhibit E, p. 2).
24. Later that day, the Department received a fourth 51A report alleging neglect of M by father based upon M's statement at the hospital that father was drinking over the weekend and was yelling at mother which made him fearful so he stayed in his room the entire weekend. (Exhibit D).

25. The Department response worker met with M individually at his home. Regarding his statement on March 6, 2017, M said that he was feeling sad/frustrated because he was thinking about how father sometimes interrupts him and he doesn't like it. He also said he was upset because father always yells. He said that is "just how he talks." He denied father was ever mean when yelling or talking loud. He denied father drinks a lot or that his drinking bothers him. He said sometimes father will yell at mother, but she never seems scared. He said father drinks "here and there." He denied staying in his bedroom all weekend because his parents were yelling. He denied ever seeing father hurt mother. He denied that he is ever physically disciplined. (Exhibit E, p. 5).
26. The Department response worker met with mother individually at her home. She denied being afraid of father. She acknowledged that he can get loud. She said that when he speaks loud, she does too. She said that he is loud whether he has been drinking or not. She denied father is physically abusive. She said he is a wonderful father and he and M has a great relationship. She acknowledged that father does interrupt often. She said that maternal grandmother does not like father's drinking. She said that maternal grandmother has heard father call her a "bitch." She did not say when, whether it happened more than once or if M was present. (Exhibit E, pp. 6-7).
27. The Department response worker met with father and his attorney. Father said he drinks a glass of wine about three times a week. He denied using physical discipline with M except for one occasion when he spanked him about three years ago when M was not listening. He said he (father) often says, "I can't take it anymore" when he is working from home and he thinks that is why M said that at school. He denied that he yells at mother. He said he does redirect M if he spends too much time on his electronics. He denied calling mother names. He said they do argue mostly about money. He denied having a problem with alcohol and said he is drug tested at work. (Exhibit E, pp. 9-10).
28. On March 22, 2017, the Department made the decision that the allegation of physical abuse was unsupported because M and mother denied father is physically abusive. The Department determined that father neglected M by abusing alcohol and verbally abusing mother when he is intoxicated. The Department found that father's actions posed a risk to M's emotional well-being. The Department's decision was based upon the reports that M expressed concerns about father's alcohol use and becoming loud and aggressive, calling mother's names in front of M, often calling mother a bitch and yelling at her a lot when he drinks. (Exhibit E, pp. 12-13; Testimony of the Department response worker and supervisor).
29. After the Department's response, the Department opened a case for the family and an assessment worker was assigned. The family members met with the Department assessment worker several times. M and mother denied that father has a drinking problem, that he is abusive or that they are afraid of him. They both said that they feel safe at home. Mother and M reported having a good relationship with father and that M and father engaged in many activities together. The assessment worker

concluded that M is thriving in his environment. No protective concerns were noted during the assessment. The assessment worker did not observe anything that would suggest that mother or M were, in fact, fearful in the home. The assessment worker did note throughout the assessment report that M and mother have consistently denied the initial reports that father drinks and becomes angry making it difficult to determine what is actually happening in the home. (Exhibits F, G, H and I).

30. There is no evidence that either the response worker or assessment worker spoke with maternal grandmother. (Exhibit E; Exhibit F).
31. Father and mother testified at the hearing. They denied that father drinks excessively. They acknowledged that father speaks in a loud voice, he and mother sometimes argue and that they can both be loud. They denied that father is abusive, verbally or physically. Mother testified that she, M and maternal grandmother are safe in the home. (Testimony of mother; Testimony of father).
32. I find mother and father's testimony to be credible.
33. I find that there was no reasonable cause to believe that father has failed to provide minimally adequate care for M or that his actions placed M in danger or posed a substantial risk to M's safety and well being.

Analysis

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 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." Factors to consider include, but are not limited to, direct disclosure by the child 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 C.M.R. §4.32(2)

The response should include consulting with the reporter(s), checking the Department's files and making any collateral contacts necessary to obtain reliable information which would corroborate or disprove the reported incident and the child's condition. The primary sources of information should be the parent or caregiver of the reported child, the reported child and the reporter(s). 110 CMR 4.27(2).

"[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.

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. 110 CMR 10.23

"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.

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

As M's parent, father is his caregiver under Department regulations. 110 CMR §2.00(5).

The Department determined that father neglected M by abusing alcohol and verbally abusing mother when he is intoxicated. The Department found that father's actions posed a risk to M's emotional well-being. The Department's decision was based upon the reports that M expressed concerns about father's alcohol use and becoming loud and aggressive, calling mother's names in front of M, often calling mother a "bitch" and yelling at her a lot when he drinks.

Father concedes that he drinks a glass of wine a few nights a week and a few glasses of wine on the weekends. He denies he abuses alcohol. He concedes that he and mother have arguments and that they both can get loud. He also acknowledged that he was upset during the weekend before the 51A reports were filed, he drank more than usual and he

was expressing his anger out loud. Father argues that he is not abusive, verbally or physically with mother or M and M and mother both stated that during the Department's response as well as the assessment.

The evidence shows that M did make a statement in school about wanting to harm himself due to frustration and struggling in school. When he was questioned by school staff, he apparently talked about father drinking and being angry over the weekend. When he was evaluated at the hospital, he clarified that he had no actual intent to harm himself and that his comment was unrelated to father's behavior. Unfortunately, the response worker did not speak to the reporter from the school to try to clarify the context of his statement about father.

Although what was initially reported in the four 51A reports was concerning, only one of the reporters was consulted and that reporter confirmed that M's statement about harming himself was not related to father. The only concern mentioned by that reporter was that M was upset about father being angry and yelling the prior weekend. That reporter also said that M and mother both denied that father was abusive and mother denied father needed substance abuse services.

None of the Department staff who became involved with the family interviewed maternal grandmother who lives in the home and who might have been able to shed some light on the atmosphere in the home. The evidence also shows that there are extended family members on both mother and father's side with whom they keep in close contact. No other family members were contacted to try to corroborate or disprove the allegations.

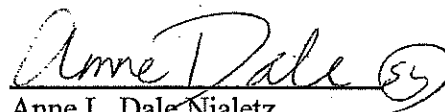
During the response and the assessment, M and mother both denied being afraid of father or that he is abusive. Although they said he is loud, he drinks alcohol and he interrupts often, they noted that father always talks loud whether he is drinking or not. Contrary to what the Department documented in its conclusion, mother did not say that father often calls her a "bitch" or that M has heard him. She said that maternal grandmother has heard him call her a "bitch." M never mentioned that father calls mother names or otherwise verbally abuses her. M did say that father yells, but he also said that mother never seemed afraid.

As noted by the assessment worker, M is thriving at home and at school. His medical needs are being met. He engages in many activities with father and in the community. He (and mother) exhibited no signs of being fearful in the home and M reported that he got along with everyone in the home.

Considering all of the evidence, I find that the Department's decision was based primarily, if not solely upon the 51A reports and not on the information gathered during the response and there was no information gathered during the assessment to support the response conclusion and, therefore, there is no reasonable basis to find that father neglected M or that his actions placed M in danger or posed a substantial risk to his safety or well being.

Conclusion and Order

The Department's decision to support allegations of neglect of M by father was made without a reasonable basis and therefore, the Department's decision is REVERSED.



Anne L. Dale Nialetz,
Administrative Hearing Officer

1/12/2018

Date



Sophia Cho, LICSW
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner