

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
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Commissioner

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IN THE MATTER OF

CV # 2017 0579

FAIR HEARING DECISION

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

Procedural History

On March 29, 2017, the Department received a report which alleged physical abuse of M and neglect of A by the Appellant, their father, after the school nurse observed that M had a visible scratch and bruises and M disclosed that the Appellant picked him up and threw him across the room and into a couch after M closed his sister’s fingers in the door. The Department screened-in the report and conducted a response. On April 20, 2017, the Department made the decision to support an allegation of physical abuse of M and neglect of his younger siblings A, S and V. 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. A hearing was held at the DCF Robert Van Wart Area Office in Springfield on June 29, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; FM, DCF Supervisor; CV, 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 29, 2017

Exhibit B: 51B Report completed on April 20, 2017 by MH

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 M, A, S and V. The mother of M and A is BR. The mother of S and V is JL. At the time of the report in question, M was 8 years old, A was 6 years old, S was 3 years old and V was 1-year old. (Exhibit A, p. 3; Exhibit B, pp. 1, 4)
2. The Appellant was a caregiver for M, A, S and V under Department policy and regulations. (DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00)
3. The Appellant was previously involved with the Department. In 2014, the Appellant

and JL had a domestic incident which led to JL's arrest and to involvement with the Department until May 2015. In January 2017, the family was re-involved with the Department after a domestic dispute between the Appellant and JL which led to the Appellant's arrest. At the time of the report in question, the Appellant, JL and the children received case management services from the DCF Robert Van Wart Area Office. There were no previous concerns for physical abuse of the children. Between May 2015 and January 2017, there were no reports pursuant to M.G.L. c. 119 §51A filed on behalf of the children. The children were visible in the community and participated in extracurricular activities. (Exhibit A; Exhibit B; Testimony of Appellant and FM)

4. There is no indication that the Appellant employed physical discipline with the children. (Exhibit B, pp. 2-4, 8)
5. At the time of the report in question, the Appellant and JL were married and resided in Massachusetts with all the children. BR resided in [REDACTED]. M and A attended school in [REDACTED] where BR resided. The Appellant dropped off M and A each morning to BR and she took them to school. M was in the 2nd grade and A was in Kindergarten. (Exhibit A; Exhibit B, pp. 2, 7; Testimony of Appellant)
6. On or before March 29, 2017, the Appellant was home alone with the children. While he was in the kitchen doing bills, A was in the shower and S was in time-out sitting near the kitchen. M went into the bathroom and then the Appellant heard S screaming.¹ M closed S's fingers in the hinge-side of the bathroom door. The Appellant pushed M out of the way and attended to S, whose fingers were still stuck in the doorjamb. (Exhibit B, pp. 2, 7, 8; Testimony of FM and Appellant)
7. On March 29, 2017, the Appellant took A and M to BR's home before school. BR dropped the children off at school. When M went to school, his teacher noticed he had a scratch on the left side of his forehead and sent M to the nurse. The school nurse observed that M had two bruises on his chest and a mark on the left side of his neck. M disclosed that he caught and "squished"² S's fingers in the bathroom door and the Appellant picked him up under the armpits, threw him toward the couch, and "a metal thing in the couch made the marks". M's disclosure precipitated a response by [REDACTED] DCF workers, who subsequently filed a report with the Department on M's behalf. (Exhibit A; Exhibit B, pp. 3, 5, 7, 8; Testimony of FM and Appellant)
8. The [REDACTED] DCF Workers concluded that one incident did not account for all the marks on M. (Exhibit A; Testimony of FM)
9. The Department screened-in the report and conducted a response. During the screening of the report, the DCF ongoing social worker, supervisor and their Area Program Manager (APM) reviewed the report and the APM spoke with the reporter

¹ The Appellant told the worker he heard "a hurdling (sic) scream" and during the hearing testified that he leapt over a baby gate to get to S (Exhibit B, p. 7)

² M stated that he "on purpose by mistake" closed S's fingers in the door. (Exhibit A)

who met and interviewed the children. A told the reporter that M “got spanked really hard because he slammed S’s fingers in the door on purpose.” The report was screened-in for a 15-day response and the Department determined the ongoing worker would initially follow-up with the family the same day. (Exhibit A, pp. 8, 9)

10. There is no documentation in the record of what, if anything, the ongoing worker observed or learned when she followed-up with the family. (Exhibit B, p. 1)
11. M did not tell BR what happened until after the report was filed. BR told the worker that the Appellant attributed the bruises on M’s chest to roughhousing between the Appellant and M during which M fell on the couch. When BR asked M about what happened, M replied “that it was nothing”. (Exhibit B, p. 4)
12. On April 3, 2017, the DCF Worker interviewed M at home. M had a “slightly visible” mark on his forehead, a “reddish mark” on his neck and told the worker he had some “barely visible” marks on his chest, which the worker did not view. M’s statements regarding the incident are consistent regarding slamming S’s fingers in the door. M’s statements about the Appellant’s actions were inconsistent with what he told ██████████ DCF workers. M told the DCF Response Worker that some of what he told the ██████████ DCF workers was not true. M stated the Appellant did not throw him, but pushed him; that he “hit the floor and slid on the carpet, fell on the couch and hit a metal part on the couch. M explained and tried to demonstrate how he reached down in the couch and got the marks on his chest. M maintained that all the marks came from the same incident.³ (Exhibit B, p. 3; Testimony of FM)
13. A did not reiterate her statements to the ██████████ DCF workers; A told the DCF Response Worker she did not want to tell the worker what the Appellant did and that she was not supposed to talk about what happened.⁴ I find A’s statements unreliable given her age, the fact that she was in the shower at the time the incident occurred and lack of corroboration that the Appellant spanked M. (Exhibit B, p. 3; Testimony of FM)
14. M did not see a pediatrician following the reported incident. S visited the pediatrician for treatment of her fingers. (Testimony of Appellant)
15. The Department did not contact the Appellant until April 3, 2017 because the number provided to the Response Worker was incorrect. The Response Worker scheduled an office visit with the Appellant after normal business hours and then cancelled the appointment because the worker was involved in an emergency on an unrelated case. The next available date for a meeting in the DCF Office was April 20, 2017. (Exhibit

³ FM testified that the Response Worker, MH, felt M’s description [during her interview] “didn’t quite fit” his injuries.

⁴ The Appellant testified that he did not tell A not to talk about the incident and explained that he received advice from a police officer not to talk about what happened when he was released from jail and that his father, a retired police officer, advised the same: “What’s done is done, what’s said is said, it’s over it’s done with don’t continue it on” and the Appellant felt it was important to keep a “state of normalcy” afterward, so did not discuss it.

B, p. 4)

16. On April 20, 2017, the Department supported an allegation of physical abuse of M by the Appellant and neglect of A, S and V by the Appellant. The basis for the Department's decision as to physical abuse was M's disclosure that he was thrown by the Appellant and hit an object that caused injuries on his forehead and chest. The basis for the Department's decision as to neglect was A, S and V's presence during the incident and concern for the children's emotional stability and growth because of witnessing the incident. (Exhibit B, pp. 6, 7; Testimony of FM; 110 CMR 2.00 and 4.32)
17. In contemplating the Appellant's actions, the Department determined that the Appellant was reacting to the circumstance of S's fingers being caught in the door when he pushed M, but that his reaction was "likely inappropriate" because it resulted in an injury.⁵ (Testimony of FM and the Appellant)
18. The Department made the decision to support allegations prior to the Appellant's interview and without respect to his response.⁶ (Exhibit B)
19. On April 20, 2017 at 5:30PM, the DCF Response Worker met with the Appellant at the DCF Office. The Appellant's statements to the worker are consistent with his testimony at the hearing. (Exhibit B, pp. 7, 8; Testimony of Appellant)
20. The evidence supports that M closed his sister's fingers in a doorjamb "on purpose by mistake," that S screamed, and when the Appellant went to her aid he reactively pushed M out of the way which caused M to fall and incur minor injuries. With respect to the Appellant's physical size and focus on his screaming child, it is more likely than not that the Appellant forcefully, albeit reactively and unintentionally so, pushed M out of the way, leading to M's minor injuries. (Fair Hearing record)
21. After a review of the evidence and for the following reasons, I find the Department did not have reasonable cause to support an allegation of physical abuse of M by the Appellant:
 - a) "'Abuse' means the non-accidental commission of any act by a caretaker... which causes, or creates a substantial risk of physical or emotional injury..." (110 CMR 2.00);
 - b) The Appellant forcefully, albeit reactively and unintentionally, pushed M to get to S, whose fingers M closed in the doorjamb and as a result M acquired minor injuries;
 - c) The Department did not demonstrate that the Appellant physically abused M under Department regulations. 110 CMR 2.00 and 4.32

⁵ The Appellant noted he is [REDACTED] tall and weighs [REDACTED] pounds.

⁶ The Response Worker did not enter her contact with the Appellant until April 21, 2017 at 10:11 AM. (Exhibit B, p. 7)

22. 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 A, S and V by the Appellant:

- a) The Department did not demonstrate that the Appellant failed to provide minimally adequate care for A, S and V including minimally adequate emotional stability and growth or neglected the children under Department regulations (110 CMR 2.00 and 4.32), and;
- b) The Department did not demonstrate that the Appellant's actions placed A, S or V in danger or posed a substantial risk of harm to their safety or well-being. (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. 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

"Abuse" means the non-accidental commission of any act by a caretaker upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. 110 CMR 2.00

"Physical Injury" means death; or fracture of a bone, a subdural hematoma, burns impairment of any organ, and any other such nontrivial injury; or soft tissue swelling or skin bruising dependent upon such factors as child's age, circumstances under which the injury occurred, and number and location of bruises; or addiction to drug at birth; or

failure to thrive (FTT). 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

As the father of M, A, S and V, the Appellant is their caregiver under Department regulations. 110 CMR 2.00

The Department supported an allegation of physical abuse of M by the Appellant and neglect of A, S and V by the Appellant. The basis for the Department's decision as to physical abuse was M's disclosure that he was thrown by the Appellant and hit an object that caused injuries on his forehead and chest. The basis for the Department's decision as to neglect was A, S and V's presence during the incident and concern for the children's emotional stability and growth because of witnessing the incident. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant argued that he reactively responded to a distressed child, reactively pushing M aside as he did so and that his reactive actions did not constitute physical abuse or result in neglect to A, S and V.

Physical Abuse of M

This Hearing Officer is obliged to consider the entire administrative record, including evidence that may detract from the support decision. In the instant case, the evidence supports that M went to school with a minor injury his teacher noticed and sent him to the nurse. After speaking with M, the nurse phoned the ██████████ DCF, who responded and interviewed M and observed additional "bruises" on M's chest and filed a report with the Massachusetts DCF and the ██████████ Police Department, where the Appellant and the children resided. The evidence supports that M closed his sister's fingers in a doorjamb and as he responded to S's screams, the Appellant forcefully, albeit reactively and unintentionally, pushed M out of the way and M fell and acquired minor injuries. There is no indication that M required medical attention for his injuries. There are no previous concerns for physical abuse of the children or indication, that the Appellant utilized physical discipline, or that the reported incident was an intentionally administered act of physical discipline. For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer finds the Department's decision that the Appellant physically abused M was not made in accordance with Department regulations. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); see Wilson v. Department of Social Servs., 65 Mass.App.Ct. 739, 744-745 (2006)

Neglect of A, S and V

Regarding allegations of neglect of A, S and V, this Hearing Officer is obliged to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that the Appellant neglected A, S and V. In the instant case, the Department's finding of neglect rests upon the Appellant's actions during the reported incident, which the Department considered like a physical altercation between caregivers and because the children witnessed the event, it was likely to affect their emotional stability and growth. There is no evidence to support that A or V were upset by what they witnessed. S suffered acute distress due to M closing her fingers in the door, but otherwise there was no indication that she suffered emotional distress or instability because of the Appellant's actions. For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision that the Appellant neglected A, S and V 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 placed A, S or V in danger or posed a substantial risk to their 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 an allegation of physical abuse on behalf of M and support allegations of neglect on behalf of A, S and V was not in conformity with Department regulations or made with a reasonable basis, therefore the Department's decision is REVERSED.

4-30-18
Date

Maura E. Bradford
Maura E. Bradford
Administrative Hearing Officer

Nancy S. Brody
Nancy S. Brody, Esq.
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner