

**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 )  
 )  
 C.P. ) **FAIR HEARING DECISION**  
 )  
 FH # 2017-0701 )

The Appellant in this Fair Hearing is the mother of the subject child who will be referred to as the Appellant or CP. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegations of neglect of the child (N) pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On April 13, 2017, the Department received a 51A alleging the neglect of infant (M) by the Appellant. The Department conducted a response and, on May 9, 2017, the Department made the decision to support the allegation of neglect. The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on August 24, 2017, at the DCF Lynn Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Ms. Lisa Henshall	Fair Hearing Officer
Ms. C.P.	Appellant (mother)
Ms. A.M.	DCF Response Worker
Ms. S.T.	DCF Area Program Manager (APM)

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this matter, having no direct or indirect interest, personal involvement, or bias in this case.

The Fair Hearing was recorded pursuant to DCF regulations. 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

**For the Department:**

Exhibit A Child Abuse/Neglect Report dated 3/23/17

Exhibit B Child Abuse/Neglect Response dated 5/9/17

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

**Issue to be Decided**

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, 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, 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 subject child of the Fair Hearing was (M), who was a newborn [REDACTED] at the time of the report. (Exhibits A & B)
2. The Appellant was the mother of the child; therefore, she was a caregiver pursuant to Departmental regulation 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16. (Exhibit A; Exhibit B; Testimony of the Appellant)
3. This was the family's first involvement with the Department. There was a six year old unreported child in the home as well. (Exhibit B, p. 1)
4. The Department received a 51A report on March 23, 2017, pursuant to M.G.L. c. 119, §51A, alleging neglect of the newborn by the Appellant. There were concerns that the child was exposed to marijuana as the Appellant tested positive for marijuana throughout her pregnancy. The report was screened in, pursuant to M.G.L. c. 119, §51B, and assigned for a response. (Exhibit A, pgs. 3 & 6; Exhibit B. p. 2; Testimony of the Response Worker)
5. It was undisputed that the Appellant tested positive for marijuana while she was pregnant with the child. The Appellant tested positive for marijuana on August 25 & October 26, 2016 and January 13 & 26, 2017. (Testimony of the Response Worker; Testimony of the Appellant)

6. The Appellant acknowledged that prior to August 25, 2016, when she learned she was pregnant; she had consumed high amounts of "THC." The Appellant stopped smoking marijuana when she became aware she was pregnant. (Testimony of the Appellant)
7. The Appellant stated that she tested positive for marijuana in October 2016 as it had remained in her system from August 2016. The Appellant "unintentionally" ingested a brownie that contained marijuana over the holidays. The Appellant disputed that she willfully ingested marijuana after learning of her pregnancy. (Exhibit B, p. 3; Testimony of the Response Worker; Testimony of the Appellant)
8. The Appellant stated that she tested positive for marijuana in October 2016 as it had remained in her system from August 2016. The Appellant "unintentionally" ingested a brownie that contained marijuana over the holidays. The Appellant disputed that she willfully smoked marijuana after learning of her pregnancy. (Exhibit B, p. 3; Testimony of the Response Worker; Testimony of the Appellant)
9. The Appellant believed that because of her large stature the marijuana remained in her system longer than an individual of average size. There was no medical evidence submitted to support her claim. (Exhibit B, p. 2; Testimony of the Response Worker)
10. As defined by Department policy the child was a substance exposed newborn. (Fair Hearing Record; DCF protective intake policy #86-015 p. 28, revised February 28, 2016)
11. At the time of the child's birth neither his urine nor meconium tested positive for marijuana. There were no other concerns about the child's health. (Testimony of the Appellant; Exhibit B)
12. The Department had no concerns with respect to the Appellant's home. There was food in the home, a crib and other essential baby items. (Exhibit B, p. 3)
13. There was no other evidence presented to indicate that there were any protective concerns about the new newborn. (Fair Hearing Record)
14. At the end of its response, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department based this determination on the Appellant's use of marijuana during her pregnancy and the Appellant's positive drug screen for marijuana. The Department concluded this constituted neglect as defined by its regulation and that the Appellant's inactions posed a substantial risk to the child's well-being. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
15. Based on the credible evidence, I find that the Department did not have reasonable cause to believe that Appellant failed to provide the child with minimally essential care per the Department's definition of neglect and that the Appellant's actions or inactions did not place the child in danger or pose a substantial risk to the child's safety and well-being. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
  - a) The Appellant ingested marijuana while she was pregnant with the child;

- b) The child was a substance exposed newborn;
- c) The Department had no concerns about the home and noted the presence of a crib, diapers and other necessary baby items;
- d) The Department did not provide any evidence that the Appellant failed to provide the child with minimally adequate care or that there were any protective concerns.  
(Exhibit B; Fair Hearing Record; DCF protective intake policy #86-015 p. 28, revised February 28, 2016; See Analysis)

### Applicable Standards

A support finding of abuse or neglect requires that there be reasonable cause to believe that a child(ren) 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 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 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

A “caregiver” means a child’s (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child’s health or welfare, and (e) 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 baby-sitting), a foster home, a group care facility, or any other comparable setting. As such, “caregiver” includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The “caregiver” 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 himself/herself a child (i.e. baby-sitter). 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

“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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

A "Substance Exposed Newborn" (SEN) is defined as a newborn who was exposed to alcohol or other drugs in utero ingested by the mother, whether or not this exposure is detected at birth through a drug screen or withdrawal symptoms. A SEN may also be experiencing Neonatal Abstinence Syndrome (NAS), which are symptoms and signs exhibited by a newborn during withdrawal. NAS is a subset of SEN. Fetal Alcohol Syndrome (FAS) as diagnosed by a qualified licensed medical professional is also a subset of SEN. 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, (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 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

### Analysis

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

The Appellant, the mother of the child, was a "caregiver," pursuant to Departmental regulation. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant contested the Department's decision to support the allegation of neglect on behalf of her child. The Appellant argued that the supported decision of neglect in this case should be reversed. The appellant acknowledged that she had smoked large amounts of marijuana prior to realizing she was pregnant. The Appellant argued that positive screen in October 2016 was a result of her physical size and the amount of marijuana had had previously been ingesting. After that she mistakenly ate a brownie that contained marijuana. The Appellant argued that the urine screens were taken without her consent. The Appellant stated she was sorry for what she did but that her child was doing well and was not harmed. The child did not test positive for marijuana and neither did his meconium.

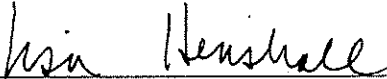
The Department argued that the Appellant marijuana use while she pregnant with the child met the definition of failing to provide at least minimal essential care. However, while the child was a

substance exposed newborn there was not additional evidence that he was neglected. The child did not test positive for marijuana and experienced no signs or symptoms of withdraw. The Appellant had all of the necessary provisions to the care for the child and there was no evidence of any protective concerns. There was no evidence to indicate that the Appellant did not provide her child with minimally adequate care and that the Appellant's actions or inactions did not place this child in danger or pose a substantial risk to his overall safety and well-being. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16


Based on a review of the evidence, presented in its totality, this Hearing Officer finds that there was not reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulations. (See Findings)

**Conclusion and Order**

The Department's decision to support the 51A report for neglect of the child (M) by the Appellant is **REVERSED**.

  
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Lisa Anne Henshall BC  
Fair Hearing Officer

May 1, 2018  
Date

  
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Barbara Curley, Supervisor  
Fair Hearing Unit

\_\_\_\_\_  
Date

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Linda S. Spears  
Commissioner