

**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 )  
( JP )  
( )  
( FH # 2017-0705 )  
( )

**HEARING DECISION**

**Procedural History**

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

On April 7, 2017, the Department received a 51A report from a mandated reporter alleging neglect of Ja, B and T (hereinafter "Ja" or "B" or "T" or "the children") by the Appellant, JP. On April 11, 2017, a second 51A was filed regarding the same incident. On May 3, 2017, a third 51A was filed alleging neglect of the children by EP, who is JP's wife. These three reports were incorporated into one 51B response. The allegations of neglect of the children by the Appellant were subsequently supported. The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06

The Fair Hearing was held on October 17, 2017, at the Department of Children and Families' South Central Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
JP	Appellant
JK	DCF Response Worker
SG	DCF Supervisor

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 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, dated 4/7/2017
- Exhibit B: 51A Report, dated 4/11/2017
- Exhibit C: 51A Report, dated 5/3/2017
- Exhibit D: 51B Response

For the Appellant:

- Exhibit 1: Printout of email chain.

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. JP is the biological father of Ja, B and T. EP is the biological mother of the children. At the time of the 51A reports the children were the following ages: Ja was five(5), B was three (3), and T was two (2). The Appellant was a caregiver pursuant to Departmental regulations and policies. 110 CMR 2.00; DCF Protective Intake Policy #86-015 Rev. 2/28/16 (Exhibit A pp.1-3; Exhibit B pp.1-3; Exhibit C pp.1-3; Exhibit D pp.1-3; Testimony of JK; Testimony of Appellant)
2. On April 7, 2017, the Appellant and EP had a confrontation about parenting choices for the children. The confrontation became physical, during which time JP stepped on EP's foot and placed her in a "bear hug" while they were in the bathroom. The

children did not observe most of this confrontation, only B might have seen some of the "bear hug". The Appellant then left the home and went to a gym to workout. EP went to the police station and filed a police report and obtained a 209A restraining order as a result of the incident. The Appellant was arrested. The 51A's filed on 4/7/2017 and 4/11/2017 stemmed from this incident. (Exhibit A pp.1-3; Exhibit B p-13; Exhibit D pp.3-7; Testimony of JK; Testimony of Appellant)

3. The reports were screened in and assigned for a non-emergency response, pursuant to M.G.L. c. 119, §51B. On May 9, 2017, the Department supported the allegations of neglect of Ja, T and B by the Appellant at the conclusion of its response. The allegations were supported because of domestic violence and medical neglect. The Department found they had reasonable cause to believe the Appellant failed to provide minimally adequate care and medical needs of the children and his actions placed the children in danger and/or posed significant risk to their safety and well-being. (Exhibit D; Testimony of JK)
4. There was no evidence of any previous issues of domestic violence between the Appellant and EP. (Exhibit D; Testimony of JK; Testimony of Appellant)
5. During the 51B Response, the children's pediatrician informed the Department that the children had not had any vaccinations for approximately two (2) years. B was also overdue for a physical examination, and a follow-up visit for a high lead level test. EB reported it was the Appellant's wish not to have the children immunized. (Exhibit C p.1-3, Exhibit D p.4-8, Exhibit 1, Testimony of Appellant)
6. At the Fair Hearing, the Appellant testified it was EB and her family who had refused to bring the children to their pediatrician and obtain immunizations. In support of this, the Appellant submitted emails EB received from their family's church. (Testimony of Appellant; Exhibit 1)
7. In light of the totality of the evidence presented in this case, I find that the Department did not have reasonable cause to support allegations of neglect of the children by the Appellant for the following reasons:
  - a. The children did not observe the majority of the alleged incident, including the physical confrontation;
  - b. There was no evidence the children were impacted by the alleged incident;
  - c. There was no evidence the Appellant failed to provide minimally adequate supervision or emotional stability and growth during the alleged confrontation;
  - d. A failure to immunize a child was not sufficient for finding the Appellant failed to provide minimally adequate medical care or neglect;
  - e. Ja and T had missed a appointments, however both had appointments scheduled at the time of the 51B response for May 23, 2017 and June 2, 2017, respectively. B was due for both a medical appointment and a follow-up for lead levels, which her pediatrician stated a lack of follow-up placed B at any

risk of injury; however B also had an appointment scheduled at the time of the 51B Response for August 29, 2017;

f. The children's pediatrician did not file a 51A regarding the children's lack of medical appointments.

8. Therefore, the Department did not have sufficient evidence to support a finding that the Appellant neglected the children, Ja, T and B under Departmental regulations and policies. 110 CMR 2.00 and 4.32(2); DCF Protective Intake Policy #86-015 Rev. 2/28/16

### Applicable Standards

A "support" finding of abuse or neglect 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. 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". A caregiver is 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

“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

“Domestic Violence” means a pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts. 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 supported an allegation of neglect of the children by the Appellant due to a confrontation between the Appellant and their mother, EF; a lack of immunizations; and missed pediatrician appointments. However, the Department did not provide sufficient evidence the children were or could have been impacted by the April 7, 2017 confrontation. While there was a physical confrontation between the Appellant and EF, there was insufficient evidence of ongoing behaviors that could be construed as domestic violence. (See, definition of “Domestic Violence” above) Therefore, there was insufficient evidence that the Appellant failed to provide minimally adequate supervision, emotional stability and growth, or other care as a result of the incident.


In regards to medical care, the failure to immunize the children was not sufficient for a finding of neglect. While the children’s pediatrician noted B’s lead levels needed to be monitored, the pediatrician did not file a 51A as a result of the situation. It was

reasonable to infer the pediatrician did not feel the Appellant failed to provide minimally adequate medical care. While some of the children had missed appointments, all of them were scheduled for future appointments at the time of the 51B response to take place after the response time. Therefore, there was insufficient evidence that the Appellant failed to provide minimally adequate medical care for their children.

Based upon a review of the evidence presented, in its totality, this Hearing Officer finds there was not reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulations. Considering all of the evidence and the circumstances, I find that there was no reasonable basis for finding that the Appellant neglected the children, Ja, B or T.

**Conclusion and Order**

The Department's decision to support the allegation of neglect of Ja, B and T by the Appellant is here by **REVERSED**.

Nicholas Holahan   
Nicholas Holahan  
Administrative Hearing Officer

3/14/18  
Date

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

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Date

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Linda S. Spears  
Commissioner