

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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BOSTON, MASSACHUSETTS 02111

LINDA S. SPEARS,
COMMISSIONER

Voice: (617) 748-2000
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IN THE MATTER OF)
)

N. B.)
)

FH #2017 0960)
)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Mr. NB ("the Appellant"). The Appellant appeals the decision of the Department of Children and Families' ("the Department" or "DCF") to support a report of neglect pursuant to Mass. Gen. L., c. 119, sec. 51A. Notice of the Department's decision was sent to the Appellant and he filed a timely appeal with the Fair Hearing Office on July 28, 2017.

The Fair Hearing was held on September 26, 2017, at the DCF VanWart Area Office. The hearing record remained open until October 10, 2017, in order for the Appellant to submit additional documentary evidence, however none was received. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esq.
NB
TK

Administrative Hearing Officer
Appellant
DCF Response Worker

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 pursuant to DCF regulation 110 CMR 10.26.

The following documents were submitted into the record at the Fair Hearing:

For the Department:

- Exhibit 1: 6/26/17 51A Report
- Exhibit 2: 6/27/17 51A Report
- Exhibit 3: 6/30/17 51A Report
- Exhibit 4: 7/18/17 51B Report

The Appellant did not submit documentary evidence into the hearing record.

Statement of the Issue

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 investigation, 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 of human trafficking: Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05.

Findings of Fact

1. The subject children of this hearing are the following: (See, Exhibit 1, p1.)
 - a) The male child, "J", eleven (11) years old;
 - b) The male child, "M", eight (8) years old;
 - c) The female child, "E", three (3) years old; and
 - d) The female child, "C", two (2) years old.¹
2. The Appellant is the biological father of C, and the step-father of J, M, and E. (Testimony of Appellant.) The Appellant was a caregiver, as defined by the Department's policy. Protective Intake Policy #86-015, rev. 2/28/16
3. The mother of all the children is Ms. MB ("mother"). (Exhibit 1, p.5.)
4. The DCF history for the family members includes the following relevant information: (See, Exhibit 1, p.10.)

¹ These were the children's ages at the time of the 51A filings in this matter.

- a) January, 2009—Support for the neglect of the children by the mother and the father of M and E (Mr. RR)² due to issues of domestic violence. There were significant mental health concerns for both mother and Mr. RR at that time.
 - b) February and March, 2014—Support for neglect of J and M by mother and the Appellant due to inappropriate discipline (locking the children in their bedrooms and the use of soap in their mouths).
5. On June 26, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A, alleging the physical abuse and neglect of all four children by the Appellant. The reporter (Reporter #1) appeared in person at a DCF office. The allegations included ongoing domestic violence in the relationship between the Appellant and the reporter; DCF staff viewed rug burns on the reporter from allegedly being thrown to the ground and dragged across the floor. The reporter also alleged physical violence and verbal abuse by the Appellant of the children. The Appellant threatened to strangle C on more than one occasion; he made fun of the children, and spoke badly about the reporter to the children. The Appellant displayed control and anger issues with the reporter; he has called the reporter numerous times while the reporter was at work, he has destroyed objects in the home; the Appellant kicked a hole in the bedroom door and took the Xbox when he suspected the reporter was going to report him to the authorities. DCF staff viewed the reporter as "crying and fearful" when making the disclosures. (Exhibit 1, pp.3 and 11.)
 6. On June 27, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A, again alleging the physical abuse and neglect of all four children by the Appellant. The mother informed the reporter (Reporter #2) of the same information as in the above 51A report with the additional details that the Appellant became physical with the mother on May 3rd and June 20th and the four subject children witnessed the incidents; the Appellant sent text messages to the mother threatening physical abuse to her and the children. Reporter #2 saw "rug burns and bruises" on mother's wrists. (Exhibit 2, p.3.)
 7. The Department screened-in both of the 51A reports above for a non-emergency response. (Exhibit 1, p.11; Exhibit 2, p.12.)
 8. On June 27th, the mother was granted a restraining order against the Appellant for six months. While at court, the Appellant "admitted to putting his hands on her" but argued it was not in an aggressive way. The Court found the Appellant not credible after seeing physical evidence on the mother's body and threatening text messages on her phone, as well as photos of old injuries inflicted upon the mother. (Exhibit 2, p.3; Exhibit 1, pp.10 and 11.)
 9. At her DCF interview on June 28th, mother explained more about the Appellant's cycle of power and control in the domestic violence in their relationship, and about his anger: (See, Exhibit 4, pp.2—3.)

² Exhibit 4, p.4.

- a) The mother expressed regret she did not leave the Appellant sooner; she stayed on the phone with her mother the entire ride to the police station so she would not change her mind to make a report. She was fearful to stay in the family home due to the Appellant knowing their location.
 - b) The previous Sunday there was a joint birthday party for the Appellant and M, however the Appellant would not go as one of the kids had spilled something on his shorts; this started an argument in the household. Thereafter, the Appellant got angry when his birthday card did not contain any money.
 - c) The Appellant would call mother's workplace incessantly to the point that no one would pick up the phone if they knew it was him; he would also come up with reasons to make her have to leave work.
 - d) The Appellant did not work and did not help with the house or with the children when mother arrived home from work; he would blame the condition of the house on her, and threaten mother that he would call DCF and she would lose C (his child).
 - e) The mother tried to leave the Appellant two months earlier but was threatened by the Appellant and his mother that they would get custody of C in Court.
 - f) The Appellant and mother were together 3-1/2 years; after 1-1/2 years, the Appellant became "angry."
 - g) When they viewed domestic violence in the home by the Appellant, E would exclaim, "Stop yelling!" J would tell the Appellant to stop, or he would try to get in between, and the mother has told J and M to "walk away to prevent them from getting hurt."
10. The DCF Response Worker ("RW") viewed holes in the walls in the home, a bedroom door off its hinges as well as a missing window pane on the front door, all attributed to the Appellant's actions. (Exhibit 4, pp.2 and 5.)
 11. J denied feeling afraid when the Appellant and his mother argued, and denied being physically disciplined by either of them. He saw the Appellant "push and drag" his mother; he told him to stop. He witnessed the Appellant "hit and punch things a lot...it was because of the little things...he was scared for his mom's safety because she takes care of them." When asked, J's only worry was about his mother. (Exhibit 4, p.4.)
 12. M corroborated that on the previous Sunday, one of the children spilled juice on the Appellant's shorts, and then "there was a fight about his birthday card not having any money in it; the following day, the Appellant "slammed the fridge." M denied being physically disciplined by either his mother or the Appellant. M denied being afraid when they argued, but stated, "he [M] gets the girls out of the room." He saw the Appellant push his mother "because of the Xbox." (Exhibit 4, pp.4—5.)
 13. The DCF RW viewed E and C (ages 3 and 2, respectively) but did not interview them due to their young age. (Exhibit 4, p.5.)

14. On June 30th, the mother telephoned the DCF RW upset with new information that she believed the Appellant called her workplace (a restaurant) anonymously to report the mother had been stealing money by incorrectly ringing in food items and pocketing the cash; she was going to be investigated by the corporate office. In addition, the Appellant learned that her ex-husband (Mr. RR) was watching the children for a day and made threats to an email account he knew mother had access to, that he was going over to the house to kill Mr. RR "and did not care about the consequences." The mother was fearful and was going to the Court that day to report this. (Exhibit 4, pp.5 and 6.) She and the children stayed elsewhere the following weekend. (*Id.* at p.8.) The DCF RW worked with mother on emergency domestic violence shelter options. (*Id.* at pp.7—10.)
15. On that same day, June 30, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A, by Reporter #3, alleging neglect of all four children by the mother for allowing her ex-husband, Mr. RR, to move into the home just days after the mother filed for a restraining order against the Appellant; Mr. RR has DCF history of abuse and neglect of his children. The Appellant alleged mother was "unfit and neglectful" in that she changed men often, failed to bring the children to the doctor when sick and did not supervise the children properly. The Appellant also alleged that mother sexually assaulted him in front of the children by "putting her finger up his butt." J allegedly told mother to stop. (Exhibit 3, p.3.) This 51A report was added to the ongoing response. (*Id.* at p.12.)
16. There is no evidence that the children, J and M, witnessed sexual touching by the mother of the Appellant. (Testimony of TK.)
17. The Appellant has mental health diagnoses but had admittedly stopped going to therapy and had stopped taking his medications (Effexor and a mood stabilizer) seven months prior to the response. (Exhibit 4, p.12.)
18. The Appellant is not deemed credible in this matter:
 - a) At the time of his DCF interview, and at the fair hearing, the Appellant "presented as if he was a victim" of domestic violence by the mother; his arguments were not believable. He acknowledged that he called the mother "an absurd amount" (Testimony of Appellant) of times while she was at work when C was sick, and admitted he could have, but did not, call the pediatrician himself to help care for the child. He acknowledged being the stay-at-home parent but stated that the mother "belittled" him and made him feel "useless" and did not help with the care of the house or the cooking. The Appellant alleged that the mother sustained the marks/bruises on her wrists when "she was hanging on to his pants, trying to put her finger in his butt, she got dragged when he was trying to get away because she wouldn't let go..." (Exhibit 4, pp.11-12.)
 - b) The Appellant alleged that the mother was stealing money from her workplace, was back together with Mr. RR, and also alleged the mother sexually assaulted him in front of the children, but denied filing a 51A report with the same

- information. (Exhibit 4, p.11—12.) Again, the Appellant is not believable in this regard as these are the exact statements found in the 51A filed by Reporter #3.
- c) Despite evidence to the contrary, the Appellant denied he was responsible for the broken window pain on the door; he also insisted that there were no holes in the walls of the home and that some doors were unhinged because they "pop off" when they are slid back and forth.
19. The Appellant was charged criminally with Assault of the mother. (Exhibit 4, p.12.)
20. On July 18, 2017, the Department supported the aforementioned report, in accordance with M.G.L. c. 119, s. 51B, for neglect on behalf of all four children by the Appellant due to the children being witness to ongoing domestic violence in the home perpetrated by the Appellant. The two oldest children reported domestic violence, the DCF RW viewed damage to the home due to the ongoing violence, and the mother presented with visible injuries as a result of the domestic violence. (Exhibit 4, pp.13—15.)
21. The Department opened the family for a Family Assessment and Action Plan following the support decision in order to further assess the family for services. (Exhibit 4, p.15.)
22. At the hearing, the Appellant acknowledged that he had a "yelling problem" and that he and the mother "buted heads" and were not good for each other. At the hearing, the Appellant verbalized his realization that his yelling was neglectful to the children; however he continued to deny he physically abused the mother. By the date of the hearing, the Appellant was once again engaged in therapy but was not medicated. His diagnosis at that time was Depression. (Testimony of Appellant.)
23. Based upon a review of the evidence presented in its entirety, the Appellant was unable to take those actions necessary to provide all four children with minimally adequate emotional stability and growth, and the actions/inactions by the Appellant posed a substantial risk to the children's safety and well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16; See, Analysis.)

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. 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 s. 51A. Id. at 63. 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.

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

"Caregiver"

- (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 person entrusted with responsibility for a child’s health or welfare, whether in the child’s home, 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. *Protective Intake Policy No. 86-015* (rev. 02/28/2016)

To prevail at a Fair Hearing, an Appellant must show based upon all evidence presented at the hearing, 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/or statutes and/or case law 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. If the challenged decision is a supported report of abuse or neglect, the Appellant must show 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

As the father of C and the step-father of J, M and E, the Appellant was a "caregiver" pursuant to DCF Protective Intake Policy #86-015, rev. 2/28/16.

The family's DCF history included domestic violence in the relationship between the mother and the father of the older children, Mr. RR; the Appellant was aware the children had been exposed to the violence. The Appellant acknowledged his yelling problem and correlation of that to his neglect of the children, and also acknowledged that he and the mother were not good for each other due to them butting heads. The Appellant's ongoing denial of physical abuse of the mother was not believable due to the evidence in this case, including the mother's injuries and the statements of the children, J and M. The children were present for and aware of the ongoing domestic violence in the home, evidencing risk to the children's safety and well-being, and were most concerned for their mother and their younger siblings, also evidencing the effect of the violence on their emotional stability and growth.

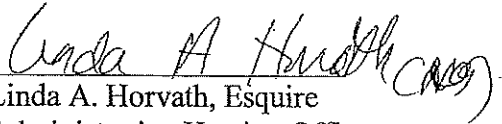
Our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979). As such, the Department was appropriately concerned in the instant case regarding the children's exposure to domestic violence in the home by the Appellant.

In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Department had reasonable cause to support the allegation of neglect of the children by the Appellant for failure to provide minimally adequate emotional stability and growth to the children; in addition, his actions posed a substantial risk to the children's safety and well-being.

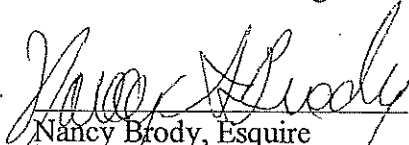
Conclusion

The Department's decision to support the 51A reports of June 26, 2017, and June 27, 2017, for neglect by the Appellant on behalf of J, M, E and C is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county in which the Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Linda A. Horvath, Esquire
Administrative Hearing Officer

Dated: 5-7-18


Nancy Brody, Esquire
Supervisor, Fair Hearing Unit