

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6th Floor
BOSTON, MASSACHUSETTS 02111**

**LINDA S. SPEARS,
COMMISSIONER**

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

D. C. & J. N.)
)

FH #2017 1184)
)

HEARING DECISION

Procedural Information

The Appellants in this Fair Hearing are Ms. DC (or "mother") and Mr. JN (or "father"; collectively as "the Appellants"). The Appellants appeal 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 Appellants on August 25, 2017, and they filed a timely appeal on September 18, 2017.

The Fair Hearing was held on November 16, 2017, at the DCF Holyoke Area Office. The record remained open until December 1, 2017, in order for the Appellants to supplement the hearing record with an additional written statement. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esq.
AC
HP
JN¹
DC
JN

Administrative Hearing Officer
DCF Response Worker
DCF Supervisor
Appellant
Appellant
Subject Child

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.

¹ Mr. JN signed into the fair hearing as Mr. AN.

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

For the Department:

- Exhibit 1: 8/15/17 51A Report
- Exhibit 2: 8/25/17 51B Report
- Exhibit 3: Photograph (copy)

The Appellants 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 female child of this hearing is "J" ("the child"), who was eight (8) months old at the time of the subject 51A filing referenced below.² (Exhibit 1, p.1.)
2. The Appellants are the biological parents of the child and were living together as a couple at the time of the 51A filing and at the time of the hearing. (Exhibit 1, pp.1—3.)
3. On August 15, 2017, the Department received a report pursuant to M.G.L. c. 119, s. 51A, from a mandated reporter, alleging neglect of the child by the Appellants due to the following concerns seen in the home on August 14th: 1) Hoarding—dirty dishes piled up high, wrappers on the floor, and items all over the kitchen and living room floors, which is a safety risk to the crawling child; 2) Mother's mental health—Ms. DC informed the reporter that when she struggles with depression, she closes herself in her room with the child all day and does nothing to upkeep the home; 3) The reporter "noted marijuana paraphernalia on the living room floor," thought to be "a joint", in the area where the child crawls; the child was in her playpen when reporter

² The child was in attendance at the hearing at eleven months old. (See, hearing record.)

was at the home; the reporter was concerned the parents were smoking marijuana inside the apartment; the landlord complained he would not renew the Appellants' lease due to the marijuana smell coming from the apartment. (Exhibit 1, pp.2—3.)

4. The Department screened-in the 51A report for an emergency response due to safety concerns for the child. (Exhibit 1, p.6.)
5. The mother has a DCF history as a child. (Exhibit 1, p.5.) The father does not have a DCF history. (Exhibit 2, p.1.)
6. The Reporter had been working with the family for the previous three months as part of a home stabilization program with the goal of the family maintaining their own apartment within a year's time. Although the 51A report indicates the Reporter had previously spoken to the mother regarding the condition of the home, the Reporter informed DCF "this was the first time the condition of the home was concerning" for him/her. (Exhibit 2, p.1.) Not noted in the 51A report either is that the morning of the 51A filing was the first time the Reporter and her supervisor performed a "walk through" of her home. (*Id.* at p.2.)
7. The DCF Response Worker ("RW") made an unannounced visit to the home on the day of the 51A filing. The RW found, "dishes in the sink, several water bottles...on the counter and the table was covered with kitchen electronics and dishes." The RW did *not* find the floors covered with items as described in the 51A report or a condition of "hoarding." There was no odor of marijuana in the home. The RW also viewed the home on the following day (August 16th) without any concerns. (Exhibit 2, pp.2 and 3; Testimony of AC.) There were "no reportable conditions" in the family's home. (Testimony of AC.)
8. During the course of the DCF response, the Reporter backed off of the original allegations stating "the conditions of the home didn't meet the standards of hoarding" nor was it unsanitary, and as such, the Reporter did not take a picture of the conditions of the home, just a picture of the "joint." The Reporter simply felt the condition of the home was in decline. (Exhibit 2, p.6.)
9. The mother has the diagnoses of Depression, Anxiety and ADHD³ and has been in therapy for many years. (Exhibit 2, pp.1 and 3.) She was medicated from the age of 7 until 2012, but stopped due to negative drug reactions. (Exhibit 2, p.2.)
10. The father has full-time employment, and is not as available as the mother to help with the upkeep of the home. He acknowledged smoking marijuana outside of the apartment building; he denied smoking in the home or around the child. The mother does not smoke often and denied smoking in the home or around the child. They keep their marijuana in a lock box in their bedroom. (Exhibit 2, p.2.) They denied there was a joint on their living room floor surmising it was a filter; they also denied

³ Testimony of Ms. DC.

the child crawls on the living room floor but only on the bedroom floor. (Testimony of Appellants; Exhibit 2, p.2.)

11. Though the Reporter took a picture of the "joint" (s)he presumably saw on the floor of the Appellants' living room (See, Exhibit 3), the Reporter did not bring it to the attention of the mother while in the home, and did not state anything negative about the condition of the home to her while there. (Testimony of Ms. DC; Exhibit 2, p.5.) The Appellants saw the photo at the hearing for the first time. The photo is not entirely clear but appears to be a filter and not a joint. The Appellants denied it is a photo of a joint but insisted it is indeed the kind of filter they use. (Testimony of Appellants.)
12. The Appellants and the child all have asthma. The Appellants' had complained to their landlord many times that the upstairs neighbor smokes and sells marijuana however the landlord accused them as the tenants who are smoking. (Exhibit 2, p.2; Testimony of Appellants.) There is evidence the landlord was searching for reasons to not renew their lease and was harassing the Appellants so they would leave the building. They had just received an eviction notice the day before the hearing; the Appellants had been actively looking for a new apartment; (Exhibit 2, pp.2 and 3; Testimony of Appellants.)
13. The apartment and landlord issues were heightening the mother's anxiety and she was feeling "overwhelmed" during the course of the response. The mother was going to speak with her therapist about possibly staying at her grandmother's home for a respite from the issues. (Exhibit 2, pp.3 and 5.)
14. The mother's therapist is Ms. DD ("therapist"). The therapist did not have any concerns for the mother's mental health or her care of the child. The mother attended therapy regularly with the child. She observed the Appellant as being attentive and caring and giving the child the highest priority. The therapist opined the mother is "able to advocate for herself and get help when she needs to." (Exhibit 2, p.5.)
15. The RW viewed the child during her home visits and had no concerns. (Exhibit 2, p.2.)
16. The child's pediatrician did not have any concerns. (Exhibit 2, p.4.)
17. The undersigned hearing officer viewed the Appellants to be extremely loving, caring and attentive to their child during the hearing; the child was extremely well-behaved and calm. (See, hearing record.)
18. The Appellants were receptive to a DCF referral for early intervention services for the child. (Exhibit 2, p.6.) DCF wanted to put a parent-aide in place for the family (Id. at p.7), and Ms. DC was interested in babysitting services. (Testimony of Ms. DC.)

19. The DCF RW intended to "unsupport" the allegation of neglect however that decision was changed to a "support and open" by higher management for "clarification" of the issues. (Exhibit 2, p.7; Testimony of HP.)
20. On August 25, 2017, the Department supported the aforementioned report, in accordance with M.G.L. c. 119, s. 51B, for neglect on behalf of the child by the Appellants due to mother's mental health issues (for which there is a long history) possibly impacting her care of the then 8-month-old child and her ability to keep a safe and clean home environment. DCF opined that the father is as responsible for the upkeep of the home as the mother. (Exhibit 2, pp.6 and 7; Testimony of AC; Testimony of HP.)
21. The Department did not have reasonable cause to believe that the Appellants failed to provide minimally adequate care for the child and there was no evidence that any action/inaction on the part of the Appellants' placed the child in danger or posed a substantial risk to her safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16. (See, Analysis.)

Applicable Standards

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 of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16.

A "caregiver" is defined, in part, as: (1) A child's parent, stepparent, guardian, or any household member entrusted with the 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." 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.

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 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 of human trafficking." Protective Intake Policy #86-015, rev. 2/28/16. 110 CMR 10.23.

Analysis

As the child's parents, the Appellants are deemed "caregivers" pursuant to DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Department’s reasoning for the support decisions of neglect by the Appellants is not supported by evidence and is not reasonable based upon the facts of this matter as stated herein. First, according to DCF, there was no reportable condition in terms of safety/hazards in the home on the day of the RW's unannounced home visit. In addition, the Reporter backed off of his/her initial report of hoarding and/or issues with the condition of the home. Second, there is no evidence that mother's mental health issues were interfering with her ability to care for the child. She has managed her mental health for years with therapy; medication was not suitable for her at the time of the response. Her current therapist did not have any concerns for Ms. DC's parenting. Third, there is no evidence of a nexus between the Appellants' marijuana use and their care of the child, and no evidence that the item found on the carpet in the apartment was anything more than a filter used by the Appellants. There is evidence that the Appellants' landlord was not assisting them in their complaints about the neighbor who was smoking marijuana in

the building, and was making things difficult for the Appellants with the hope of getting them out of the apartment.

In light of the totality of evidence in this case, as discussed above and in the detailed Findings of Fact, the Appellants have shown by a preponderance of the evidence that the Department did not have reasonable cause to support the allegation of neglect of the child by either Appellants in this matter, and there was no action or inaction on the part of the Appellants that placed the child in danger or posed a substantial risk to the child's safety or well-being.

Conclusion

The Department's decision to support the 51A report of August 15, 2017, for neglect on behalf of the child by Ms. DC is **REVERSED**.

The Department's decision to support the 51A report of August 15, 2017, for neglect on behalf of the child by Mr. JN is **REVERSED**.

Linda A. Horvath

Linda A. Horvath, Esquire *BC*
Administrative Hearing Officer

June 5, 2018
Date

B. Curley

Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner