

**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 )  
                          ) )  
                  DS           ) **FAIR HEARING DECISION**  
                          ) )  
          FH # 20171188    ) )  
                          ) )

The Appellant in this Fair Hearing was DS (hereinafter "DS" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On September 1, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of M (hereinafter "M" or "the child") by her mother, KT, and DS: An emergency response was initiated and an emergency removal of M took place via a 51B3. M was placed in foster care. Since 2014, M was in the conditional custody of her father, DC (hereinafter "DC") through a Care and Protection Petition filed on her behalf. On September 6, 2017, a second 51A report was received by the Department alleging the neglect of M by KT and DC<sup>1</sup>. On September 15, 2017, the Department made the decision to support the allegation of neglect of M by the Appellant. 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 December 12, 2017, at the DCF Plymouth Area Office. All witnesses were sworn in to testify under oath. The record remained closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
DS	Appellant

<sup>1</sup> DS was not a named party in this 51A report, dated September 6, 2017.

LR  
SM

Department Response Social Worker  
Department Supervisor

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 on one (1) compact disk in accordance with regulations. 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 8/11/17

Exhibit B: 51B Report, completed 8/16/17

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 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) 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 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16

**Findings of Fact**

1. At the time of the filing of the 51A report, M was six (6) years old. She was in the custody of her father, DC, who resided in ██████████, MA. M was visiting maternal grandmother, DS, in ██████████, MA when the subject incident occurred. (Fair Hearing

Record)

2. The Appellant is the grandmother of the child; M was visiting with the Appellant at her home for the weekend; therefore she was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
3. The Department assumed emergency custody of M when she three (3) years old due to a 51A report which alleged the neglect of M by her mother, KT, as KT was brought into the emergency room via ambulance after having overdosed on heroin and cocaine. M found KT and could not wake her up and got her grandmother, DS. DS reportedly found KT with a baggie and a needle in her arm. At that time, M was placed in foster care. Approximately eight (8) months later, conditional custody was granted in court to M's father, DC. (Exhibit C. pp. 1-2)
4. DS and KT had a history of protective involvement with DCF, when KT was a child. DS' first husband was an addict but passed away [REDACTED]. (Exhibit A, Testimony of DS)
5. On September 1, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect of M by her mother, KT, her father, DC, and the Appellant, DS. According to the reporter, KT overdosed in the Appellant's home on opiates; the Appellant called the police and then sent M to a neighbors' home in an effort to conceal the child. KT was transported to the hospital. An emergency response was initiated. (Exhibit A, p. 2)
6. On August 26, 2017, the Appellant's ex-husband overdosed in the Appellant's home. (Exhibit B; Exhibit C; Testimony of Appellant)
7. M spent most of the summer, 2017, at the Appellant's home. KT was also been present at the Appellant's home, when M spent time at the home. (Exhibit B)
8. On September 1, 2017, the Appellant was with M and upon returning from Kentucky Fried Chicken, arrived to her home and saw KT's car at the home. The Appellant brought M to a neighbors' house, went inside and found that the bathroom door was locked. Unable to open it, the Appellant went outside and saw through the window, KT passed out between the sink and toilet of her bathroom. The Appellant called the police and reported KT had overdosed. (Exhibit C, p.3; Testimony of Appellant) I do not Appellant's testimony compelling. (See, Finding #12)
9. The police arrived and found KT in the bathroom. Nineteen (19) Gabapentin pills were found in the Appellant's bathroom with KT on the toilet seat. Gabapentin pills were also removed from KT's pocket. (Exhibit C)
10. On September 1, 2017, the Department interviewed M. M was aware "something bad happened with mom." M shook her head when asked if she knew what happened to her mother, KT. M denied that she saw her mother, but had stayed in the car when DS went

into the house and then she was taken to a neighbor's home. (Exhibit C, p. 3)

11. On September 1, 2017, the Department assumed emergency custody of M via 51B3; who was placed in foster care. (Fair Hearing Record)
12. On September 6, 2017, M disclosed to her social worker, prior to the incident she was at stayed at her maternal aunt's house and DS picked her up and brought her to DS' home. KT was at the house and she saw "mommy fall asleep on the toilet". (Exhibit C, p.6)
13. The Appellant testified KT was known to come to her house when the Appellant was not there. The doors to the house were always unlocked and the Appellant could not control who came and went into her home. (Testimony of DS)
14. On September 15, 2017, pursuant to M.G.L. c. 119, §51B, the Department supported the allegations of neglect of M by the Appellant, KT and DC<sup>2</sup>. The Department supported because the Appellant failed to provide M with minimally adequate care/supervision and that her actions placed M in danger or substantial risk to M's safety or well-being. Further, KT overdosed in the Appellant's home, M saw KT and the Appellant attempted to conceal M from the police when they arrived by sending her to a neighbors' home; KT comes and goes from the Appellant's home as the Appellant leaves her doors unlocked; and M disclosed to social worker she saw "[KT] fall asleep on the toilet in the bathroom". (Exhibit C)
15. Based upon the totality of the evidence in this case, I find the Department's decision to support the allegation of neglect by the Appellant was based on reasonable cause and was made in accordance with Departmental regulations. The actions of DS, failing to provide a safe, stable home environment, placed M in danger and posed substantial risk to M's safety and well-being. The Department had reasonable cause to intervene with this family in order to ensure M's safety and well-being. 110 CMR 2.00, 4.32(2); DCF Protective Intake Policy #86-015, rev. 2/28/16

### Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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

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<sup>2</sup> KT and DC were not a party to this fair hearing appeal.

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)

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §51A." Care and Protection of Robert, 408 Mass. 52, 63 (1990) This same reasonable cause standard of proof applies to decisions to support allegations under §51B. Id. at 64; M.G.L. c. 119, §51B "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. Id. at 64

"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 "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; and (e) 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

"Danger" is defined as a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. DCF Protective Intake Policy #86-015, rev. 2/28/2016

"Risk" is defined as the potential for future harm to a child. DCF Protective Intake Policy z386-015, rev. 2/28/2016

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) 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

It is undisputed that Appellant was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant contested the Department's decision to support an allegation that she neglected M when she failed to provide M with a safe, stable home environment. She argued she had no history of abusing substances, could not control who went into her home, and was not responsible for the actions of others in her home. The Appellant argued M was not in the home when KT was found in the bathroom; that she had sent her to a neighbors' home when she saw KT's car at her home. I do not find the Appellant's argument persuasive.

The record reflected KT struggled with an opiate addiction for at least three (3) years. M entered Departmental foster care due to KT's prior overdose. The child was exposed to KT when she had overdosed three (3) years prior and when asked by the Department if she knew what occurred on the date of the instant 51A report, she stated "something bad happened to mommy". Furthermore, the child reported her social worker she saw "mommy asleep on the toilet." Our Court has found "if children are to be protected from neglect, it makes no sense for the Department to wait until neglect has already run its course to the point of producing physical or emotional injury." Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 795 (2003).


In determining whether the Department had reasonable cause to support a finding of neglect, the Hearing Officer must apply the facts, as they occurred, to the Department's regulatory definition of neglect; new information presented at the Hearing that was not available during the investigation may be considered as well. The totality of evidence was considered, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that DS neglected M. This Hearing Officer finds that the Department had reasonable cause to believe that M was neglected while in the care of the Appellant, as defined by Departmental regulations. As stated above, "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 § 51B. Id. at 64; G.L. c.119, §51B.

### Conclusion

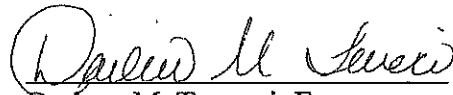
The Department's decision to support the allegation of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this

decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

  
Laureen Decas  
Administrative Hearing Officer

Date: 9/30/18

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