

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
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Commissioner

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**IN THE MATTER OF**

**HL #2017-1190**

**FAIR HEARING DECISION**

HL appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

**Procedural History**

On August 14, 2017, the Department received a 51A report alleging neglect of K and S by their mother, HL. The Department screened-in the report for a non-emergency response and, on September 1, 2017, the Department made the decision that the allegation of neglect of K and S by HL was supported. The Department notified HL of its decision and her right to appeal.

HL made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on November 30, 2017, in the DCF Coastal Area Office. HL, PD (witness for HL) and the Department response supervisor testified at the hearing. HL was represented by an advocate from the [REDACTED]

The Department submitted the following exhibits which were entered into evidence at the hearing.

Exhibit A: 51A report.

Exhibit B: 51B report.

HL submitted the following exhibits which were entered into evidence at the hearing.

Exhibit 1: Affidavit of ED

Exhibit 2: Affidavit of NKC

Exhibit 3: Letter from Administrative Assistant, [REDACTED] Eye Associates, dated October 5, 2017.

Exhibit 4: Notes from a medical provider who examined and treated S on June 22, 2017, for an upper respiratory infection.

Exhibit 5: E-mail from HL to her Department social worker dated August 31, 2017.

Exhibit 6: Text message exchange between HL and HL's in-home therapist.

Exhibit 7: A hearing brief.

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

### **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. 110 CMR 10.05.

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05.

### **Findings of Fact**

1. HL (hereinafter "mother") is the mother of the reported children, K (d.o.b. [REDACTED]) and S ([REDACTED]). (Exhibit A, pp. 1-2).
2. Mother is K and S's caregiver under Department regulations. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015 Rev. 2/28/16.
3. The Department became involved with mother in May 2013, shortly after K's birth and the Department maintained an open case with mother since then. There was an open Care and Protection with a goal of adoption at one point, however mother worked hard to correct the Department's concerns. The children were both returned to her care in the fall of 2016, and the Care and Protection was dismissed. (Exhibit A, pp. 3-7).

4. Mother is and has been cooperative and engaged with a number of services and supportive individuals. Mother attended individual therapy weekly. She worked with a parent partner. Mother attended [REDACTED] and had a [REDACTED]. She has been sober since 2012. Mother arranged for an in-home therapist to come to the home, however, this service was not mandated by the Department. She had a strong connection to her church community. In addition to many friends, she was supported by her live-in boyfriend, her father and his girlfriend and her former foster mother. She was also proactive in seeking services. She was appealing the [REDACTED] Public Schools' decision to deny S Early Intervention services and she was applying for social security for herself and S. (Exhibit A, pp. 6, 7; Exhibit B, pp. 3, 4, 5; Exhibit 6; Testimony of mother).
5. K and S had various medical needs and mother engaged them in treatment with a number of medical specialists. S was seen at the Complex Care Program at [REDACTED] Medical Center, the Developmental and Behavioral clinic, pediatric neurology, gastroenterology, the eye clinic and genetics. K was followed by gastroenterology, audiology and psychiatry. (Exhibit B, p. 5; Exhibit 3).
6. Mother missed medical appointments at times for various reasons including cancellation by the treating physicians. There was no evidence that the missed appointments placed S or K at risk or that any of S and K's medical providers have ever filed a 51A report due to missed appointments. (Exhibit A; Exhibit B; Exhibit 3).
7. Mother was a member of the [REDACTED] Church in [REDACTED]. The church members considered themselves as an extended family who care about each other and are supportive and involved in each other's lives. (Exhibit 1; Exhibit 2; Exhibit B, p. 4; Testimony of mother).
8. On August 6, 2017, the [REDACTED] Church held an event to baptize mother and others. The event was held at a public park on the ocean and the church members were baptized in the water. The baptism was followed by a picnic at the park. There were about 100 church members in attendance. Mother and the children attended the event with mother's long time friend, NKC. NKC's husband, children and mother were also present. Mother, the children, NKC and her family arrived together, walked to the beach together and they remained together throughout the day. Coincidentally, mother's in-home therapist was also in attendance to support one of her friends. (Exhibit 1; Exhibit 2; Exhibit B, pp. 1, 3, 4, 5, 6; Testimony of mother).
9. Mother did not realize what the event would entail so she had not made any specific plan for the care of the children while she was in the water. When the church members being baptized went into the water, she initially refused to leave the children. NKC and another church member, ED, offered to watch K and mother's in-home therapist offered to hold S. Mother then went into the water to be baptized with the others. (Exhibit 1; Exhibit 2; Exhibit B, pp. 3-5; Testimony of mother).

10. After the baptism, the church members remained in the park and had a picnic. Mother was sitting with her children. Mother's in-home therapist was in line for food and she offered to make plates of food for the children. At some point, mother's children and NKC's children were playing together supervised by NKC's mother. At no time were K and S unsupervised that afternoon. (Exhibit 1; Exhibit 2: Exhibit B, pp. 3, 4; Testimony of mother).
11. On August 13, 2017, mother attended church while the children were being supervised in the infant/toddler room. After the service, the church held an ice cream social which mother and the children attended along with mother's friend, DC. (Exhibit B, p. 5).
12. On August 14, 2017, the Department received a 51A report alleging neglect of S and K by mother. The reporter stated that mother did not supervise the children, she swore at them and she was physically rough with them. The reporter alleged that, on August 6, 2017, mother was swearing at the boys on the way to the beach calling them "fucking little bastards." She left them unattended when she went into the water to be baptized and other church members watched them. Later, mother took a nap while the children ran around unsupervised. At lunch time, mother got herself something to eat, but she did not feed the children. Another church member noticed and got them some food. The reporter also stated that mother was screaming at the children at the ice cream social on August 13, 2017. The Department screened-in the report for a non-emergency response. (Exhibit A).
13. The Department response worker spoke with mother at her home. Mother's in-home therapist, mother's live-in boyfriend, mother's former foster mother and mother's friend, DC, who was with her at the ice cream social were also present and participated in the meeting. (Exhibit B, pp. 3-5)
14. Mother described the events of the day of the baptism consistent with the above findings. She acknowledged that she did not know what to expect that day and she had not pre-planned any arrangement for the children while she was in the water. She said her in-home therapist and another church member, ED, watched the children and she was at the event with her friend, NKC, and her mother. She denied eating before feeding the children or taking nap. (Exhibit B, pp. 3-4):
15. Mother's in-home therapist confirmed that she ran into mother and offered to help her. She was with her most of the day and she never saw the children unsupervised. She denied mother ate before the children were fed. She did make plates for the children. She denied hearing mother swear at the children. She stated that mother did not appear to be having a hard time managing the children. (Exhibit B, p. 3).
16. Mother's friend, DC, who was with her at the ice cream social denied that mother was verbally or physically abusive to the children. (Exhibit B, p. 5).
17. Although there were no allegations of medical neglect, mother voluntarily provided the response worker with paperwork from [REDACTED] Medical Center showing the

children's providers and appointments in order to show her engagement in services to meet the children's needs. The response worker noted that numerous appointments had been missed. They did not discuss in any detail why the appointments were missed, whether they were rescheduled or whether missing the appointments had any impact on the children. (Exhibit B, p. 5; Testimony of mother).

18. The Department response worker spoke with someone at [REDACTED] Medical Center about the children's medical care. The [REDACTED] staff member provided dates of several appointments for S, but did not mention any missed appointments. She noted that K was up to date with immunizations and he missed several appointments. She did not express any significant concerns about the missed appointments or indicate whether the missed appointments had been completed on a subsequent date. (Exhibit B, p. 5).
19. The Department response worker spoke again with mother's in-home therapist. She told the response worker that, on the day of the baptism, mother did not seem to know what to do and she clearly needed help. She described mother as overwhelmed and anxious. She also said that her friend (in-home therapist's friend) who was at the baptism told her that she witnessed mother napping at the park and not caring for the children. She said she would ask the friend to contact the response worker. She also said she has only had 3 in-home sessions with mother during the 7 weeks she has been working with her. (Exhibit B, pp. 5-6).
20. Shortly afterward, an anonymous person called the response worker and left a message for the response worker stating that she witnessed mother nap for 20-25 minutes while the children were "definitely running free, unsupervised." (Exhibit B, p. 6).
21. On September 1, 2017, the Department made the decision that mother neglected S and K because she did not have a plan for childcare during the baptism and, had others not offered to help, the children would have been left unattended at the water's edge, she took a nap later that day leaving the children unsupervised for 20-25 minutes, she missed seven (7) medical appointments for S and fifteen (15) for K<sup>1</sup> and she only attended three (3) out of a possible fourteen (14) in-home therapy sessions. (Exhibit B, pp. 6-8).
22. Mother testified at the hearing. She denied the children were ever unsupervised. She submitted affidavits from ED and NKC who confirmed this. She also submitted evidence to explain a few of S's missed appointments and verification that he attended on a later date and evidence that she brought one (1) of the children for emergency medical care on one of the cancelled dates. Mother also submitted evidence to indicate that the Department did not require mother to meet with the in-home therapist. (Testimony of mother; Exhibit 1-6).
23. I find mother's testimony to be credible.

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<sup>1</sup> The number of missed appointments in the Department's conclusion is not supported by the evidence in the record. The report only notes that S missed 4 appointments and K missed 12.

24. Considering all of the credible evidence, I find no reasonable cause to believe that mother neglected S and K under Department regulations or that her actions/inaction placed them in danger or posed a substantial risk to their safety or well being.

### Analysis

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 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 C.M.R. 4.32(2).

"[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 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 s. 51B. Id. at 64; M.G.L. c. 119, s. 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.

"Caregiver" is defined as:

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

"Neglect means failure by a caretaker, 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition." 110 CMR 2.00(33).

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

The Department made the decision that mother neglected K and S because she did not have a plan for childcare during the baptism and, had others not offered to help, the children would have been left unattended at the water's edge, she took a nap later that day leaving the children unsupervised for 20-25 minutes, she missed seven (7) medical appointments for S and fifteen (15) for K and she only attended three (3) out of a possible fourteen (14) in-home therapy sessions.

The Department's decision assumed that, had others not volunteered to watch the children, mother would have left them at the water's edge unsupervised while she was in the water. Mother acknowledged that she did not know what to expect at the event and she did not pre-plan who would care for the children while she was in the water. Mother testified credibly that she would not have left the children unattended and she provided two (2) sworn statements from witnesses attesting to the fact that she was unwilling to go into the water until she was sure the children were being watched by others.

The evidence showed that mother went to the baptism event with her friend NKC and NKC's husband, mother and children and they stayed together all day. NKC attested to the fact that the children were supervised by an adult at all times including a period of time when NKC's mother was watching her children and mother's children playing in the park. Although the Department received reports from an anonymous source that mother took a nap leaving the children unsupervised for 20-25 minutes, I find no reason to credit an anonymous source over a sworn statement.

Regarding the children's medical care, the Department determined that mother neglected the children based upon documentation provided by mother that showed some cancelled appointments. The response worker documented in the 51B report that S missed two (2) ophthalmology appointments and two (2) appointments with the pediatrician and K had twelve (12) cancelled appointments between January and July 2017, involving pediatrics, psychiatry and audiology. It is unclear why the Department's conclusion indicated that S had seven (7) cancelled appointments and K had fifteen (15) cancelled appointments.

In any case, the Department response worker did not follow up with any of the medical providers to inquire who cancelled the appointments (mother or the provider), why the appointments were cancelled, whether they were subsequently rescheduled and attended and what, if any, harm or risk of harm to the children resulted from the cancelled appointments.

Mother provided documentation to explain S's missed ophthalmology appointments. His initial appointment was cancelled by the doctor who rescheduled for the following day. Mother was unable to go the next day and she cancelled that appointment and rescheduled for June 21, 2017, with the same doctor. On that date, the doctor noticed that the appointment should have been made with a pediatric optometrist so she cancelled the appointment with her and S was seen on that date by the pediatric optometrist.

It was notable that there was no evidence that any of the medical providers for the children had concerns about mother meeting the children's medical needs. The one (1) person from [REDACTED] Medical Center who the response worker spoke with did not report having any protective concerns and there was no evidence that the Department has ever received a report of neglect from a medical provider stating that mother was not meeting the children's medical needs.

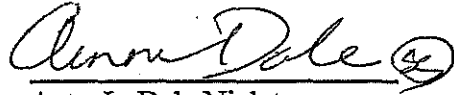
Regarding the in-home therapy, the Department determined that mother neglected the children by attending only three (3) meetings with the in-home therapist over a seven (7) week period. The evidence showed that mother sought out that service and it was not something that was required by the Department. Although it certainly would have been a helpful support to mother, there was no evidence to suggest that her failure to meet more frequently with the in-home therapist placed the children at risk of harm.

Considering all of the evidence, I find no reasonable cause to believe that mother failed to provide K and S with minimally adequate supervision, medical care or other essential care and, therefore, she did not neglect them under Department regulations.



**Conclusion and Order**

The Department's decision to support allegations of neglect of K and S by mother was made without a reasonable basis and therefore, the Department's decision is REVERSED.



Anne L. Dale Nialetz,  
Administrative Hearing Officer

3/14/2018

Date



Sophia Cho, LICSW  
Fair Hearing Supervisor

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Date

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Linda S. Spears, Commissioner