

**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

Voice: 617-748-2000
FAX: 617-261-7428

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(IN THE MATTER OF)
(ER)
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(FH # 2017-1193)
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HEARING DECISION

Procedural History

The Appellant in this Fair Hearing was ER (hereinafter "ER" or "Appellant"). The Appellant appealed 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 August 7, 2017, the Department received a 51A report from a non-mandated reporter alleging neglect and physical abuse of E (hereinafter "E" or "the children") by EdR (hereinafter "EdR"). On August 10, 2017, the Department received a second 51A report from a non-mandated reporter alleging physical abuse and neglect of E by EdR and ER. The report also alleged neglect of N (hereinafter "N" or "the children") by EdR and ER. These reports were combined into a single 51B response. Upon completion of the response, the Department made the decision to support the allegations of neglect of E and N by the Appellant and EdR.¹ The Department informed the Appellant of its decision and of her 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 December 6, 2017, at the Department of Children and Families' Dimock Street Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
ER	Appellant
FD	DCF Response Worker
SH	DCF Supervisor

¹ ER was the only party to this appeal. EdR was not a party to this Fair Hearing.

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 #3760685, dated 8/7/2017
Exhibit B: 51A Report #3761682, dated 8/10/2017
Exhibit C: 51B Response

For the Appellant:

Exhibit 1: Kindergarten Progress Report for N
Exhibit 2: Fall Report card for B (2016-2017)
Exhibit 3: Fall and Winter Report card for B (2016-2017)

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. ER is the mother of E and N. At the time of the filing of the 51A reports, E was seven (7) years old and N was five (5) years old. E and N both resided with the Appellant. I find that the Appellant was a caregiver of E and N in accordance with the regulations and policies that govern these proceedings. (Exhibit A pp.1-3; Exhibit

B pp. 1-3; Exhibit C pp.1-2; Testimony of FD; 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16)

2. The Appellant was a victim of domestic violence. On April 27, 2017, EdR was arrested on multiple Assault and Battery charges after an incident between himself and the Appellant. This incident was previously filed as a 51A report and investigated and the allegations were supported against EdR by the Department in a previous 51B response. (Exhibit A pp.1-6; Exhibit B pp. 1-6; Exhibit C pp.5-7; Testimony of FD)
3. On August 8, 2017, the Department received a report from a non-mandated reporter alleging neglect and physical abuse of E by EdR pursuant to M.G.L. c. 119, §51A. According to the reporter, there were concerns of EdR being both physically and emotionally abusive towards E; hitting E with a belt and frequently yelling at E. No marks or bruises were observed on E. E had recently returned to Massachusetts from visiting ██████████ in ██████████ for the summer. Further, the reporter was concerned for the Appellant. (Exhibit A p. 3)
4. On August 10, 2017, the Department received a second report from a non-mandated reporter alleging neglect and physical abuse of E and neglect of N by EdR and neglect of E and N by the Appellant pursuant to M.G.L. c. 119, §51A. According to the reporter, EdR threw a burger in E's face; and "whips her all the time" with a belt all over her body. No marks or bruises were observed on E. Further, the reporter stated E was scared; that EdR beats the Appellant in the presence of the children and calls her names; that the Appellant was an alcoholic and was not able to care for the children. (Exhibit B p. 3)
5. Both the August 8 and August 10, 2017, reports were screened in and assigned for a non-emergency investigation pursuant to M.G.L. c. 119, §51B. The reports were combined into one response. At the conclusion of the response, the Department supported the allegations of neglect of E and N by the Appellant and EdR. The Department supported the allegations of neglect of E and N by the Appellant² because there had been a physical altercation between ER and EdR in front of the children; N reported feeling scared when the Appellant and EdR fight; the Appellant received a cut to her face during the most recent altercation with EdR; the Appellant drank up to five (5) beers in front of the children and EdR needed to ask her to stop; and EdR had unlimited access to the children and the home. The Department found reasonable cause to believe that the Appellant's actions impacted the children's emotional stability and growth and her actions placed the children in danger or posed a substantial risk to their well-being and safety. (Exhibit C p. 11; Testimony of FD)
6. For most of the summer, 2017 the children were staying with relatives in ██████████. The children returned on August 4, 2017, and both 51A reports were filed shortly

² The Department supported the allegations of neglect of E and N by EdR but he was not a party to this fair hearing, as such, only ER's support decision was discussed.

thereafter. (Exhibit A pp.1-3; Exhibit B pp. 1-3; Exhibit C pp. 5-11; Testimony of Appellant)

7. Aside from the April 27, 2017, incident there were no further documented incidents with the police or the Department. (Testimony of FD; Testimony of Appellant) The Department did not obtain any evidence of any specific incidents of domestic violence between EdR and the Appellant after April 27, 2017. (Exhibit A pp.1-6; Exhibit B pp. 1-6; Exhibit C pp. 5-7; Testimony of FD)
8. Aside from the previously addressed incident on April 27, 2017, none of the incidents alluded to in the anonymously filed 51A's were corroborated or verified during the course of the Department's response. (Exhibit A pp.1-3; Exhibit B pp. 1-3; Exhibit C pp. 5-11; Testimony of FD)
9. The Department acknowledged that the condition of the home was not grounds for the decision to support the allegation of neglect. (Exhibit C pp. 6-7; Testimony of FD)
10. None of the collaterals contacted by the Department cited any protective concerns in regards to the Appellants ability to care for the children or for the children themselves. (Exhibit C; Testimony of FD)
11. The Appellant acknowledged she drank between 1-3 cans of beer. When the Department's response worker interviewed N, she said the Appellant drank five (5) beers a night and that EdR yells at her because and tells her to stop. E told the Department she did not see the Appellant drink alcohol. At the Fair Hearing, the Appellant testified that she did not drink to intoxication. (Exhibit C p.5-7; Testimony of FD, Testimony of Appellant)
12. The Appellant testified the children were in ██████████ for the summer, 2017 and upon their return 51A reports were filed. The Appellant surmised that a relative had made the reports because of them being angry at her, but denied that she neglected her children. (Testimony of Appellant)
13. At the Fair Hearing, the Appellant submitted documentation from E and N's schools which reflected both of them were achieving passing grades and were attending regularly. (Exhibit 1; Exhibit 2; Exhibit 3; Testimony of Appellant)
14. Based upon the totality of the evidence in this case, I find that the Department did not have reasonable cause to believe that the Appellant's behavior constituted a failure to provide the children with minimally adequate care. There was insufficient evidence that the Appellant placed the children in danger or posed substantial risk to their safety or well-being through her actions. (110 CMR 2.00; 4.32(2); DCF Protective Intake Policy #86-015, rev. 2/28/16)
 - a. There was no evidence of any domestic violence incidents since the previously addressed incident on April 27, 2017.

- b. There was no evidence that any alcohol consumption by the Appellant inhibited her ability to provide minimally adequate care for E and N.
- c. The home condition was not a basis for the Department's decision.
- d. None of the contacted collaterals had any concern for the Appellant's ability to provide care for E and N.

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 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

"Domestic violence" is 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

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

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

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 allegations that she neglected the children. The Appellant argued the children were with her family in [REDACTED] during the summer, 2017 and only upon their return the 51A reports were filed. The Appellant denied she consumed alcohol to the point of intoxication and was able to provide documentation from their schools indicating the children were doing fine.

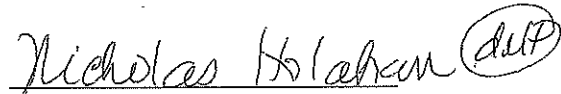
In this case, the Department was unable to obtain any verification of any specific incidents alluded to in the 51A reports. The Department relied upon an incident in this case that occurred in April, 2017, that was the subject of a previous 51B response. There was no new evidence of any incidents of domestic violence between the Appellant and EdR since April, 2017. It was also notable that E and N were in [REDACTED] for most of the summer vacation, and that shortly upon their return, two (2) anonymously filed 51A reports were filed, after their return to the Appellant's care. The Appellant's assertion that the 51A's were filed by a family member with malicious intent had credibility.

The Department relied on alcohol consumption by the Appellant as a basis for its decision. However, the actual amount of such consumption was not clear. Further, there was no evidence that any consumption on the part of the Appellant impacted her ability to provide minimally adequate care to E and N.

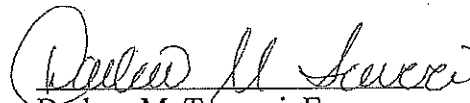
After a review of all the evidence presented, the evidence in its entirety was insufficient to support the Department's decision to support neglect of the children by the Appellant. Therefore, the Department did not have reasonable cause to support and the decision was not made with a reasonable basis.

Conclusion and Order

The Department's decision to support the allegation of neglect of E and N by the Appellant was not made in conformity with the Department's regulations and with a reasonable basis and, therefore the Department's decision is hereby **REVERSED**.


Nicholas Holahan
Administrative Hearing Officer

5/7/18
Date


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

Date

Linda S. Spears
Commissioner