

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

LINDA S. SPEARS,  
COMMISSIONER

Voice: (617) 748-2000  
Fax: (617) 261-7428

IN THE MATTER OF )  
)

H. A. )  
)

FH #2017 1210 )  
)

**HEARING DECISION**

**Procedural Information**

The Appellant in this Fair Hearing is Ms. HA (“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 she filed a timely appeal with the Fair Hearing Office on September 14, 2017.

The Fair Hearing was held on November 2, 2017, at the DCF VanWart Area Office. The hearing record remained open until November 17, 2017, at the request of the Appellant in order for her to submit additional documentary evidence into the hearing record; none was forthcoming. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esq.  
HA  
AG

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: 8/29/17 (5:04PM) 51A Report
- Exhibit 2: 8/29/17 (8:04PM) 51A Report
- Exhibit 3: 8/30/17 (3:57PM) 51A Report
- Exhibit 4: 8/30/17 (4:19PM) 51A Report
- Exhibit 5: 9/6/17 51B Report

For the Appellant:

- Exhibit A: 9/7/17 Temporary Order

**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: The male child, "T", who was ten (10) years old at the time of the subject 51A filing referenced below, and the female child, "N", who was three (3) years old at that time. (Exhibit 1, p.1.)
2. The Appellant is the biological mother of the children and their caregiver. (Protective Intake Policy #86-015, rev. 2/28/16; Exhibit 1, pp.1 and 3.)
3. The father of T is Mr. G. (Exhibit 1, p.7.)
4. The father of N is Mr. L. (Exhibit 1, pp.1—2.) The Appellant and Mr. L had separated two weeks prior to the subject 51A filings. (*Id.* at p.3; Exhibit 5, p.4.)
5. The Appellant and T have DCF history pertaining to supported allegations of sexual abuse and neglect of T however the Appellant was not a named perpetrator in those matters. There is no evidence of any DCF history for Mr. L. (Exhibit 1, p.6.)

6. On August 29, 2017 (5:04 PM), the Department received a report pursuant to M.G.L. c. 119, s. 51A, alleging the neglect of the children by the Appellant. The reporter (Reporter #1) went to the Appellant's home to pick up N for a visit and had the following concerns: The electricity in the home was due to be shut off in two days. The home was in "complete disarray" and there was no food in the refrigerator or cabinets even though Reporter #1 gave the Appellant money for groceries the previous week. When Reporter #1 arrived, the Appellant was asleep on the couch while N was awake and unsupervised. Reporter #1 alleged that the Appellant was prescribed Adderall and drank alcohol every night; there were nip bottles lying around the house. Reporter #1 informed the Appellant he/she would not be returning N to the home that night if the home wasn't clean and there was no food; however, the local police informed Reporter #1 to return the child. (Exhibit 1, pp.1 and 3.)
7. Also on August 29, 2017 (8:04 PM), the Department received a report pursuant to M.G.L. c. 119, s. 51A, alleging the neglect of the children by the Appellant. On that date, the Appellant's friend went to the Appellant's home and found her "passed out" with N running around wearing a wet diaper, and T was arriving home from school. The Appellant's friend woke the Appellant up and bought food for the children as there was none in the home. Reporter #2 alleged the Appellant was addicted to Adderall and alcohol. After Reporter #1 informed the police of the state of the Appellant and the condition of the home, the police did a well child check. (Exhibit 2, p.2.)
8. On August 29<sup>th</sup>, the Department screened-in the above 51A reports for an emergency response. (Exhibit 1, p.7; Exhibit 2, p.5.)
9. The DCF hot-line Response Workers ("RW") arrived at the Appellant's home on August 29<sup>th</sup> at approximately 9:30PM:
  - a) The Appellant was not home. They were greeted by a woman named M [REDACTED] who would not provide her last name; she stated the Appellant would be back in 10 minutes. M [REDACTED] had just met the Appellant 1-1/2 weeks earlier. She had been at the Appellant's house the night before and got into an argument with her because there was no food in the house for the children; she bought pizza for everyone and left the home. M [REDACTED] was back at the home on August 29<sup>th</sup> in order to take a shower. M [REDACTED] denied that the Appellant drank alcohol during the day when she cared for the children. When asked if the Appellant used drugs, Meredith "shook her head and said she didn't want to say anything." (Exhibit 5, p.2.)
  - b) The Appellant arrived home and was "angry" that DCF was at her house. She denied being passed out when Mr. L came to get N at 3PM on the day in question, but then she showed the DCF workers a string of text messages between her and Mr. L, one of which was Mr. L "asking her what happened today and why he couldn't wake her up when he came to get [N]." (Id.)

- c) The Appellant denied abusing alcohol indicating she drinks wine 3 times per week; the children are home and she is capable of caring for her children at those times. (Id.)
  - d) The Appellant denied using any drugs and "became more agitated" after being asked the question. She is prescribed 60mg of Adderall daily and takes it in the morning and evening; she provided the DCF Response Workers ("RW") with the name of her medical provider. (Id. at pp.2—3.)
  - e) There was limited food in the home. The home was slightly cluttered but otherwise clean; there were no safety hazards. (Id. at p.3.)
  - f) The Appellant claimed to have "a lot of anxiety" and as such was unable to leave N and go back to work; she was not in therapy at that time. She denied using drugs/alcohol to manage her anxiety. (Id.)
  - g) The Appellant is prescribed Adderall for ADHD. (Exhibit 4, p.3.) When DCF asked to see the Appellant's prescription bottle for Adderall, she claimed she did not have it because Mr. L rationed the pills out to her every day when he came to get N for visits. (Exhibit 5, p.4.) The RW contacted Mr. L who denied having the Appellant's pill bottle. (Id.) The Appellant's last visit with her provider was a year earlier, on August 8, 2016, at which time she refused to have more frequent appointments when requested by the physician. She had last filled her prescription for Adderall on August 8, 2017, and had consistently picked up her prescription from her medical provider on a monthly basis for the previous year. (Id. at p.7.)
  - h) T is also prescribed Adderall for ADHD; the Appellant informed DCF of the child's medical provider. (Id.) There was one Adderall pill for T put out in a container for the child to take the next day. When DCF asked to see T's prescription bottle, the Appellant indicated she did not have the bottle and had to pick up the new prescription at the pharmacy the next day. (Id.) In fact, the Appellant had picked up T's prescription prior to her DCF interview, on the afternoon of August 29<sup>th</sup> at 4:49PM. (Id. at p.8.)
10. On August 29<sup>th</sup>, a DCF hotline Response Worker ("RW"), interviewed T: T visited with his father, Mr. G, every other weekend. The child informed DCF they had minimal food in the home because his mother had not had a ride to go grocery shopping,<sup>1</sup> however T informed Mr. G there is not enough food in the home. T denied his mother slept while caring for him and his sister. He denied his mother drank alcohol or ever acts any differently. Although T informed DCF that he takes Adderall for ADHD in the morning, Mr. G denied giving T his medication for the previous 3 months as T never came to visits with it and T informed his father he did not need it any longer. (Exhibit 5, pp.5—6.)
11. While at Mr. G's home, T had made the following comments: "I hate when mom drinks [']cause then I have to make my own food," and that he would not "rat out" his mother. (Exhibit 5, p.12.)

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<sup>1</sup> The Appellant's license had been revoked due to several motor vehicle infractions including operating an uninsured vehicle; she was arrested on May 19, 2017, for operating a vehicle with a suspended license, a suspended registration, and operating an uninsured vehicle. (Exhibit 5, p.8.)

12. There were days when T had reported to his school that he had not taken his medication. The school had difficulty communicating with the Appellant with respect to this issue and others. (Exhibit 5, p.11.)
13. On August 29<sup>th</sup>, the DCF RW spoke with Mr. L via phone and in person. When he arrived at the Appellant's home on that day to get N, the front and side doors were wide open; the Appellant was "passed out" and N was unattended to. He has witnessed the Appellant "eating Adderall pills" and drinking, leaving nip bottles all over the house. The Appellant had stolen money from Mr. L, and had opened credit cards in his name for her use; he reported this fraud to the police.<sup>2</sup> He separated from the Appellant two weeks earlier due to her running up credit cards, "popping pills," drinking, her refusal to get a job, and her explosiveness. (Exhibit 5, pp.4—5.)
14. On August 30, 2017, Reporter #2 petitioned the Court, pursuant to M.G.L. c.123, s.35, for an order to commit the Appellant for alcohol and/or substance abuse treatment. (Exhibit 2, p.2.) The Appellant was not committed and returned home (*Id.* at p.2) as "there was not enough evidence" that the Appellant was abusing Adderall. (Exhibit 4, p.3.)
15. As a result of the allegations set forth to the Court by the Appellant's mother, Mrs. ET ("grandmother" of the children) in the commitment proceeding, two more 51A reports were filed on August 30<sup>th</sup> (Exhibits 3 and 4), and were joined to the DCF response. (Exhibit 3, p.5; Exhibit 4, p.6.)
16. Reporter #4 reported the same allegations contained within the first two 51A reports, as well as the following additional relevant information: The Appellant denied abusing Adderall; she denied having a problem with any substances. The Appellant tested negative for all drugs while at Court but for Adderall, however the test does not discriminate if she had more than the prescribed dosage in her system. The Appellant's pattern is to take a lot of Adderall to stay awake and then drink alcohol to go to sleep. There were concerns that the Appellant was soon to be evicted from her home. There were reports of "drug addicts" in the Appellant's home. (Exhibit 4, p.3.)
17. On August 30, 2017, Mr. L filed a complaint for custody of, support for, and/or parenting time with N with the Probate Court. The Court issued Temporary Orders on September 7, 2017, which included the following: N shall reside with Mr. L except during specified times when the child would be with the Appellant. The Appellant's time with the child is supervised by the grandmother and takes place at the grandmother's home or at a location agreeable to the grandmother. The matter was continued to November 13, 2017. (Exhibit A.)
18. At the time of the DCF Response, N's last physical exam was more than a year earlier (on April 1, 2016), but she was up to date with immunizations. N was a "no-show" for her 15-month, 18-month and 2-year medical exams. T was also behind medically.

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<sup>2</sup> See, police department records at Exhibit 5, p.9.

T's last physical exam was 2 years earlier (on November 12, 2015) at which time lab work was ordered but never followed through with by the Appellant. (Exhibit 5, p.8.)

19. Local police department records indicate the following relevant information: June 7, 2017—the Appellant reported her home was broken into and a guitar case, her son's Xbox and T's 30 Adderall pills were stolen; July 15, 2017—A friend of the Appellant's reported that the Appellant stole her medication and tried to pass off a fake \$100 bill at a local liquor store. (Exhibit 5, p.9.)
20. The DCF RW interviewed the grandmother who expressed the concerns reported above by all the reporters, as well as the following: The Appellant "has been an alcoholic for years." At Christmas, 2016, the Appellant stole a ring from her, and after that the Appellant was not allowed back in her house. She had not seen the Appellant again until the time of the 51A filing and she was "flabbergasted" by her loss of weight and "scabs all over her face." A friend of the Appellant's and Mr. L contacted the grandmother due to their concerns for the Appellant and the children. (Exhibit 5, p.9.)
21. During the DCF response, the Appellant agreed to sign an emergency service plan allowing for each of the children to stay at their respective father's homes, as well as agreeing to seek individual therapy and complete a substance abuse evaluation. (Exhibit 5, p.10; Testimony of Appellant.)
22. When Mr. G picked up T from the Appellant's home to gather his belongings (the Appellant was not home), they looked for T's Adderall prescription bottle but could not find it. (*Id.* at p.13.) Thereafter when questioned by DCF, the Appellant denied seeing the prescription bottle after Mr. G picked up the child. (*Id.*)
23. On September 1, 2017, the Department supported the aforementioned report, in accordance with M.G.L. c. 119, s. 51B, for neglect on behalf of T and N by the Appellant due to concerns of the Appellant's drug and alcohol use/dependence while caring for the children, resulting in failing to provide the children with minimally adequate food, supervision and medical care, including regular physical examinations for both children and a withholding of T's medication from him. In addition, the family was at imminent risk of having the electricity shut off in the home and of being evicted in the near future. (Exhibit 5, pp.13 and 14.)
24. The Department opened the family for services following the support decision in this matter. (Exhibit 5, p.14.)
25. At the hearing, the Appellant's testimony was such that she continued to minimize the allegations and concerns regarding her ability to care for the children due to substance use or abuse. (See, hearing record.) She continued to deny seeing T's prescription bottle after the time Mr. G brought T to his home. (Testimony of Appellant.)

26. At the time of the hearing, the Appellant was employed and utilities were on at her home. T was residing with maternal grandmother; N was residing with her father, Mr. L, and a Probate matter was ongoing with respect to custody of N; the Appellant could visit with either child at any time supervised by maternal grandmother. (Testimony of Appellant.)
27. At the hearing the Appellant asked DCF what the indicators were of her using/abusing drugs. (Testimony of Appellant.) The RW noted the "big concern" was the Appellant not being able to account for her or T's Adderall. (Testimony of AG.) Noteworthy, the Appellant made no comment thereafter and no rebuttal argument. (See, hearing record.)
28. Based upon a review of the evidence presented in its entirety, the Appellant was unable to take those actions necessary to provide T and N with minimally adequate food, medical care and supervision as a result of drug/alcohol use and abuse, 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

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.

"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.

A "Caregiver" is

- (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 children's mother, the Appellant is deemed a "caregiver" pursuant to DCF Protective Intake Policy #86-015, rev. 2/28/16.

Based upon the evidence in this matter, the Appellant did not provide minimally adequate care to T and N in the form of food, supervision and medical care. The evidence is such that the Appellant was using/misusing her and T's Adderall prescriptions and/or selling the pills as T told the school on a few occasions that he did not take his medication and told his father he did not need it any longer; T was clearly covering for the Appellant and acknowledged he would not "rat out" his mother. DCF verified with the medical providers she had recently filled each prescription, but she could not produce either medication bottle to DCF at the time of the response; as such, her responses with respect to not being able to produce the medication bottles were not credible. There was no credible reason, but for misuse by the Appellant, that T did not get his ADHD medication



on a daily basis. This evidence, together with the evidence of close family and friends having concerns of drug and alcohol abuse, Mr. L finding the Appellant asleep with the 3-year-old child unsupervised with the doors of the home unlocked, no food in the home, allowing virtual strangers to be around the home (M██████), not complying with the requisite medical appointments for both children, and the change in the Appellant's physical appearance at that time, are all indicators of drug and/or alcohol abuse by the Appellant while being the primary caretaker for her children.

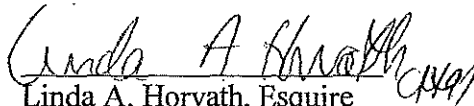
The Appellant continued to minimize the issues in this matter throughout the response and at the hearing. She did not make any reasonable arguments with respect to the issues at hand and did not directly respond to the issue of misuse of the medication Adderall at the time of hearing. In light of the 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, and the actions/inactions by the Appellant posed a substantial risk to the children's safety or well-being.

### Conclusion

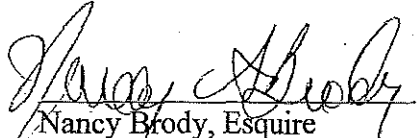
The Department's decision to support the 51A reports of August 29<sup>th</sup> and 30<sup>th</sup>, 2017, for neglect by the Appellant on behalf of T is **AFFIRMED**.

The Department's decision to support the 51A reports of August 29<sup>th</sup> and 30<sup>th</sup>, 2017, for neglect by the Appellant on behalf of N 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 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