

**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)
)
 KZ) **FAIR HEARING DECISION**
)
 FH # 20171212)
)

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

Procedural History

On September 11, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the physical abuse of J (hereinafter "J" or "the child") by his mother, KZ, the Appellant. On September 12, 2017, two additional 51A reports were received by the Department, alleging the neglect and physical abuse of J. An emergency response was conducted and on September 18, 2017, the Department made the decision to support the allegation that KZ neglected and physically abused J. 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 20, 2017, at the DCF Cape Cod Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for one month for any additional evidence to be submitted. The record on this matter was closed on January 20, 2018.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
KZ	Appellant
IC	Attorney for Appellant
GF	Department Response Social Worker
ER	Department Response Social Worker (Observing)

JP

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 according to 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 9/11/17
- Exhibit B: 51A Report, dated 9/12/17 @ 3:52pm
- Exhibit C: 51A Report, dated 9/12/17 @ 4:03pm
- Exhibit D: 51B Response, completed 9/18/17

Appellant

- Exhibit 1: Affidavit of PM, Paternal grandmother

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 subject 51A reports, J was fifteen (15) years old. He and his mother, KZ, were temporarily residing at the home of the paternal grandmother, PM, in ████████ MA. His siblings, Jo (15) and Ja (13) were temporarily residing in ████████ MA with a paternal uncle. J's father was being held in county jail. (Fair Hearing Record)

2. The Appellant is the mother of the child; therefore she was deemed a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
3. Thirteen (13) 51A reports had been filed with the Department alleging abuse and neglect of the Z children. The family had a history of involvement with child protective services due to domestic violence between the Appellant and her husband, substance abuse/misuse by both adults, and lack of appropriate parenting. The family had an open case with the Department at the time of the subject reports. (Testimony of JP)
4. The [REDACTED] Police were familiar with the Z family; they responded to the home on multiple occasions for fighting amongst various family members. The Appellant attempted to make it appear the problem was her children and not her however; the police determined the Appellant was not a truthful reporter. (Exhibit A, p.8)
5. On September 9, 2017, the Appellant called the police due to a verbal argument between herself and J. The police spent over forty (40) minutes at the home restoring the peace. (Testimony of KZ; Exhibit D)
6. On September 11, 2017, the Department of Children and Families received a report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the physical abuse of J by his mother, KZ. According to the report, 911 was called at 5:38 pm and a physical altercation was reported between the Appellant and J. The Appellant appeared slightly intoxicated with a flushed face, glassy eyes and smelled of alcohol. J was observed to have redness around his neck. J had a cell phone video which depicted the Appellant bothering him on the couch, once the Appellant realized she was being recorded she attempted to take J's cell phone from him. The Appellant was arrested for Domestic Assault and Battery. This report was screened in for a response. (Exhibit A)
7. On September 12, 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 and physical abuse of J by his mother, KZ. According to the report, the paternal grandmother sought and obtained a protective order against J. Once the order was served, J had no place to stay. The Appellant was not willing to make a plan for J and was "done with him". (Exhibit B)
8. On September 12, 2017, the Department of Children and Families received a third report pursuant to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect and physical abuse of J by his mother, KZ. The report indicated the Appellant was arraigned at court and released, her plan was to return to paternal grandmother's home, who had obtained a protective order against J. This report was screened in for an emergency response. (Exhibit C)
9. It was uncontested that a verbal argument became physical between the Appellant and J. The police were called and the Appellant was arrested for domestic assault & battery as the police determined the Appellant was the aggressor. (Fair Hearing Record)

10. The Department supported the aforementioned reports for physical abuse of J by the Appellant based on the child's consistent disclosure to mandated reporters as well as the Department that there was a physical altercation between him and his mother. J had observable injuries which were consistent with his report. The Department supported the allegation of neglect based on the Appellant's ongoing failure to provide J with a safe, stable home environment. The Department noted the Appellant provided inconsistent stories currently and in the past to the Department. (Exhibit D; Testimony of GF)

11. The Department determined there was a pattern of chaos, inconsistent reporting, and escalation of circumstances within the family which led to violent situations routinely occurring. ~~The Department found the Appellant unable to control herself which~~ contributed to the instability of the home environment. (Testimony of JP)

12. J had deep scratches on the right side of his neck which were caused by the Appellant during a physical altercation. (Testimony of GF; Exhibit D)

13. According to the Appellant, J was being mouthy and disrespectful in the home. He refused her orders to help put away the groceries and to help clean out the shed. He called her names, like "slave", and refused to get off the couch. The Appellant then "nudged" J to get off the couch; a physical confrontation ensued and J was scratched. (Testimony of KZ)

14. In light of the totality of the evidence in this case, I find that the Department did have reasonable cause to support the allegation that the Appellant neglected J.

- "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).
- The Appellant provided J with a chaotic home environment which failed to minimally meet his needs of a safe, stable home environment. J exhibited considerable acting out behaviors at home and in the community, and had been arraigned on several serious criminal charges. The Appellant was arrested in the past for assaultive behaviors towards family members. (Exhibit D)
- The Appellant failed to provide J with minimally adequate emotional stability and growth and her actions posed significant risk to J's safety and well-being.

15. After consideration of the relevant evidence, I find the Department's decision to support the allegations of physical abuse was made based on reasonable cause.

- A finding of physical abuse requires that the Department have reasonable cause to believe that a caregiver's actions caused or created a substantial risk of physical or emotional injury. 110 CMR 2.00
- The Department had sufficient evidence to support a finding that the Appellant physically abused J under Department policies and regulations. J received injuries caused by the Appellant, whom the police determined was the aggressor in the instant physical altercation after viewing video of her

actions. The Appellant's chaotic home environment and years of documented inappropriate parenting creates a substantial risk of physical injury to J now and in the future.

- The totality of the evidence supported a finding of physical abuse as defined by Department policies and regulations. 110 CMR 2.00; 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 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

"Abuse" means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

"Physical injury" is defined as death; or fracture of a bone, a subdural hematoma, burns,

impairment of any organ, and any other such nontrivial injury; or soft tissue swelling or skin bruising depending on such factors as the child's age, circumstances under which the injury occurred, and the number and location of bruises. 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 #86-015, 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, through counsel, contested the Department's decision to support allegations that she neglected and physically abused her son J. The Appellant argued it was J who was out of control verbally and physically over the weekend of September 9, 2017, and that she could not have abused him even if she tried. The Appellant maintained she was only trying to protect

herself from J, that she did not want him to incur more criminal charges, and that she was the victim in the subject matter. The evidence considered by the Department, evidence collected from the police, did not support the Appellant's contentions. The Appellant submitted an affidavit from the paternal grandmother who was present for parts of the subject weekend, which was considered by this hearing officer. The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision for neglect or physical abuse. The undersigned will not pass clinical judgment on the Department's broad discretion as delineated in the regulations.

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. Based on a review of the evidence presented, in its totality, the Department had reasonable cause to believe that J was neglected while in the care of the Appellant, as defined by Departmental regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16 The home environment provided to J was filled with chronic discord, verbal and physical altercations, repeated police intervention and constant escalation of adult behaviors. 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

With respect to the Department's finding that the Appellant physically abused J, the issue in this case was whether the non-accidental act/acts by the Appellant caused physical injury to J or created a substantial risk of physical injury to J. As noted above, in a case of soft tissue swelling and/or bruising all of the circumstances must be considered in order to determine whether a caregiver's actions are reasonably considered abusive. J received injuries caused by the Appellant, whom the police determined was the aggressor in the instant matter. The Appellant's chaotic home environment and years of documented inappropriate parenting creates a substantial risk of physical injury to J and in the future. The Appellant presented with no insight into her own behaviors, rather focused on her son's treatment of her. The credible evidence here amounted to a "collection of facts, knowledge, or observations which tend to support or are consistent with the allegations that a substantial risk of injury is present," Cobble v. Department of Social Services, 430 Mass. 385, 394 (1999), where substantial risk of injury is defined as an "act by a caretaker upon a child which ... creates a substantial risk of physical or emotional injury." 110 CMR 2.00 This instant case was dissimilar to Cobble v. Commissioner of the Department of Social Services (1999). The Appellant was not disciplining J by spanking him with a belt in a controlled fashion on his bottom for the purpose of educating him about his behavior. Rather, the Appellant often had a hard time handling J, became upset and frustrated with his behaviors, and engaged in verbal and physical altercations with J routinely, which caused observed deep scratches on his neck. In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29


Considering the entirety of the record in this case, there was no evidence that the Department

acted unreasonably when supporting this report, the Appellant was not substantially prejudiced by the Department's decision, and the Appellant did not show by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of physical abuse and neglect of J by the Appellant.

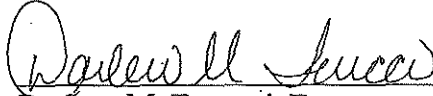
Conclusion

The Department's decision to support the allegations of **physical abuse and neglect** of J 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, he/she may do so by filing a complaint in the Superior Court for the county in which she/he lives, or within Suffolk County, 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.


Laureen Decas
Administrative Hearing Officer

Date: 4/27/18


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