

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET 6TH FLOORS
BOSTON, MASSACHUSETTS 02111**

**Linda S. Spears
Commissioner**

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IN THE MATTER OF: SA & LG

Fair Hearing # 2017-1222

FAIR HEARING DECISION

The Appellants in this Fair Hearing are Ms. SA (hereinafter SA) and Mr. LG (hereinafter LG or collectively as the Appellants). The Appellants appeal the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to support allegations of neglect by the Appellant LG of the reported child, A, the report filed and investigated pursuant to MGL., c.119, sec. 51A and B.

Procedural Information

On August 15, 2017, the Department received a non-mandated 51A report alleging the neglect and sexual abuse of the subject child by LG. The report was received by the Department's Lowell Area Office, where it was deemed non-emergent and assigned accordingly. The Department completed its response on September 5, 2017. The allegation of neglect of A by the Appellant LG was supported. The allegation of sexual abuse was unsupported. The Appellants were informed of the decision and of their right to appeal the Department's determination. The Appellants filed a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was held on December 7, 2017 at the Department of Children and Families' Lowell Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record closed concurrent with the Hearing session on December 7, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph
LG
SA
MO
MS

Hearing Officer
Appellant
Appellant
Department Supervisor
Department Response Worker

In accordance with 110 C.M.R. 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 following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit 1: 51A dated August 15, 2017

Exhibit 2: 51B dated September 5, 2017

For the Appellant:

None

Issue To Be Decided

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 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, 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) 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. The subject child of this investigation, A, was four (4) years old at the time of the subject report. (Exhibit 1, p.1)
2. LG is not the biological father of A, but has been SA's intimate partner for more than three (3) years, and has therefore been A's caregiver for the majority of her life. (Testimony of Appellants, Fair Hearing Record)
3. A is a gregarious, loving and energetic little girl, who is thriving across settings. (Exhibit 2, pp. 2, 12, Testimony of Appellants, Testimony of Department Response Worker)

4. LG has a son, J, age three (3) from a previous relationship. LG is devoted to J and sees him regularly. (Testimony of Appellant, Exhibit 2, p.1)

5. SA's mother, hereinafter Ms. [REDACTED], holds a negative opinion of LG due to his infidelity early in the Appellant's relationship. Ms. [REDACTED] is also hyper vigilant to issues of alleged sexual abuse due to the victimization of one of her own, now adult, children. (Testimony of Appellants)

6. In June, 2017, A had two episodes where she had blood spots in her underwear. SA acted immediately after the first episode, taking A to her pediatrician, who performed urinalysis and exam, and found no sign of trauma, no infection and nothing consistent with sexual abuse. (Exhibit 2, pp. 3, 4, Testimony of SA)

7. Two (2) months after these episodes, [REDACTED] M filed with the Department, and detailed a number of concerns, including the possible sexual abuse of A, as well as neglect. (Exhibit 1, pp1, 2)

8. The Appellants assert that Ms. [REDACTED]'s version of these events was exaggerated, biased against LG and informed by her own personal history of abuse. (Testimony of Appellants, Fair Hearing Record)

9. There is reason to credit the Appellants' assertion. No collateral had any concerns with LG having abused A, nor did the pediatrician. LG had no history of predation, and his Department history is confined to actions he initiated in an effort to shield his first child from substance abuse. (Testimony of Appellants, Fair Hearing Record, Exhibit 2, p.1, See Analysis)

10. In the absence of any evidence corroborating the sexual abuse, the Department unsupported that allegation, leaving the allegation of neglect. The Department's support decision for neglect of A was predicated on two (2) incidents where LG was alleged to have left A unsupervised. (Exhibit 2, pp. 8, 10, 11)

11. Neither one of these alleged instances constitutes neglect as defined by the Department. In the first, LG left A secured in her car seat whilst he paid for gas at a glass enclosed kiosk. A was not out of his sight and the entire time elapsed was no more than two (2) minutes. (Testimony of LG, DCF Protective Intake Policy #86-015, rev. 2/28/16)

12. The second, more substantive, incident occurred when LG left A in the Appellants' shared home to shovel snow. The temperature was frigid, and LG did not want to expose A whilst he dug out the car, and moved it as per the requirements of his apartment complex. (Exhibit 2, p.2, Testimony of Appellants)

13. LG's testimony regarding these events is highly credible. The time frame reported by Ms. [REDACTED], which would indicate that A was left alone for thirty (30) minutes is inaccurate. LG checked on A every few minutes while he shoveled and could not have reasonably anticipated that he would be delayed by a fender bender in the parking lot. In total, A was

outside of LG's purview for a total of fifteen (15) minutes, while the police responded, provided a form to report the incident and left. No police report was taken, nor report filed with the Department. (Testimony of LG, Fair Hearing Record, see analysis)

14. LG erred in judgment in stepping away from A, notwithstanding that he could not have reasonably anticipated a fender bender would delay him in return. LG is remorseful and he has not since left A unattended. (Testimony of LG, See Analysis)

15. The Department's response worker had no protective concerns absent this supervision issue, and approved the reunification of this family prior to the conclusion of the response period. (Testimony of Department Response Worker)

16. While the Department made a recommendation to open for services, the ongoing worker made no substantive recommendations nor offered any service, and the case was, at the time of Fair Hearing, slated for imminent closure. In the interstice between the report and Fair Hearing, the Department's social worker has given approval for LG to resume unsupervised caretaking responsibilities for A. (Testimony of Department Response Worker, Testimony of Department Supervisor, Testimony of Appellants)

17. Both SA and LG spoke with compassion, authority, insight and devotion about both A and LG's older son. (Fair Hearing Record, Testimony of Appellants)

18. The Department had received no further reports of concern about this family, and telegraphed their lack of protective concern in both approving LG as a caregiver and in moving to close the case after assessment. (Testimony of Department Supervisor, Testimony of Department Response Worker, see analysis)

19. After a review of the evidence and for the following reasons, I find that the Department did not have reasonable cause to find that A was neglected by LG and further, that LG's actions/inactions did not place A in danger. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

20. The Department's decision to support the allegation of neglect by Appellant of A was therefore not made in conformity with its policies and regulations. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

Applicable Standards

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred *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. 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.” Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caregiver; 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

“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. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

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

As A’s functional step-father, the Appellant was a caregiver for A under Department regulations and/or policies. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department supported an allegation of neglect of A by the Appellant, LG. The Department has failed to meet the threshold set forth. There is reason to doubt the credibility and motivation of the family member who provided the most critical information to the Department. The sexual abuse allegations were unsupported.

This Hearing Officer is obliged to consider the entire administrative record, including evidence that supports and/or detracts from the allegation made. The Department gave significant weight to the opinions and ostensible facts provided by the maternal

grandmother, Ms. [REDACTED]. There is ample cause to question both her motivation and credibility, neither of which was considered by the Department.


LG erred in judgment in leaving A in their home while he shoveled snow outside her line of sight. A was not at significant risk during this time as LG checked on her regularly. His remorse and commitment not to repeat this error were authentic and credible. The Appellants are devoted, capable young people who have successfully blended a family with two thriving preschoolers.

With respect to the totality of the evidence, including the basic undisputed facts, this Hearing Officer finds the Department's decision was not made in accordance with Department policies and/or regulations. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); Wilson v. Department of Social Servs., 65 Mass.App.Ct. 739, 744-745 (2006);

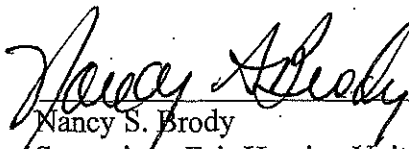
Conclusion and Order

Based upon the evidence presented both at the time of the investigation and at the Fair Hearing, the decision of the Department to support the allegation of neglect, as defined in its regulations, was not made in conformity with Department regulations, policies and procedures. Therefore, the decision of the Department to support the allegation of neglect is **REVERSED**.

The Department's decision to support the allegation of NEGLECT of A by the Appellant, LG, is REVERSED.


Anna L. Joseph
Administrative Hearing Officer

Date: 4-4-18


Nancy S. Brody
Supervisor, Fair Hearing Unit

Date:

Linda S. Spears
Commissioner