

**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

KP and JJ #2017-1228

FAIR HEARING DECISION

KP and JJ appeal 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 15, 2017, the Department received a 51A report alleging neglect of K, D, A and J by JJ (father of A and J). The Department screened-in the report for a response. On September 6, 2017, the Department made the decision that K, D, A and J had been neglected by JJ and his girlfriend, KP (mother of K, D and J). The Department also determined that A was neglected by his mother, AB and AB's boyfriend, JC. The Department notified KP, JJ, AB and JC of its decision and their right to appeal.

KP and JJ made a timely request for a fair hearing to appeal the Department's decision. A hearing was held on December 6, 2017, at the DCF Arlington Area Office. KP, JJ, the Department response worker and the Department supervisor testified at the hearing.

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

Exhibit A: 51A report.

Exhibit B: 51B report.

KP and JJ submitted the following exhibits which were entered into evidence at the hearing.

Exhibit 1: Police incident report.

Exhibit 2: Abuse Prevention Order

Exhibit 3: Phone records

Exhibit 4: ██████████ online, police records, August 3, 2017.

Exhibit 5: Copy of a social media post.

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. JJ and AB are the parents of A (age 10 at the time in question). (Exhibit A, pp. 1-3; Exhibit B, p. 1).
2. JJ and AB have not been involved in a relationship in years. After they separated, they shared 50/50 custody of A. (Exhibit B, p. 2).

3. JJ is currently in a relationship with KP and they live together. KP has two children from a prior relationship, K (age 15 at that time in question) and D (age 12 at the time in question). KP has physical custody of K and D. (Exhibit A, pp. 1-; Exhibit B, pp. 4, 5).
4. JJ and KP also have a son together, J (age 8 months at the time in question). (Exhibit A, pp. 1-2).
5. JJ and KP are caregivers for K, D, A and J under Department regulations. 110 CMR 2.00(5).
6. JJ and AB have a history of involvement with the Department dating back to October 2013. At that time there were two supported 51A reports alleging neglect and physical abuse of A by JJ after JJ assaulted AB in front of A. (Exhibit A, pp. 5-8, 10).
7. The Department had an open case with the family from October 2013, until March 2015. (Exhibit A, pp. 5-8).
8. The case re-opened in February 2016, after a 51A report was filed and supported. The report alleged neglect of A by JJ after A saw a text message JJ sent to AB in which JJ threatened to kill AB. The case remains open to date. (Exhibit A, pp. 5-8, 10; Exhibit B, p. 1).
9. AB has had 4 restraining orders against JJ in the past. (Exhibit B, p. 6).
10. AB became involved in a relationship with her current boyfriend, JC, in 2016. (Exhibit B, p. 7).
11. AB was diagnosed with cancer in 2016. She had surgery and began chemotherapy in 2017. She lost her job, apartment, and car due to her illness. She was homeless and moving from place to place, staying in hotels and with friends. (Exhibit B, pp. 6-7).
12. A lived primarily with JJ throughout this time. AB saw A about every three weeks for 3-4 hours at a time. When she saw A, she and JC picked him up and dropped him off at JJ's home. In order to avoid interaction with JJ, they parked down the street from JJ's home. (Exhibit B, pp. 2, 3, 6).
13. AB and JC are caregivers for A under Department regulations. 110 CMR 2.00(5).
14. On August 14, 2017, AB and JC picked up A at JJ's home. They had dinner and checked into a hotel and went to the hotel pool. During the visit, JJ began sending text messages to A asking him where he was. JJ then called A and asked to talk to AB. A gave AB the phone. JJ and AB had an argument and were screaming on the phone. Later that night, AB and JC brought A back to JJ's home. They arrived about 8:45pm. (Exhibit B, pp. 3, 6; Exhibit 1).

15. AB and JC parked the car down the street. AB got out of the car with A and JC remained in the car. A began walking up the driveway to the home. JJ came out of the home and walked down the street toward AB and JC. Father was recording mother with his phone as he approached her and repeatedly yelling, "What is your address?" AB told him she is homeless and does not have an address. JC got out of the car. He got between AB and JJ and told JJ to stop it. JJ told JC that he knows where he lives and his daughters' names. JC took that as a threat and he pushed JJ. JJ pushed him back and they engaged in a physical altercation. (Exhibit 1; Exhibit B, pp. 2, 3, 4, 6, 7).
16. A observed the altercation. He was upset, crying and hyperventilating. AB wanted him to get back into the car. A started to run to a neighbor's house, but either JJ or JC caught him and told him to go into the house. He ran into the house and was watching out the window. (Exhibit B, pp. 2, 3).
17. KP ran outside and yelled, "What's going on?" AB and JC came back up the driveway. KP and AB engaged in a loud verbal argument. AB called KP a bitch and a whore. KP said that she is the one who takes care of her son. AB said, "What are you going to do? I have cancer and am homeless." The verbal argument escalated to a physical altercation. (Exhibit 1; Exhibit B, pp. 2, 3, 4; Testimony of KP).
18. K and D were in the house when the incident occurred. They heard yelling and saw A crying and hyperventilating when he came in the house. D hugged him. K heard AB call KP a bitch. K went outside and yelled at AB, "Who the fuck do you think you are?" AB yelled back, "Fuck you." (Exhibit B, p. 4).
19. When KP went back into the house, she told A that his mother attacked her. (Exhibit B, p. 4).
20. JJ called the police and officers responded to the home. By the time they arrived, AB and JC were gone. JJ told police that JC started the altercation. KP told police that AB attacked her. Police located JC and AB. JC acknowledged shoving JJ first because he would not stop coming at them and recording. AB told police that KP attacked her. (Exhibit 1).
21. Police noted that JJ and KP had minor injuries as a result of the altercations. They declined medical attention. (Exhibit 1).
22. Police observed all of the children including J who was being tended to by K during the time police were in the home. A was visibly upset and hugging JJ asking him if he was okay. (Exhibit 1).
23. No one was arrested. Police filed a 51A report alleging neglect of the children by JJ. (Exhibit 1; Exhibit A).
24. On August 15, 2017, the Department received a 51A report alleging neglect of all of the children by JJ due to the above incident. The Department screened-in the report for a response. (Exhibit A).

25. The Department response worker spoke with JJ, KP, AB, JC, A, K and D. The information gathered was consistent with the above findings. All of the adults denied any part in instigating the incident. While the response worker spoke with family members at JJ's home, A requested that everyone meet as a family to talk about it. He felt bad about the incident and wanted to apologize for his mother. D said she was upset by what happened and she keeps thinking about it. K said she wishes she could have done more or say something to AB. KP said she did not know why AB "did that." They reassured A that he was a good kid. (Exhibit B, pp. 4, 5).
26. On September 6, 2017, the Department made the decision that, among other things, JJ and KP neglected K, D, A and J by exposing them to the incident of violence and negatively impacting their emotional well being. (Exhibit B, pp. 9-11).
27. Considering all of the credible evidence, I find that there is reasonable cause to believe that JJ and KP neglected K, D, A and J and that their actions posed a risk to the children's safety and 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.

To prevail, an Appellant must show 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 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. 110 CMR 10.23

"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).

The Department found that JJ and KP neglected the children by exposing them to the physical altercation between JJ and JC and between KP and AB.

JJ and KP do not dispute that, had their actions contributed to the altercation, their actions would constitute neglect and pose a risk to the children's well-being. JJ and KP argue that they did not do anything to instigate the altercations. Further, they claim that they had put J to bed at 8:00pm and he was asleep in his crib at the time of the incident.

I do not credit KP's testimony that they put J to bed at 8:00pm as usual and he was asleep in his crib throughout the incident. The police report documents that he was awake and being tended to by K when they were in the home. If he had been asleep, I find it unlikely that they would have woken him up when the police arrived.

I find that there is evidence in the record to indicate that JJ and KP's actions and verbal engagement at the very least contributed to, if not provoked the incident of violence.

The evidence shows that JJ has a history of threatening and being violent toward AB. The evidence also shows that JJ was already angry with AB that day. While A was with AB, JJ sent a text message to A asking him where he was and then he called him to speak with AB and an argument ensued. When AB and JC went to drop A off at JJ's home they parked down the street as they usually did to avoid any interaction with JJ. Instead of remaining in the home, JJ walked down the street toward them recording with his phone and demanding to know where AB lived. I find that JJ's actions provoked the events that followed. JC perceived him as threatening. He got in between AB and JJ. JJ made a comment to JC about knowing where he lives and knowing his daughter's names which JC also viewed as a threat. This provoked JC to push JJ which escalated into a physical altercation between them.

KP was in the house with the other children when A came running in crying and hyperventilating. Instead of remaining inside with the children to calm A down, ensure the children's safety and call the police for help, KP went outside. According to KP's testimony, when she went outside and said, "What's going on?," AB and JC "came back up the driveway." This suggests that they were disengaging at that point, but returned to respond to her. AB and/or JC called KP names and KP responded by saying, "She's the one who takes care of A." KP knew or should have known that her comment would provoke a response from KP, which it did and the argument escalated into a physical altercation.


I find that JJ and KP's actions and verbal engagement had the reasonably foreseeable result of escalating the incident while the children were present and that they acted

without regard for whether the children would witness or become involved in the incident. I find that JJ and KP neglected the children under Department regulations and that their actions posed a risk to the children's safety and well-being.

Conclusion and Order

The Department's decision to support allegations of neglect of K, D, A and J by JJ and KP was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

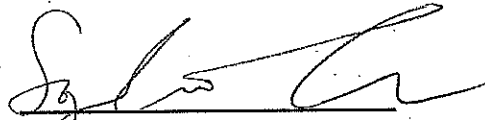
This is the final administrative decision of the Department. If the Appellants wishes to appeal this decision, the Appellants may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which they reside, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Anne L. Dale Nialetz,
Administrative Hearing Officer

12/29/2017

Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit