THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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IN THE MATTER OF	)	
	)	
CA & CD	)	**FAIR HEARING DECISION**
	)	
FH # 20171232	)	
	)	

The Appellants in this Fair Hearing were CA and CD (hereinafter "CA" or "mother"; or "CD" or "father"; or "parents" or "Appellants"). The Appellants appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On September 12, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of A, M, A2 and M2 (hereinafter "A" or "M" or "A2" or "M2" or "the children") by their parents, the Appellants. A response was conducted. On September 27, 2017, the Department made the decision to support the allegations of neglect of the children by the Appellants. The Department notified the Appellants of its decision and their right to appeal.

The Appellants made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on December 7, 2017, at the DCF Fall River Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
CA	Appellant[1]
JS	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.

[1] CA [redacted] represented herself and CD at the hearing. CD was not present.

The Fair Hearing was recorded pursuant to DCF regulation 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 9/12/17
Exhibit B: 51B Report, completed 9/27/17

Appellant:
Exhibit 1: Criminal docket of GR, maternal grandmother, dated 8/13/07

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 report, A and M were sixteen (16) years old (twins), A2 was twelve (12) years old, and M2 was ten (10) years old. The children resided in [redacted] MA with their parents, CA and CD, the Appellants. (Exhibit A)

2. The Appellants are the parents of the children; therefore they are deemed caregivers pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

3. 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 of A, M, A2 and M2 by the Appellants. According to the reporter, M reported that on September 8, 2017, she was told by the Appellants she would be their designated driver for a social event, as she had her learner's permit. M argued with the Appellants all weekend and her

mother, CA, told her to leave the home which she did. On September 12, 2017, CD arrived at the school in the morning to un-enroll M from the school; CD had an odor of alcohol emanating from him. M disclosed the Appellants drank alcohol daily and she did not feel safe getting into CD's car. M was described as a great student, model peer, and star soccer player. On prior occasions, M had gone to school crying and reported arguments with the Appellants and also reported their drinking. This report was screened in for an investigative response. (Exhibit A)

4. On September 13, 2017, the Department interviewed A at school. A expressed concern that the Appellants drank excessively. He had told his parents to not drink and drive as they had drove drunk with the children in the past. A wanted his parents to cut back on their drinking as it was a problem. (Exhibit B, p. 2)

5. On September 13, 2017, the Department interviewed M at school. M reported she has a learner's permit and was asked to be the driver for her parents on September 8, 2017. Her parents were intoxicated and M drove them home. M stated that the Appellants ask her to drive so they can drink. M reported she had seen her parents drink, that her father drink wine and both parents drink at times six (6) bottles at night. M was concerned about her parents drinking. (Exhibit B, p. 3)

6. On September 13 2017, the Department interviewed A2 at school. A2 stated there were times that the Appellants drove the children when they should not have as they had been drinking. A2 reported that CD is not smart about drinking and drank a lot and had started the day with a drink; while drinking throughout the day.

7. On September 14, 2017, the Department interviewed M2 at school. M2 stated the Appellants had driven with the children and felt that they were intoxicated and should not have been driving. M2 felt that both Appellants drink a lot; however his father had more of a problem with drinking. M2 reported he wanted them both to stop drinking. (Exhibit B, p.10)

8. The Appellants declined to meet with the Department and declined a visit to their home. (Exhibit B)

9. On October 3, 2017, after interviewing the four (4) children separately and speaking with school personnel familiar with the family, pursuant to M.G.L. c. 119, §51B, the Department supported the allegations of neglect by the Appellants; that the Appellants failed to provide minimally adequate care and supervision, as they failed to minimally meet the emotional stability and growth of their children due to their alcohol consumption; their actions placed the children in danger or posed a substantial risk to the children's safety and well-being. (Exhibit B, p.10; 110 CMR 2.00)

10. At the end of its response, the Department supported the aforementioned report for neglect of the children by the Appellants. The Department based their support finding on the following:
    a. A asked the Appellants in the past not to drink and drive with them (the children)

in the car. Somedays CD began his day with alcohol and both parents were drinking excessively.

b. During a party on September 8, 2017, the Appellants were both intoxicated and M drove them home with a learner's permit. M was asked to drive by the Appellants so they could consume alcohol. The Appellants drank six (6) bottles of wine a night sometimes and M felt they needed to address their alcohol use.
c. A2 expressed his mother was smart about her drinking but his father was not and drank too much. His father started his day with alcohol sometimes. At times the Appellants drove the children after drinking. There was arguing in the home.
d. M2 felt his parents needed a designated driver because they both drink a lot and needed to stop drinking. He has heard the Appellants arguing and saying bad things to each other.

(Exhibit B)

11. According to CA, in 2012, she was charged with an OUI ("Operating Under the Influence"). CA went to court ordered treatment and reported she continued to drink but no longer drinks and drives. (Testimony of CA)

12. The Appellants drank more than their children liked them to; and they drank more alcohol then they should. (Testimony of CA)

13. The Appellants had two (2) interactions with the police department during the past year due to A and M's acting out behaviors; neither incident did the police suspect they were intoxicated. (Testimony of CA)

14. In light of the totality of the evidence in this case, I find that the Department had reasonable cause to believe the allegations of neglect on behalf of A, M, A2, and M2 because the Appellants failed to provide the children with minimally adequate care/supervision.
    a. A determination of neglect does not require does not require evidence of actual injury to the child. Lindsay v. Dep't of Social Servs., 439 Mass. 789, 795 (2003).
    b. The Department had sufficient evidence to support a finding that the Appellants neglected their children under Department policies and regulations. All four (4) children independently and separately expressed ongoing concern over their parent's consumption of alcohol. M was used as a designated driver for her parents and did not receive the necessary guidance and instruction a permitted driver needed when her passengers, her parents, were intoxicated. A2 and M2 acknowledged their parents excessive alcohol consumption, arguing, and calling each other bad things.
    c. The Appellants failed to provide the children with minimally adequate care, supervision, emotional stability and growth and their actions placed the children in danger and posed substantial risk to the children's safety and well-being. 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 caretaker 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. 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" is "[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. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

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, (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 Appellants were caregivers pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellants contested the Department's decision to support allegations of the neglect of their children by them. They argued although they consumed alcohol, and possibly drank too much alcohol; they were able to provide for and meet the needs of their children. The Appellants maintained they did not fail to provide their children with anything; that they have an active household with four (4) children who do well in school and who all play soccer; that this decision was influenced by M, who was testing stricter limits on her adolescences then she liked, limits stricter than that of her peers. I did not find the Appellants argument persuasive. The Department based their support decision not solely on the statements made by M. Considering the entirety of the record, the Department supported neglect as all four (4) children had knowledge of parents' consumption of alcohol, verbalized their feelings that alcohol was a problem for their parents which caused fighting in the home; the parents have driven the children while under the influence; CA's admittance of a OUI charge in 2012 and continued use of alcohol, and that all four (4) children wished their parents would stop drinking. No evidence was offered to show the Department acted unreasonably or that the weight given to the statements of all of the children was inappropriate or in error. The Department credited and relied upon the statements made by the four (4) children who live in the home, from the ages of ten (10) to sixteen (16) and who were interviewed separately. There was no evidence that the children were motivated to make false allegations against the Appellants or that the children had done so in the past. Edward E. v. Dep't of Social Services, 42 Mass.App.Ct. 478 (1997)

This Hearing Officer is duty bound to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision the Appellants neglected their children. In reaching the instant decision, this Hearing Officer gave weight to the Appellants admittance she and her husband drank too much and did have their permitted daughter transport them, giving credibility to M's claims. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691 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, s 51B.

"The purpose of the mandatory reporting regime under M.G.L. c. 119,§ 51A is to provide the DCF with information necessary to protect a child's health, safety, and development before actual harm is done." B.K. v. Dep't of Children & Families, 79 Mass. App. Ct. 777, 782 (2011) "A caretaker's actions that fail adequately to protect a child's well-being can constitute neglect, even in the absence of actual harm." Id. at 783

Considering the entirety of the record in this case, I find that the Department's decision to support the allegations of neglect was made in conformity with its policies and regulations and with a reasonable basis. 110 CMR 2.00, 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16 The Appellants have not shown 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 neglect.

Conclusion

The Department's decision to support the allegations of **neglect** of the children, M, A, M2, and A2, by the Appellants was made with a reasonable basis and therefore, is **AFFIRMED.**

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, he/she may do so by filing a complaint in the Superior Court for the county in which he/she lives, or within Suffolk County, 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.

Laureen Decas

Laureen Decas
Administrative Hearing Officer

Date: 3/20/18

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