

**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

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

IN THE MATTER OF)

A.B.)

FH # 2017-1238)

FAIR HEARING DECISION

The Appellant (Ms. A.B.) in this Fair Hearing is the mother of the reported child, A. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On September 16, 2017, the Department received a 51A alleging the neglect of the child (A) by the Appellant. The Department conducted an emergency response and, on September 16, 2017, the Department made the decision to support the allegation of neglect of the child by the Appellant. 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 19, 2017, at the DCF Malden 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:

Ms. Lisa Henshall
Ms. A.B.
Ms. B.P.

Fair Hearing Officer
Appellant/mother
DCF Hotline Response Supervisor (RS)

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 pursuant to DCF regulations. 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A Child Abuse/Neglect Report dated 9/16/17
Exhibit B Child Abuse/Neglect Non-Emergency Response dated 9/18/17

Appellant:

None

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. The subject child of the Fair Hearing was A, who was ten (10) years old at the time of the reported incident. (Exhibits A & B)
2. The Appellant is the child's mother; therefore she is a caregiver pursuant to Departmental regulation 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16. (Testimony of the Appellant)
3. On September 16, 2017, a 51A report was filed alleging the neglect of the child A by the Appellant.¹ The report alleged that the Appellant and the maternal grandmother EB, were at a restaurant with the child and determined to be "highly intoxicated" by the server. A decision was made to no longer serve them alcohol. The police were contacted and when they arrived they concurred that the two were highly intoxicated. EB was given a

¹ The report also alleged the neglect of the child by the maternal grandmother, EB, but that was not the issue being appealed at this hearing.

breathalyzer. The Appellant was reportedly "combative" so her intoxication level could not be determined. The report was screened in, pursuant to M.G.L. c. 119, §51B, and the report was assigned for an emergency response. (Exhibit A, pgs. 2 & 7; Exhibit B; Testimony of the RS)

4. It was undisputed that on the day of the reported incident the Appellant had been out with EB and the child. They had lunch in ██████████, MA and then drove to a restaurant in ██████████, MA where they were determined to be highly intoxicated. The ██████████ police were contacted and responded at 10pm. (Exhibit A; Exhibit B; Testimony of the Appellant; Testimony of the RS)
5. The police responded and EB was given a breathalyzer and her score was .204. The police transported the Appellant, EB and the child to the police station. (Fair Hearing Record)
6. At the police station, the Appellant was lying on the floor demanding to see her son and to leave. The Appellant was combative and swearing. The Appellant was swearing at the child's father because he was unable to come pick them up. (Testimony of the RS; Exhibit B)
7. The Appellant argued that she was angry because the child was interviewed without asking her permission and she was being detained by the police, which did not make her happy. (Testimony of the Appellant)
8. The Appellant smelled of alcohol. The Appellant refused a breathalyzer. (Exhibit B, p.3)
9. The Appellant disputed that she was "so intoxicated" as indicated in the DCF response. At the time of the response the Appellant denied that she had been drinking at all. At the hearing she testified she had wine. (Exhibit B, pgs. 2-3; Testimony of the RS; Testimony of the Appellant) I find that the Appellant had been drinking alcohol at the time of the reported incident and was intoxicated based on the server's observations at the restaurant, her behavior at the police station and the Department Response Worker's observations. (Exhibit B, pgs. 2-3; Testimony of the RS; Testimony of the Appellant)
10. The Appellant was unsure how much alcohol EB drank that day indicating it was not her responsibility to keep track of EB as EB was an adult. (Testimony of the Appellant)
11. It was undisputed that EB drove the child and the Appellant from ██████████ to ██████████, MA while intoxicated. (Fair Hearing Record)
12. The child resided with his father during the week and the Appellant on the weekends. There were no other protective concerns regarding the child. (Exhibit B)
13. At the end of its response, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department based this determination on the Appellant's actions on the day in question. The Appellant was found to be under the influence of alcohol based on the evidence gathered. The police determined that the Appellant was unable to safely transport her son home from the police station so she was

detained. The Appellant allowed EB to drive her and her child while EB was intoxicated. The case remained open at the conclusion of the response. (Testimony of the RS; Exhibit B, pgs. 6-7) The Department concluded this constituted neglect as defined by its regulations 110 CMR 2.00; DCF Protective Intake Policy #86-015 Rev. 2/28/16

14. Based on the credible evidence, I find that the Department did have reasonable cause to believe that child was neglected per the Department's definition. In addition, I find that the Appellant's actions on the day in question, placed the child in danger and posed a substantial risk to the child's safety or well-being. 110 CMR 2.00; Protective Intake Policy #86-015 Rev. 2/28/16 (Testimony of the RS; Exhibits A & B; Testimony of the Appellant)

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 or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16

Danger is 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. (*Id.*)

"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 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 § 51A. *Id.* At 63. This same reasonable cause standard of proof applies to decisions to support allegations under §51B." *Id.* At 64; G.L. c.119, s 51B

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child's health or welfare, and (e) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including baby-sitting), a foster home, a group care facility, or any other comparable setting. As such, "caregiver" includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The

“caregiver” definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is himself/herself a child (i.e. baby-sitter). 110 CMR 2.00

Neglect is defined by failure by a caregiver, either deliberately or through negligence and 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 solely to the existence of a handicapping condition. Protective Intake Policy #86-015 Rev. 2/28/16

A Fair Hearing shall address (1) whether the Department’s or provider’s decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;. . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

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. 110 CMR 10.23

Analysis

The Appellant contested the Department’s decision to support the allegation that the Appellant had neglected her child. The Appellant stated that it was an unfortunate incident and she was embarrassed by it. The Appellant argued that the restaurant had an issue with them because EB could not find her credit card to pay. The Appellant stated she ended up paying and “even left a tip.” The Appellant argued that she was angry because she was being detained by the police, her child was present and had been spoken to without permission and the child’s father would not come to pick them up. Further, her child was well taken care of and that this would never happen again and described it as one really bad day.

The Appellant’s argument was not persuasive as the Department’s presented evidence that, on the day in question the Appellant failed to provide the child with minimally adequate care and that there was “reasonable cause to believe” that he was neglected. In addition, to the Appellant’s obvious intoxication she permitted EB to drive her and her child while EB was intoxicated as indicated by the evidence. The Appellant’s decision on the day of the reported incident placed the child in danger. 110 CMR 2.00; Protective Intake Policy #86-015 Rev. 2/28/16

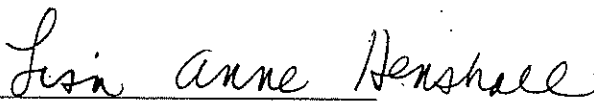
Although there was no evidence that A was harmed by Appellant's actions, the Department need not wait for an actual injury to occur to intervene. The Department's decision was made in conformity with its policies and with a reasonable basis. See definitions of "reasonable cause" and of "neglect" above. A determination of neglect does not require evidence of actual injury. Lindsay v. Department of Social Services, 439 Mass. 789 (2003). For example leaving an infant in a hot car on a summer day, or weapons loaded and within access of a child, or driving in a car with an intoxicated driver the action itself constitutes neglect and the Department does not need to wait for a disastrous outcome in order to support an allegation of neglect

Based on a review of the evidence, presented in its totality, this Hearing Officer finds that there was reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulation. The Department also presented evidence that the Appellant's actions placed the child in danger. (See Findings)


Conclusion and Order

The Department's decision to support the 51A report for neglect of the child (A) by the Appellant 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 he lives within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.)



Lisa Anne Henshall
Fair Hearing Officer *BC*



Barbara Curley
Supervisor, Fair Hearing Unit

Date: June 18, 2018