

**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 )  
( T.B. )  
( FH #2017-1246 )  
( )

**HEARING DECISION**

**Procedural History**

The Appellant, T.B., appeals the decision of the Department of Children and Families [hereinafter "the Department" or "DCF"], to support for neglect of J and B, pursuant to M.G.L., c.119, §§51A & 51B.

In August 2017, the Department received three 51A Reports; two of which involved the Appellant as it pertained to neglect of his daughter, J, and of his daughter's friend, B. The 51A Reports contain allegations about the children's exposure to unsecured firearms handled by another child, D, while all children and some of their families were visiting the home of D's grandparents, and were out on the boat leaving the children alone. The police responded to the grandparents' lake house and confiscated multiple unloaded firearms located in an unsecured closet which also contained ammunition. The 51A Reports were screened in for a 51B response and assigned to response social worker, T.N. who, among other matters, met with three different families associated with the incident(s) to include the Appellant. On September 13, 2017, following the 51B responses, the Department supported the allegations for neglect of J and B by the grandparents and by the Appellant for his failure to provide J and B with minimally adequate supervision. The Appellant's case was opened for assessment and remains open to date.

The Department notified the Appellant of the decision involving his daughter, J, as well as his right to appeal by letter dated September 19, 2017. The Appellant filed a timely request for Fair Hearing ["Hearing"] on October 12, 2017, as it pertained to both children, and in accordance with 110 CMR 10.06 & 10.08. The Appellant's request for Hearing was granted and held on January 16, 2018 at the Department's South Central Area Office in Whitinsville, MA. Present were the DCF Response Supervisor, K-B.H.; the DCF Response Social Worker, T.N.; and, the Appellant all of whom were sworn in under oath and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a compact disk [CD].

Admitted into evidence for the Department was the DCF 51A Report of August 22, 2017 as it pertains to child, J [Exhibit A] and the corresponding DCF 51B Response Supported and Approved on September 13, 2017 [Exhibit B] as well as the DCF 51A Report of August 22,

2017 as it pertains to child, B [Exhibit C] and the corresponding DCF 51B Response Supported and approved on September 13, 2017 and September 14, 2017, respectively [Exhibit D]. The Appellant made no submissions. The Hearing record was closed on January 16, 2018.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

### **Standard of Review**

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 51B response, the Department's decisions or procedural actions, in supporting the 51A Reports, 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 [110 CMR 10.05] 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 Revised 2/28/16]

### **Findings of Fact**

1. The Appellant and his ex-wife, N.F., are the father and mother, respectively, of a ten year-old daughter, J, who lives with her mother and was visiting with the Appellant at the relevant times. [Exhibit A; Exhibit B, pp 1 & 6; Testimony of the Response Social Worker; Testimony of the Appellant]
2. The Appellant is also the father of a one year-old daughter, A, by his girlfriend, T.M. [Exhibit B, pp.1 & 8; Testimony of the Appellant]
3. S D-S and J.S. are the parents of eleven year-old B, a friend of J. [Exhibit C; Exhibit D, pp.1 & 9-10; Testimony of the Appellant]
4. Fifteen year-old C is J's second cousin. [Testimony of the Appellant; Exhibit B, p.8]

5. S.B. and his then girlfriend and now wife, P.S., are the stepfather and mother of a twelve year-old boy named D. [Exhibit B, pp.3-4; Testimony of the Response Social Worker; Testimony of the Appellant]
6. S.B. is the Appellant's best friend. [Testimony of the Appellant]
7. S.B.'s elderly parents are N.B. and his wife, A.B; hereinafter referred to as grandparents/grandfather/grandmother. They own the lake house where the incidents under review occurred. [Testimony of the Response Social Worker; Testimony of the Appellant; Exhibit B; Exhibit D]
8. The grandparents have an open door policy for visitors to their lake house. [Testimony of the Appellant]
9. Visitors/relatives to the lake house at the relevant times included the Appellant, his girlfriend and his two children [J and A]; S.B, his then girlfriend, and child, D; child B, who was invited to join J for a asleep over with the Appellant and J; fifteen year-old C who was a guest of the Appellant at the lake house at another time; and, the grandparents, who own the lake house. They boat and jet ski while there. [Exhibit B; Exhibit D]
10. The grandfather has a license to carry [LTC] and owns guns, most of which are collectibles. The guns were stored at the lake house in a closet with an outdoor lock and key. The grandfather had the key, which he kept on his key ring. The guns were not loaded. Ammunition was also kept in this closet. [Exhibit D, p.3]
11. The children [J, B, D (& C)], at one time or another, were left alone at the lake house when exposed to and/or having access to improperly stored firearms in a closet on the third floor of the home.. [Exhibit A; Exhibit B; Exhibit C; Exhibit D] The Appellant does not dispute this occurred nor that it was a serious matter. [Testimony of the Appellant]
12. During these incidents, the adults were on the boat, which goes around in a circle keeping the house in view. Although there is some variation in the record as to the length of time the adults were absent from the house, more likely than not, it was on or about 20 minutes. [Exhibit B; Exhibit D]
13. The Hearing Officer finds that the Appellant, although on the boat, was a caretaker of J and B [as well as C<sup>1</sup>], when the incidents occurred, as set forth within the Department's Protective Intake Policy. The Appellant did not dispute this. [Testimony of the Appellant]
14. The police became involved in this matter in August 2017, because J told her mother that child D had pointed a gun at her while she was visiting with the Appellant at the lake house. This led to them walking into the police station to report this. As a consequence, the police responded to the grandparents' home, seized approximately 30 guns from the closet, suspended grandfather's LTC [license to carry], and summoned him to court to face the charge of improper storage of firearms. [Exhibit B; Exhibit D]

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<sup>1</sup>The Department did not address or support for neglect of C by the Appellant. [Administrative Hearing Record]

15. Grandfather's charge has been continued without a finding. [Testimony of the Appellant]  
The guns are now kept by his son, S.G., in his big gun safe. [Testimony of the Appellant;  
Testimony of the Response Social Worker]
16. Around June [2017], the paternal grandmother found a baseball coupon in front of the closet where the firearms were stored. This made them question if D had been in the third floor room. The children and adults stay on the first floor/basement when visiting and are not expected to be on the third floor. D was questioned and denied going up there. Paternal grandfather put a thin piece of paper in the door jam to see if someone had opened the closet door. He found that the paper had fallen indicating that someone had either been trying to get into that closet or the paper had been too thin. Paternal grandfather put a thicker piece of paper there, which never moved. On July 2, [2017], paternal grandparents bought a security camera stationed across from the closet door, which when activated by movement would send a message to paternal grandmother's phone. Within a week, there was an image of J and her cousin C going into the room giggling. The children saw the camera and then ran out of the room. This video was shown to the Appellant. [Exhibit B, pp.3-4; Exhibit D, p.3]
17. The incident involving the security camera happened on July 9, 2017. [Exhibit B, p.9]
18. The Appellant confirmed being shown the video and was embarrassed that his daughter was caught on camera. There was no reason for them to be on the third floor as there were only bedrooms there and he had never been there. The Appellant spoke with J about the seriousness of the matter. [Exhibit B, p.8; Exhibit D, pp.8-9; Testimony of the Appellant]
19. The response social worker met with the three families associated with this incident including the three children – J, B, and D. All adults and children reported that D got into the closet and jimmed the lock to gain access to the guns. D acknowledged this. [Exhibit B; Exhibit D]
20. Ten year-old J was interviewed privately by the response social worker on August 28, 2017. The following is a quick synopsis of her responses: [Exhibit B, pp. 7-8; Exhibit D, p.6-7; Testimony of the Response Social Worker]
  - (a) Twelve year-old D pointed a gun at her at the grandparents' home a few weeks prior. Her friend, eleven year-old B, was with her on the second floor. D disappeared and went upstairs [third floor]. D had the gun safe open and was holding a gun pointing it at the ceiling. She and B ran downstairs and hid. D told them the guns were away so they came out, but D was at the top of the stairs pointing a gun at her. It was a long gun. She and B went downstairs to the bottom floor and hid in the bathroom for fifteen minutes. D showed her the gun was not loaded. She guessed D put it away and afterward they watched a movie until the adults got home. The adults were on the boat to include the Appellant.
  - (b) On a second occasion, they tried again, but there was a camera.
  - (c) J does not think that the adults knew that D was getting into guns. She got in trouble when they found out and had to apologize.
  - (d) J denied touching the guns.

- (e) J was really scared, because she knows they were “murder weapons”
21. Eleven year-old B was interviewed by the response social worker on August 30, 2017. The following is a quick synopsis of her responses. [Exhibit D, pp.9-10; Testimony of the Response Social Worker]
- (a) D was playing with the guns. She saw this. It happened on one day. The adults were on the boat. D called her and J upstairs. J told her they were not supposed to be there. D was picking the lock with a knife and took out a gun. She and J ran to the bathroom. D told them to come out, promising that he no longer had it. When they came out, D was holding the gun, though not pointing it at anyone. She and J then ran to the basement bathroom and D put the gun away.
  - (b) D asked them not to say anything because his parents would be disappointed.
  - (c) She though the adults knew the guns were there, but not that D got into them.
  - (d) She does not feel safe with D, but does feel safe with the other adults including the Appellant.
22. Eleven year-old B had only one visit at the lake house with J, which was on May 26, 2017. [Exhibit D, p.9]
23. Twelve year-old D was interviewed privately by the response social worker on August 28, 2017. The following is a brief synopsis of his responses. [Exhibit B, p.5; Testimony of Response Social Worker]
- (a) The first time, he was by himself and only looked at the firearms. He shimmed the silver part of the lock to get into the closet. His mother was on the boat with the other adults.
  - (b) The second time was about a week later. He got into the closet the same way and picked some guns up. He just looked at them. He was alone. He did not tell anyone about it until the third time when he told J. Every time, his mother was on the boat and he was alone there.
  - (c) The third time, he brought J and B to the room to show them and got into the closet the same way. He said he held a pistol by the handle, pointing the barrel down. He held it for about five minutes, and did not do anything with it. He denied the girls touched the gun. He denied pointing a gun at anyone.
  - (d) There was a fourth time, when he tried to gain access to the closet with J and her cousin, C. He said he could not get in, because he did not have the knife. They noticed the camera was installed and the girls were freaking out.
24. The Appellant was interviewed by the response social worker on August 30, 2017 and testified at his Hearing of January 16, 2017. [Exhibit B, pp.7-9; Testimony of the Response Social Worker; Testimony of the Appellant]

25. Contrary to his testimony at Hearing, the Appellant knew there were guns at the lake house [Testimony of the Appellant v. Exhibit B, p.8]
26. The Appellant assumed the guns were secured. [Exhibit B, p.8; Testimony of the Appellant]
27. The Appellant said it was on July 9, 2017, when he viewed the security camera video of J and C at the closet, that he learned that the children had gone upstairs to the third floor and that there were concerns in the house. He said he then had a conversation with his daughter, J, at which point he found out about the earlier incident involving J, B, and D which occurred toward the end of May 2017. [Testimony of the Appellant]
28. The Appellant did not inform B's parents about the child's involvement in the May 26, 2017 incident. [Exhibit D, p.10]
29. The Appellant is now engaged in probate court with J's mother. He has not seen his daughter since August 2017. [Testimony of the Appellant]
30. The Department supported for neglect of J and B by the Appellant for his failure to provide minimally adequate supervision of J and B, when he allowed them to be alone, unattended, resulting in their exposure to firearms.
31. The Hearing Officer finds that the Appellant had no forewarning, prior to July 9, 2017 when the children were caught on camera, that J, B, D and even C had been exposed and/or had access to firearms at the lake house. The Appellant was aware that grandfather owned guns and assumed they were secured, but did not ask the grandparents or his best friend, if they were properly stored. Although there was an expectation that visitors were not to go up to the third floor where the closet with the firearms and ammunition was located and the Appellant, himself, had never gone up to that floor, the children apparently thought otherwise. There is no evidence in the record of a designated babysitter, when the Appellant and other adults were out on the boat at the lake house when the incidents occurred. The Hearing Officer finds that the Department, in supporting for neglect of J and B by the Appellant, had reasonable cause to believe that he failed to provide minimally adequate supervision of the children, which therefore posed a substantial risk to the children's safety and well-being. *See Analysis.*

#### Analysis

A party contesting the Department's decision, to support 51A Reports for neglect, may obtain a Hearing to review the decisions made by the Area Office. [110 CMR 10.06] The Appellant requested a Hearing, which was granted and held on January 16, 2018.

Regulations, policies, and case law applicable to this appeal include, but are not limited to the following:

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a

report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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 caretaker, physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals, e.g., professionals, credible family members, and the social worker and supervisor's clinical base of knowledge. [110 CMR 4.32]

The 51A report under appeal is supported for neglect. 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. This definition is not dependent upon location, i.e., neglect can occur while the child is in out-of-home or in-home setting. [110 CMR 2.00]

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 children 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. One such example is neglect that has led to a serious physical or emotional injury. Protective Intake Policy #86-015 [2/28/16]

**Substantial Risk of Injury:** A situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child. Protective Intake Policy #86-015 [2/28/16]

Caregiver is defined as:

- (1) A child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or
- (2) 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 an 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 the age of 18. [Protective Intake Policy, #86-015, Revised 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. 110 CMR 10.23.

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter under appeal. See Findings #1 to #31 and the below discussion.

Based on the record as a whole, the Hearing Officer finds the evidence sufficient to meet the Department's regulatory definition, which requires reasonable cause to believe that the Appellant, in leaving J [two incidents] and B [one incident] alone at the lake house for about twenty minutes, resulted in their exposure to grandfather's firearms. Such evidence, that the Appellant's actions posed a substantial risk to the children's safety or well-being would be necessary to support the allegations, as in this case.

The Hearing Officer has no reason to doubt the clinical experience and judgment of the Department in the instant matter. The Hearing Officer did not find any information offered by the Appellant to be substantial or compelling or reliable to such an extent that the Department acted unreasonably and/or abused its discretion in making a decision to support for neglect of J and B. Based upon a review of the evidence presented at the Hearing, including testimony from the parties and documents submitted, the Hearing Officer finds that the Department's decision, to support for neglect of J and B for the Appellant's failure to provide the child with minimally adequate supervision, was made in conformity with its regulations, supported by sound clinical judgment, and there was a reasonable basis for the decision. See Care and Protection of Robert and Lindsay v. Department of Social Services,


The Appellant met his burden of proof in this appeal. [110 CMR 10.23] The Appellant does not dispute the seriousness of the incident.



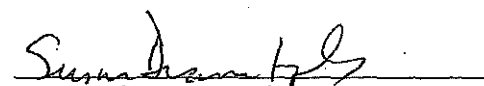
Orders

1. The Department's decision of September 13, 2017, to support the 51A Report for neglect of J by the Appellant, her father, is AFFIRMED

2. The Department's decision of September 13, 2017, to support the 51A Report for neglect of B by the Appellant, her caretaker, is AFFIRMED.

  
Frances I. Wheat (184)  
Administrative Hearing Officer  
Office of the General Counsel

Date: 2-28-18

  
Susan Diamantopoulos  
Fair Hearing Supervisor