

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda Spears
Commissioner**

**Voice: 617-748-2000
Fax: 617-261-7428**

IN THE MATTER OF

EB #2017 1248

FAIR HEARING DECISION

Appellant, EB (“Appellant”), appeals 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 August 28, 2017, the Department received a report which alleged neglect of C and J by the Appellant, their mother, and by Appellant’s partner, WN, after the reporter responded to the family’s home for a domestic disturbance and learned there was a domestic dispute between the couple that was witnessed by the children. The Department screened-in the report and conducted a response. On September 29, 2017, the Department made the decision to support allegations of neglect. The Department provided the Appellant with written notification of the decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at the DCF Springfield Area Office on November 24, 2017. In attendance were Maura Bradford, Administrative Hearing Officer; RM, DCF Supervisor; BD, DCF Response Worker; EB, Appellant; LC, Interpreter.

The Appellant had basic English proficiency; interpreter services were provided throughout the hearing as needed and for clarification.

In accordance with 110 CMR 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 Fair Hearing was digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

Prior to the completion of the hearing, the record was left open until November 24, 2017 for additional submissions by the Appellant, including a written response if desired.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

- Exhibit A: 51A Report of August 28, 2017
- Exhibit B: 51B Report completed on September 29, 2017 by BD

For the Appellant(s):

- Exhibit 1: Written Response

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) 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. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The Appellant is the mother of C and J, respectively ages 10 years and 5 years. At the time of the report in question, the Appellant and the boys resided with WN, the Appellant's live-in partner of one year. (Exhibit B)
2. The Appellant was a caregiver for C and J under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. The Appellant was involved with the Department in May 2017, when a report was

filed on behalf of J, which alleged physical abuse by WN. The Department conducted a response and the report was unsupported. (Exhibit A, p. 5)

4. J has hearing impairment and showed signs of autism, which symptoms were later attributed to his hearing impairment; C had a learning disability. Both boys attended school, received specialized education services and were visible in the community. C had a therapist. (Exhibit B, p. 1; Testimony of BD)
5. On August 28, 2017 the Appellant and WN had an escalated argument that began when WN reprimanded the family's puppy for chewing a USB cord. The argument escalated into a physical altercation during which the Appellant pushed and scratched WN and WN grabbed and hit the Appellant. C witnessed the fight between the Appellant and WN. The Appellant called the police after WN left the home, which led to his arrest and to a report being filed with the Department which alleged neglect of C and J, who had witnessed the altercation. (Exhibit B, p. 2; Testimony of BD)
6. When the Response Worker spoke to C, he told the worker it was the first time he witnessed violence between the Appellant and WN. C did not disclose feeling fearful of the Appellant or WN because of what he witnessed. Due to J's hearing impairment, the worker was not able to conduct an extensive interview with J, but he denied that he saw anything. (Exhibit B, p. 2; Testimony of BD)
7. The Response Worker spoke separately with the Appellant and WN; their statements were consistent regarding the reported incident, including that this was the first time they had a physical altercation. After the incident, WN briefly left the home. The Appellant and WN reunited after the reported incident. (Exhibit B, pp. 2, 3; Testimony of BD and RM)
8. The Response Worker placed calls to the children's pediatrician, respective schools, C's therapist and the Appellant's therapist. The worker spoke with staff at C's school, who stated that in the past, C disclosed he did not like WN but did not put his statement in context. There were no responses from the other collaterals involved with the children, from which I inferred a lack of protective concern. (Exhibit B, p. 3; Testimony of RM)
9. The Department determined that the altercation was not domestic violence as defined by DCF protective intake policy¹, but instead was a single, isolated incident between partners. (Testimony of RM)
10. On September 29, 2017, the Department supported allegations of neglect of C and J by the Appellant and WN. The basis for the Department's decision was an

¹ According to DCF Protective Intake Policy #86-015 (rev. 2/28/16), domestic violence is "A pattern of coercive controls that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts."

altercation between the Appellant and WN, witnessed by the children. The Department determined that the Appellant and WN failed to ensure the children's emotional stability and growth and that by engaging in an altercation in front of the children, the Appellant's actions posed substantial risk to the children's safety and well-being. (Exhibit B, pp. 4, 5; Testimony of RM)

11. There were no concerns for the Appellant's ability to meet the children's basic needs, including minimally adequate food, clothing, shelter, medical care and other essential care. (Exhibit B; Testimony of BD and RM)
12. The Appellant was afforded an opportunity to review the report in question and submit a written response. The Appellant's chief concern and argument regarding the Department's decision was that the Department did not adequately explain the reasons for a finding of neglect. Consistent with her testimony at the hearing, the Appellant expressed concern that there was inadequate communication between her and the Response Worker.² (Testimony of Appellant; Exhibit 1)
13. After a review of all the evidence and for the following reasons, I find the Department's decision to support an allegation of neglect of C and J by the Appellant was not reasonable (also see Analysis):
 - a) The Department did not have evidence that the Appellant failed to provide minimally adequate care for the children, including minimally adequate emotional stability (110 CMR 2.00 and 4.32), and;
 - b) The Department did not have evidence to support that the Appellant's actions, including engaging in a physical altercation, placed the children in danger or posed a substantial risk of harm to C and J's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
14. In reaching the instant decision, the Hearing Officer gave due weight to the clinical decision made by the Department. 110 CMR 4.32; 110 CMR 10.29(2)

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. 110 CMR 2.00 and 4.32; 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

² The Appellant testified that following the response, the Department required her to call a domestic violence program which was contrary to the Response Worker offering the program as a resource. (Testimony of Appellant and BD)

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 means 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition”; 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

Danger is “A condition in which a caregiver’s actions or behaviors resulted in harm to a child or may result in harm to a child in the immediate future.” DCF Protective Intake Policy #86-015, rev. 2/28/16

Risk is “The potential for future harm to a child.” 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) 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. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

As the children’s mother, the Appellant is their caregiver under Department regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department determined the Appellant neglected C and J. The basis for the Department’s decision was an altercation between the Appellant and WN, witnessed by

the children. The Department determined that the Appellant and WN failed to ensure the children's emotional stability and growth and that by engaging in an altercation in front of the children, the Appellant's actions posed substantial risk to the children's safety and well-being. 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant did not dispute the basic facts in the instant case, including that there was an altercation between her and her partner while the children were present. The Appellant argued that the Department did not adequately communicate with her during the response, clearly explain the decision and steps following the response and as such did not conduct a proper response (i.e. do the job properly).

The Department determined that by engaging in a fight with her partner, the Appellant failed to provide minimally adequate emotional stability and growth for the children; and, considering C's past statement to school staff that he did not like the Appellant's partner, the Department speculated that C was affected by what he witnessed. While the courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well-being of children who witness domestic violence, the Department clarified through testimony that while there was a violent incident, there was not a pattern of behavior indicative of domestic violence as it is defined by Department policy. The evidence suggests that the reported incident was isolated and did not result in any discernible harm to C or J. Without evidence obtained by the Department that the Appellant's actions did in fact impact C and J's emotional stability and growth, the allegations cannot be supported. Custody of Vaughn, 422 Mass. 590, 595, 664 N.E.2d 434, 437 (1996); see DCF Protective Intake Policy #86-015, rev. 2/28/16

This Hearing Officer is obliged to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that the Appellant neglected the children. For the reasons described above and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by substantial evidence. 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. Additionally, there was no evidence that the Appellant's actions placed C or J in danger or posed a substantial risk to C and J's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support allegations of neglect on behalf of C and J was not made with a reasonable basis, therefore the Department's decision is REVERSED.

Maura Bradford
Maura E. Bradford
Administrative Hearing Officer

May 14, 2018
Date

Barbara Curley
Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner