

**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)
)
 MF&VM) **FAIR HEARING DECISION**
)
 FH # 2017-1329)
)

The Appellants in this Fair Hearing were MF and VM (hereinafter “MF” or “VM” or “Appellants”). The Appellants 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 6, 2017, the Department of Children and Families received two (2) 51A reports from mandated reporters alleging sexual abuse of Ja by his maternal uncle, JF (hereinafter “JF”). An emergency response was conducted. During the course of the response three (3) additional 51A reports by mandated reporters alleging the physical abuse of Ja and Je (hereinafter “Ja” or “Je” or “the children”) by the Appellants, MF and VM, were received by the Department; two (2) were filed on September 14, 2017, and one (1) was filed on September 27, 2017. On September 28, 2017, the Department made the decision to support the allegation of sexual abuse of Ja by his uncle, JF¹. The Department also made a decision not to support the allegations of physical abuse of Ja and Je by the Appellants but did support 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 19, 2017, at the Department’s New Bedford Area Office in New Bedford, MA.

All parties were sworn in to testify under oath.

The fair hearing record closed at the conclusion of the hearing.

¹ The allegation of sexual abuse was not under appeal in this instant matter nor was JF a party to this Fair Hearing.

The following persons appeared at the Fair Hearing:

JFF	Fair Hearing Officer
GG	DCF Response Worker
MF	Appellant
VM	Appellant
GV	[REDACTED] Interpreter for the Appellants

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 digitally recorded pursuant to Department regulations 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 09/06/2017, 8:14PM
Exhibit B: 51A Report, dated 09/06/2017, 8:58PM
Exhibit C: 51A Report, dated 09/14/2017, 4:48PM
Exhibit D: 51A Report, dated 09/14/2017, 5:25PM
Exhibit E: 51A Report, dated 09/27/2017
Exhibit F: 51B Response, completed on 09/28/2017

For the Appellant:

Exhibit 1: Appellants' Letter Requesting Hearing/Written Testimony
Exhibit 2: Copy of Ja's Insurance/Medical Record from [REDACTED]

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 51A reports, Ja was eleven (11) years old and Je was five (5) years old. They resided with the Appellants and JF in ██████████, MA. (Exhibit A; Exhibit B; Exhibit C; Exhibit D; Exhibit E)
2. The Appellants are the children's parents; 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. The family did not have a history of prior involvement with the Department. (Exhibit F, p. 2)
4. On September 6, 2017, the Department of Children and Families received two (2) 51A reports from mandated reporters alleging sexual abuse of Ja by the maternal uncle, JF. According to the mandated reporters, the child disclosed that JF had been living in the home for three (3) months and they had engaged in a game where JF kissed Ja on the mouth and JF takes Ja's pants down and touched Ja's genitalia. Reportedly, JF also tried to go behind Ja but there was no penetration. Ja disclosed the abuse had been going on for two (2) months. MF acknowledged that JF had a similar incident while living in ██████████ with a ten (10) year old boy. The police were notified and MF was to file an emergency restraining order as JF was still in the home. (Exhibit A, p.3; Exhibit B, p. 3)
5. The reports were screened in and assigned for an emergency response, pursuant to M.G.L. c. 119, § 51B. During the course of the response three (3) additional 51A reports were received by the Department from mandated reporters. The first two (2) 51A reports were filed on September 14, 2017. The reporters alleged that during a scheduled forensic interview for Ja; he disclosed that the Appellants, MF and VM, had physically abused him. Ja disclosed his arm was broken while in ██████████ and there was an incident where MF was angry and punched him several times, which re-broke his arm, requiring hospitalization. Ja also disclosed being hit in the back by VM with coat hangers and belts; often leaving marks. Ja complained of back pain and attributed the pain due to being hit regularly in the back by VM. On September 27, 2017, a third 51A report was filed alleging the physical abuse of Ja and Je. During a medical exam, Ja disclosed that the Appellants use their hand, fist and shoes to physically discipline him as well as his sibling, Je. At the conclusion of the emergency response, the Department supported the allegations of sexual abuse of Ja by JF but did not support the allegations of physical abuse of the children by the Appellants. However, the Department concluded that the children were neglected by the Appellants. The allegation of neglect was supported because the children were consistent with disclosing during the forensic interview and to mandated reporters

that they were disciplined by the Appellants by being hit through the use of their hands, fists, shoes, slippers, hangers and belt. The Department concluded there was reasonable cause to believe that the Appellant's use of objects to hit their children placed them in danger of injury and affected their emotional stability and growth. (Exhibit C, p. 3; Exhibit D, p. 3; Exhibit E, p. 3; Exhibit F, p. 23)

6. The DCF Response Worker verified the alleged reports, the first two, with the mandated reporters and interviewed Appellants. The Appellants reported that Ja disclosed to MF on September 1, 2017, that he had a "secret", describing to her that JF had been playing a game, in which JF kissed him, pulled down his pants and touched him. The Appellants did not go to the authorities immediately because Ja had changed his story but was taken to a psychiatrist to sort things out. (Exhibit F, p. 3)
7. Since May 17, 2017, JF had been living with the Appellant's and the children. Prior, he had been living in [REDACTED] and then [REDACTED] JF was ill with various ailments and that was why the Appellants agreed to have him live with them. However, JF had not been allowed contact since the allegations. A no contact order was obtained. MF and the emergency room physician believed the incidents of sexual abuse occurred over a period of a month. MF reported JF only acknowledged kissing Ja on the lips and no further actions. Ja disclosed to MF that he and JF also watched pornographic material together. (Exhibit F, pp. 3 & 6)
8. The children were reported to be healthy and up to date with their medical care. (Exhibit F, p. 5)
9. Ja's guidance counselor did not report any behavioral problems at school. (Exhibit F, p. 6)
10. On September 14, 2017, Ja, underwent a SAIN² (forensic interview). Ja disclosed in detail that he was sexually abused by JF starting when he was ten (10) years old when JF lived in [REDACTED]. The disclosure was made in front of the interviewer and those watching the interview; i.e. [REDACTED] Police Detective, an Assistant District Attorney, a Nurse (sexual assault examiner) and Resource Advocate as well as the DCF Response Worker. (Exhibit F, p. 7)
11. During the SAIN interview, Ja also disclosed that when he lived in [REDACTED] that MF had re-broken a healing arm that he had previously broken. Reportedly, he had scratched MF by accident and that she hit 2-3 times with her fists and that VM had to intervene in order to separate her from him. (Exhibit F, p. 8; Testimony of the DCF Response Worker)
12. Ja further disclosed during the SAIN interview that he felt that VM preferred Je because Je was his biological son; also VM tried to hit him very hard, leaving marks

² "SAIN" is an acronym for Sexual Abuse Intervention Network. Through a joint effort by the Department of Children and Families and the District Attorney's office, the interview of the alleged victim is conducted with members of a team to eliminate the need for several interviews.

on his back. Ja reported VM called him lazy and now he cannot do certain things because his back hurts. Additionally, Ja disclosed that he has been hit with belts and coat hangers. (Exhibit F, p. 8)

13. MF acknowledged that JF had a similar experience when he was fifteen (15) years old and the victim was ten (10) years old. No criminal charges were made against JF. MF reported that JF was very sick and was not going to live much longer. She did not want him to die while incarcerated. MF also reported that Ja suffered from neurological problems and had difficulties concentrating and was very aggressive. Ja did not respect his parents and often had to be redirected. (Exhibit F, p. 9)
14. MF denied re-breaking Ja's arm. She reported Ja broke his arm at school and was treated. Since his injury Ja had always spoken of having a sensation on his arm and did not like anyone touching his arm. MF denied Ja had back issues or anyone hit his back. (Exhibit F, p. 10, Exhibit 2; Testimony of the Appellants)
15. Ja was observed interacting with MF and did not display any level of fear and appeared to be fine following the SAIN interview. (Exhibit F, p. 10; Testimony of the DCF Response Worker)
16. When interviewed privately, both children disclosed they have been hit by the Appellants. Je disclosed that he gets hit by VM when he does something wrong and that MF hit Ja. Both children reported the Appellants hit with an open hand but left no marks. (Exhibit F, p. 10)
17. On September 14, 2017, the family was interviewed for a second time. MF reported the children fight a lot; Ja was older and should know better. MF reported she had hit Ja but never to hurt him and usually because he was arguing and fighting with Je. MF reported she cannot deal with the children fighting and yelling. (Exhibit F, p. 10)
18. MF further explained that Ja's arm was broken in 2014 when they lived in [REDACTED]. She denied breaking the arm again and reported the arm was not completely healed when Ja broke it again while playing and jumping on a trampoline. MF reiterated that she was not aware of Ja's back pain. (Exhibit F, p. 11)
19. Ja disclosed that in [REDACTED] VM threw a coat hanger at his legs. He reported that he felt that VM liked Je better because he was treated differently. MF reported Ja was jealous of his younger brother, Je, VM was more active with Ja because he was older and could do more things such as playing ball. (Exhibit F, p. 11)
20. Ja underwent a medical full examination and he denied that his back hurt. There were no other concerns by the physician. (Exhibit F, p. 11)
21. On September 27, 2017, Je underwent a SAIN interview following two (2) additional 51A reports alleging physical abuse of the children. Je did not disclose that he was sexually abused by JF. However, he disclosed he got spanked if he stole something and

put against the wall by the Appellants and that he was hit with a broom by JF.
(Exhibit F, p. 19)

22. Following Je's SAIN interview, MF told the some of the team members that she did not want JF prosecuted because Ja was never really touched and he just saw "it" and was lying. Reportedly, Ja intervened with a concerned voice and disclosed that what MF was saying was not true and added that VM slapped him on the back and "belly" and he did not feel safe when he was hit by the Appellants. Ja described VM's eyes as scary when he gets hurt. Ja disclosed that he was hit recently as the day before Je's forensic interview. Ja reported that Je was also hit by the Appellants but Je just puts up with it. (Exhibit F, p. 20)
23. The SAIN interviewer expressed concerned regarding the safety of the children and filed another 51A reported regarding the physical abuse of both children by the Appellants. Ja disclosed to the response workers that he felt safe 90% of the time but reported that he does get hit on his hands, forearms and chest. Ja reported he gets hit with an open hand but that sometimes they use shoes or slippers to hit. Je acknowledged that he also gets hit and has been hit with a slipper. (Exhibit F, p. 21)
24. MF acknowledged that sometimes she gets extremely frustrated because the children do not listen and are disrespectful. The Appellant reported they got "out of control" and it was embarrassing in public places. (Exhibit F, p. 21; Testimony of the Appellants)
25. The Appellants reported that physical discipline was the last resort and only after several warnings and punishments of redirection and time outs do they use physical discipline. (Exhibit 1; Testimony of the Appellants)
26. Based on the totality of the evidence of the case, I find that it was reasonable for the Department to determine that the Appellants' behavior constituted neglect; that the Appellants failed to provide the children with minimally adequate care, emotional stability and growth. The Appellant's actions placed the children in danger or posed a substantial risk to the children's safety and well-being. 110 CMR 4.32(2); DCF Protective Intake Policy #86-015 Rev. 2/28/16.
27. Therefore, I find that the Department's decision to support the allegations of neglect was made in conformity with its policies and regulations. 110 CMR 2.00; 110 CMR 4.32, DCF Protective Intake Policy #86-015 Rev. 2/28/16

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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 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)

“[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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

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

“Substantial evidence” is defined as such evidence as a reasonable mind might accept as adequate to support a conclusion. DCF Protective Intake Policy #86-015, rev. 2/28/16

“Danger” is defined as 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. DCF Protective Intake Policy #86-015, rev. 2/28/2016

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, or (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, or (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 was undisputed that the Appellants were "caregivers" pursuant to Departmental regulation. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellants contested the Department's decision to support the allegation that they neglected their children, Ja and Je. The Appellants argued that the children had behavioral difficulties and would not listen to them when redirected, even after several warnings. The Appellants specifically pointed out that Ja had neurological issues and had difficulties concentrating and instigated fights with his younger sibling, Je. The Appellants further argued that physical discipline was always a last resort but that they could not tolerate the lack of respect from the children and their failure to respect rules, which resulted in a frustrating situation where they would have to use physical discipline. The Appellants denied physically abusing the children or using instruments when physically disciplining. They also denied breaking Ja's arm. They concluded that they loved their children and wanted the best for them, including appropriate behavior. I did not find the Appellants' argument persuasive.

In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there was a reasonable basis for the decision. Here, the Department presented a reasonable basis for its decision and complied with its regulations, in finding "reasonable cause to believe" that the Appellants were neglectful; the children disclosed that they were hit by the Appellants and Ja specifically detailed how they were hit with various instruments by both Appellants. The Appellants acknowledged that the children's behaviors were frustrating, loud and disrespectful; they were out of control and only responded to physical discipline. The Appellant's also acknowledged that at times the children were also embarrassing. While no evidence was presented that the children were injured or

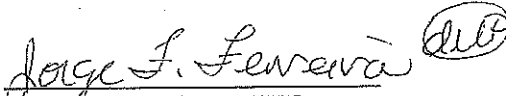
suffered any bruising, there was sufficient evidence presented as the children's emotional impact as the children expressed to several collaterals they were afraid when the Appellants hit them. Of additional particular concern was MF's minimization of Ja's disclosure of being sexually abused by JF despite the repeated account of what occurred to her Ja. Despite the latter, the Appellant focused on JF being sick, having no one and not wanting him to die while incarcerated. This reflected poor judgement in not prioritizing the safety of the child(ren). The fact that the Appellant's knew JF had a history of sexually abusing another boy when they lived in [REDACTED] and allowed JF to live with them and the children (Fair Hearing Record) also reflected poor judgement and a failure to protect the children. Subsequently, the Department's intervention was warranted and was reasonable under the circumstances.

The Appellant did not demonstrate any failure by the Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. 110 CMR 10.05 As provided for in the Department's regulations, the Investigator relied on available documentation, observable behavioral indicators and her clinical knowledge, to support the decision made. 110 CMR 4.32 Based on the totality of the circumstances, and the evidence gathered, the Department's determination that the Appellants' actions constituted neglect and that the Department's decision was made in conformity with Departmental regulations.

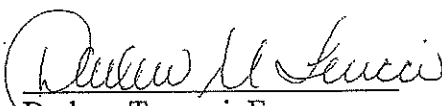
Conclusion and Order

The Department's decision to support the allegations of the neglect of Ja and Je by the Appellants 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 wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which they live, or within Suffolk County, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Jorge F. Ferreira, MSW
Administrative Hearing Officer

5/22/18
Date


Darlene Tonucci, Esq.
Fair Hearing Unit Supervisor