

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

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Commissioner

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IN THE MATTER OF

FG #2017 1344

**FAIR HEARING DECISION**

Appellant, FG (“Appellant”), appeals the Department of Children and Families (hereinafter “DCF” or “the Department”) decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On September 12, 2017, the Department received two (2) reports which alleged sexual abuse of A by her paternal uncle and an unrelated adult male. The basis of the reporter’s concern was A’s disclosure, which included that the past abuse occurred at Appellant’s home when she was alone with the alleged perpetrators. The Department screened-in the report and conducted a response. On October 3, 2017, the Department added and supported an allegation of neglect of A by the Appellant, who is her father. The Department provided the Appellant with written notification of the decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at the DCF Worcester East Area Office on January 16, 2018. In attendance were Maura Bradford, Administrative Hearing Officer; TF, DCF Supervisor; JJ, DCF Response Worker; SP, Interpreter; FR, Appellant; AG, Appellant’s Mother/Witness; SD, Witness.

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.

A [REDACTED] language interpreter was utilized during the hearing. The Response Worker was bilingual and clarified terms unfamiliar to the interpreter.

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 September 12, 2017
- Exhibit B: 51A Report of September 12, 2017 (9:50AM)
- Exhibit C: 51B Report completed on October 3, 2017 by JJ

For the Appellant(s):

- Exhibit 1: Appellant's Written Statement

**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 A's father. A's mother is TS. At the time of the report in question, A resided with TS. A was thirteen (13) years old. (Exhibit B, pp. 1, 3)
2. The Appellant resided in [REDACTED] MA.
3. During visits with the Appellant, the Appellant was A's caregiver under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

4. The Department was concerned TS and the Appellant had cognitive limitations. The Appellant has learning disabilities. The Department spoke with the Appellant in ████████ to ensure he understood the allegations. An interpreter was utilized during the Fair Hearing. (Exhibit C, p. 1; Testimony of Appellant; Fair Hearing Record)
5. The Appellant was involved with the Department in 2010 when the Department supported allegations of neglect of A by the Appellant. At the time of the report in question, the Appellant was an adult consumer involved with the Department's Worcester East Area Office, where there was an open clinical case regarding TS and A. Concerns for A included past sexual abuse, neglect by TS and sexual exploitation of A by an unrelated 17-year-old. The latter of which was brought to the Department's attention in August 2017. (Exhibit B, pp. 1, 2; Testimony of JJ)
6. TS and A had an In-Home Therapist who visited with them each week. TS and A were compliant with treatment. A's oppositional and risky behavior was difficult for her parents to manage. The Department had recommended TS acquire a Child Requiring Assistance (CRA) for A. A's therapist believed that TS should file a voluntary placement, from which I inferred that the therapist felt A's behavior required placement outside her parent's homes for treatment. (Exhibit C, pp. 3, 5, 6)
7. On September 12, 2017, the Department received two (2) reports which alleged past sexual abuse of A by EG, who is her paternal uncle (Exhibit A) and past sexual abuse by JM,<sup>1</sup> who was at the time a friend of the Appellant (Exhibit B). The Department screened in the reports and conducted a response. (Exhibit C; Testimony of JJ and Appellant)
8. Regarding EG, the alleged the abuse occurred five (5) years prior to the report in question. (Exhibit A) Regarding JM, the alleged abuse occurred six (6) years prior to the report in question. (Exhibit B). The allegations were addressed by the Department and A participated in a forensic interview prior to the report in question. The record was not clear as to whether the forensic interview addressed both disclosures. (Exhibit C, p. 3)
9. On September 14, 2017, the Response Worker spoke with the DCF Ongoing Social Worker who worked with TS and A, reviewed the case and any recent concerns. TS was concerned that the Appellant was still allowing men, including EG, around A during her visits at the Appellant's home. (Exhibit C, p. 2; Testimony of JJ)
10. Prior to the report in question, A had not visited with the Appellant between July 2017 and September 2017. The Appellant filed a contempt complaint in Probate Court after TS refused to send A to his home for visits. On September 18, 2017,

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<sup>1</sup> JM was incarcerated on unrelated federal charges at the time of the report in question.

the Probate Court awarded the Appellant a visit with A on Saturdays and a phone call with A every other Tuesday. (Exhibit C, p. 3; Exhibit 1; Testimony of Appellant)

11. On September 21, 2017, the Response Worker interviewed TS and A at TS's home. TS talked with the worker about her struggles with A's behavior and issues with the Appellant regarding A's custody and A's mandated visits with the Appellant. A was not forthcoming with any information regarding the Appellant, except to say that she was unhappy<sup>2</sup> about visits with the Appellant and had not seen him since July. (Exhibit C, p. 3; Testimony of JJ)
12. TS's statements that the Appellant was continuing to allow men around A during visits were not reliable, where the evidence suggests: A was not visiting with the Appellant when the reports in question were filed; limited visitation was reinstated on September 18, 2017; no visits had occurred between prior to the Department's interview with TS; and, A did not disclose continued contact with either EG or other men while visiting the Appellant. For these reasons, I do not credit TS's statements.
13. The Department gave full weight to TS's statements regarding the Appellant. Given TS's concern, the Department recommended she stop visits with the Appellant and enlisted the therapist's assistance to write a letter which recommended stopping visits. (Exhibit C, pp. 5, 6)
14. On September 29, 2017, the Response Worker spoke with the Appellant via telephone. The Appellant expressed concern that A arrived dirty for his visits and relative to his visits with A, that his brother EG was sometimes "around" but would "say hello and leave". The Worker advised the Appellant that EG was not permitted to have any contact with A. (Exhibit C, p. 4; Testimony of JJ and Appellant)
15. SD credibly testified that A saw EG "very briefly", on two (2) occasions in the two years prior to the report in question, which corroborated the Appellant's testimony that A "accidentally" saw EG. SD corroborated that EG does not live with SD, but in a distant area of Cambridge<sup>3</sup> and did not have regular contact with EG. (Exhibit 1; Testimony of Appellant and SD)
16. On October 3, 2017, the Response Worker spoke with the In-Home Therapist (IHT) who was involved with the family. The therapist told the Response Worker that the previous weekend, A visited the Appellant at his home in ██████████ MA, and during the visit A took the Appellant's bicycle and left for several hours. The therapist was concerned that the Appellant did not contact the police when A was missing. A refused to return to TS's home following the visit. There is no

<sup>2</sup> The Worker's testimony regarding the interview with A was more detailed than her narrative, including that A did not like having visits the Appellant and was anxious about visiting him.

<sup>3</sup> SD testified EG lived "on the other side of town" and did not have frequent contact with the Appellant.

indication the therapist or any other mandated reporter filed a report with the Department pursuant to M.G.L. c. 119 §51A regarding concern for the Appellant's supervision of A. (Exhibit B, p. 5; Testimony of JJ)

17. The Appellant denied that he allowed A to be gone for hours without attempting to find her. SD credibly testified regarding the Appellant's efforts to supervise A, including calling the police and SD when A ran away from him. SD acknowledged that he and the Appellant had discussed [supervision] and room for improvement, which the Appellant was working on. (Exhibit 1; Testimony of Appellant, SD and AG)
18. On October 3, 2017, the Department added and supported an allegation of neglect of A by the Appellant on the basis that the Appellant permitted contact between A and EG<sup>4</sup> and due to concern the Appellant had not contacted the police when A went missing for several hours during a recent visit. The Department determined the Appellant's failure to provide adequate supervision posed substantial risk to A's safety and well-being. (Exhibit C, P. 6; Testimony of JJ and Appellant)
19. In reaching the decision that the Appellant neglected A, the Department determined that the Appellant continued to allow EG to be present during A's visits, which I find was not supported by credible evidence. The evidence, including testimony at the hearing suggests that the Appellant did not have regular contact with EG, understood that EG was not to have any contact with A and that contact A and EG was coincidental and unintentional contact while out in the community. (Testimony of Appellant and SD)
20. A careful review of the evidence revealed that during a visit with the Appellant, A left the Appellant's home without his permission and while he did not contact the police, he was looking for A and was in contact with TS and asked her to pick up A. The evidence suggests that when the Department contacted the In-Home Therapist, A was still refusing to return to TS's home. (Exhibit C, pp. 5, 6; Testimony of Appellant, SD and EG)
21. After a review of all the evidence and for the following reasons, I find the Department had reasonable cause to support an allegation of neglect of A by the Appellant where it regards supervision of A (Also see Analysis):
  - a) The Department obtained evidence that A was a traumatized child with known at-risk behavior who required increased if not constant supervision;
  - b) The evidence suggests the Appellant failed to provide minimally adequate supervision for A during a visit to his home, when he was unable to stop A from leaving his home and, when A was missing for hours, he did not call the police for assistance locating her (110 CMR 2.00 and 4.32)
  - c) The evidence, including testimony at the hearing, suggests the Appellant

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<sup>4</sup> The Appellant testified that he did not believe EG had abused A and that [TS] brainwashed A because she [TS] was abused in the past.

was unable to fully appreciate the risks posed by A being unsupervised in the community (110 CMR 2.00);

- d) Under the circumstances described, the Department obtained evidence that the Appellant's failure to provide minimally adequate supervision for A placed A in danger or posed a substantial risk of harm to A's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16; also see Lindsay v. Department of Social Services, 439 Mass. 789 [2003])

22. 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)

23. Documentation regarding "BA", who is A's step-father, and text messages between BA and A, which were included in the Appellant's written statement (Exhibit 1) was struck from the record and was not considered in reaching the instant decision.<sup>5</sup> (Fair Hearing Record; Testimony of TF)

### 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 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

<sup>5</sup> Supervisor TF testified that she was aware of another response that addressed the Appellant's concerns regarding BA.

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 A’s father, the Appellant was her caregiver under Department regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department added an allegation of neglect of A by the Appellant on the basis that the Appellant permitted contact between A and EG and due to concern the Appellant had not contacted the police when A went missing for several hours during a visit. The Department determined the Appellant’s failure to provide adequate supervision posed substantial risk to A’s safety and well-being. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant illustratively argued that he did not neglect A.

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 A.

A’s behaviors were challenging for both her parents; she was a traumatized child who exhibited at-risk and oppositional behavior; behavior so concerning that her therapist considered recommending out of home placement. During a visit with the Appellant, A took the Appellant’s bicycle and ran off for several hours without anyone knowing where she was; an event that was concerning given A’s history of sexual abuse and vulnerability to exploitation.

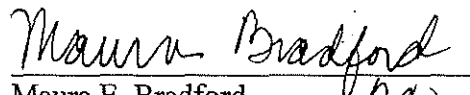
Though the Appellant has some cognitive limitations which by his account made it difficult for him to read and write, the evidence suggests the Appellant comprehended the need for police assistance, but in the instant case made a conscious choice not to call when a was missing because there had been "too many calls" [to the police] (Fair Hearing Record). SD, who was A's witness, testified that there was room for improvement in the Appellant's supervision, and at the Fair Hearing that supervision remained an area they were working on. Even if A did not suffer any harm while she evaded the Appellant, where it concerns the Appellant's lack of supervision, the evidence supports a rational inference of neglect by the Appellant. Lindsay v. Department of Social Services, 439 Mass. 789 (2003); also see Cobble v. Commissioner of DSS, 430 Mass. 385 (1999)

For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision was based on reasonable cause and 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 evidence that the Appellant's actions or inactions placed A in danger or posed a substantial risk to A'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 not shown by a preponderance of the evidence that the Department's decision to support allegations of neglect was not made with a reasonable basis; therefore, the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, s/he may do so by filing a complaint in Suffolk County, or in the Superior Court for the county in which s/he lives, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, § 14)

  
Maura E. Bradford  
Administrative Hearing Officer

May 1, 2018  
Date

  
Barbara Curley, Supervisor