

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Linda S. Spears
Commissioner

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IN THE MATTER OF

AOG #2017-1347

FAIR HEARING DECISION

AOG 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 May 18, 2006, the Department received a 51A report alleging neglect of A by her mother, AOG. The Department screened-in the report for an emergency investigation. On May 19, 2006, the Department made the decision that the allegation of neglect was supported. There is no evidence in the record to indicate whether the Department sent AOG notice of its decision and her right to appeal.

AOG became aware of the Department's decision in 2017 when a job offer was rescinded after the prospective employer ~~_____~~ completed a background check.

On October 17, 2017, AOG contacted the Department requesting an appeal of the 2006, decision. Her late request was initially denied for failure to show "good cause" for the delay. AOG made a second request stating that she never received notice of the Department's decision and her right to appeal. AOG's late request was allowed.

A hearing was held on February 6, 2018, in the Department Park St. Area Office. AOG, AOG's grandmother and a Department supervisor testified at the hearing. None of the staff involved with the 2006, decision under appeal were present.

The Department submitted the 51A and B reports. (Exhibits A and B).

AOG submitted no evidence.

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

Issue to be Decided

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 investigation, 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, 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, whether there was reasonable cause to believe that a child had been abused or neglected. 110 CMR 10.05

Findings of Fact

1. AOG (hereinafter "mother") gave birth to her daughter A on [REDACTED], 2006, when mother was [REDACTED] years old. (Exhibit A, p. 1).
2. Mother lived in a residential program and engaged in services during her pregnancy. (Exhibit B, p. 2).
3. After A was born, mother received services from the Visiting Nurses Association. (Exhibit B, p. 1).
4. Mother began attending public high school in late April 2006. (Exhibit B, p. 2).
5. At that time, mother lived with her mother, her sister and her grandparents. (Exhibit B, p. 2; Testimony of mother).
6. Mother and A received their medical care at [REDACTED] in [REDACTED] Square. Mother was seen by her ob-gyn regularly due to her on-going hemorrhaging following A's birth. (Exhibit B, p. 2).
7. Mother also saw the school nurse frequently due to continued hemorrhaging and needing to go home at times. The school nurse felt that mother was anti-social because she did not have many friends. The school nurse asked mother if she was emotional and mother acknowledged feeling emotional at times. The nurse told mother she was suffering from post-partum depression. (Exhibit B, p. 2).
8. Mother was overwhelmed, stressed and frustrated with being a new young mother, attending school, looking for employment, dealing with the recent death of a friend,

continued hemorrhaging and little or no support from A's father. (Exhibit B, p. 2; Testimony of mother; Mother's request for a hearing dated October 17, 2017).

9. On May 15, 2006, mother and A were seen at [REDACTED]. Mother saw her ob-gyn and expressed feeling stressed, but she denied she would ever hurt A. (Exhibit A, p. 2; Exhibit B, p. 2).
10. On May 17, 2006, mother went to the school nurse because she was bleeding profusely and needed to go home. The nurse asked mother for contact information for her ob-gyn. Mother assumed that the nurse was going to contact her ob-gyn about her hemorrhaging, however, she expressed concerns that mother had post-partum depression and might harm the baby. (Exhibit B, p. 2).
11. On May 18, 2006, mother received a call from someone from her ob-gyn's office who demanded that she meet with a therapist in the behavioral health department that day. Mother said she had a prep class for MCAS and she could not go that day. Mother was told it was not optional. Mother said she would try to have her grandfather pick her up and transport her to [REDACTED] to keep the appointment. (Exhibit B, p. 2).
12. Mother was unable to get a ride to [REDACTED] that day and she missed the appointment. She spoke with someone at [REDACTED]. She was told she would be contacted the next day to reschedule. (Exhibit B, p. 2).
13. On May 18, 2006, the Department received a 51A report alleging neglect of A by mother. The reporter stated that s/he called mother that day and mother said she thought about killing the baby on Mother's Day, but that she would never do such a thing. The reporter told mother she had to be seen by behavioral health that day. Mother told the reporter she would have her grandfather bring her. Mother did not show up and the reporter was told to file a 51A report. (Exhibit A, pp. 1-2).
14. The Department screened-in the report for an emergency response. (Exhibit A, pp. 3-4).
15. Emergency response workers went to mother's home that evening. Mother's grandmother was also present. Mother's statement to the response workers was consistent with the above findings. She acknowledged feeling stressed and frustrated and emotional at times. She denied feeling suicidal, homicidal or depressed. She denied saying she wanted to kill A. She admitted she told the doctor she felt frustrated, but she clearly said she would never hurt A. Mother stated that she had a lot of family support and her grandmother took the baby on a regular basis. Mother agreed to contact [REDACTED] in the morning to reschedule the appointment with behavioral health. Mother's grandmother confirmed that mother had a great deal of family support and that she took care of A on a regular basis. She reported mother was a good mother, she provided for most of A's needs and she had no concerns. She felt that the school nurse exaggerated her concerns and she was not qualified to diagnosis mother with post-partum depression. (Exhibit B, pp. 2-3).

16. On May 18, 2006, the Department emergency response workers conferenced the case with the on-call supervisor. The decision was made to "unsupport" the allegation and recommend a 10 day investigation because there was no concrete evidence to support the allegations. (Exhibit B, pp. 3, 4).
17. The following morning, the Department Area Office made the decision to "support" the allegation of neglect of A by mother due to mother's young age and the risk to A because mother allegedly disclosed homicidal ideation when A cried and thoughts of killing the baby on Mother's Day. (Exhibit B, p. 3).
18. The Department has had no further involvement with mother other than an "unsupported" investigation in 2010. (Exhibit A, p. 2; Testimony of mother).
19. Mother testified to the following at the hearing. She acknowledged she was feeling overwhelmed with being a young new mother after A was born, but she denied wanting to harm her. She had and continued to have a lot of family support. After the Department's investigation, she graduated from high school at the top of her class. She began attending college classes. She began pursuing a career in early childhood education. She was attending college and about to complete a degree in early childhood education. She was offered a position with [REDACTED]. The employment offer was rescinded because of the Department's "support" decision. At the time of the Hearing, A was eleven (11) years old and doing well. She also had a son and she was engaged to be married. (Testimony of mother).
20. I find mother's testimony to be credible. Considering all of the evidence, I find that there was no reasonable cause to believe that mother failed to provide minimally adequate care for A and, therefore, there was no reasonable basis for the Department's decision.

Analysis

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 caretaker occurred.

"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 C.M.R. 4.32(2).

As A's parent, mother is her caretaker under Department regulations. 110 CMR 2.00(5).

"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." 110 CMR 2.00(33).

The Department found that mother neglected A because of her age and homicidal comments attributed to her which she denied.

Mother did not dispute that, at the time, she was overwhelmed and stressed, but she denied saying she had thoughts of killing A, ever intending to harm her or ever actually harmed her.


It is undisputed that mother was 17 years old at the time of A's birth and she was overwhelmed. The evidence showed that mother was engaged in services during her pregnancy and afterward. She was living with her mother, sister and grandparents after A was born. Her family was supportive and her grandmother helped to take care of A often. There was no evidence that mother ever harmed A or neglected her needs. Mother agreed to follow through with an appointment with behavioral health. There was no evidence that she failed to follow through with behavioral health or any recommendations. There have been no subsequent 51A reports filed except for the report in 2010, which was unsupported.

At the time of the Hearing, A was eleven (11) years old and doing well. Mother also had a son and she was engaged to be married. She was pursuing a career working with children and was about to obtain a degree in early childhood education. She was offered a job with a daycare provider, but the offer was rescinded when the employer learned of the 2006, "support" decision.

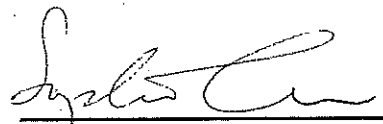
Considering all of the evidence, I find that there was no reasonable cause to believe that mother failed to provide minimally adequate care for A and, therefore, there was no reasonable basis for the Department's decision.

Conclusion and Order

The Department's decision to support allegations of neglect of A by mother is without a reasonable basis and therefore, the Department's decision is REVERSED.


Anne L. Dale Nialetz,
Administrative Hearing Officer

5/7/2014
Date


Sophia Cho, LICSW
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner