

**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**

Voice: 617-748-2000  
FAX: 617-261-7428

( )  
( IN THE MATTER OF )  
( R.T. )  
( FH #2017-1356 )  
( )

**HEARING DECISION**

**Procedural History**

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

On June 28, 2017, the Department received a 51A Report containing allegations of neglect of nine month-old N by his parents, in connection with a verbal and physical altercation that occurred at the family home on June 27, 2017. The 51A Report was screened in for a 51B response and assigned to response social worker, C.L. On July 18, 2017, following the 51B response, the Department supported the allegations due to the parents’ failure to provide N with minimally adequate supervision and emotional stability and growth during the incident of June 27, 2017. The decision was approved by management on July 19, 2017. The family’s DCF case was active, when the 51A Report was filed, which continues to date.

The Department provided the Appellant with written notification of the decision and her right of appeal. The first notice was sent to the Appellant’s old address and did not reach her. The second one was mailed to her current address on November 2, 2017. The Appellant filed a timely request for Fair Hearing [“Hearing”] on November 6, 2017, pursuant to 110 CMR 10.06 & 10.08. The Appellant’s request for Hearing was granted and held on December 5, 2017 at the Department’s Park Street Area Office in Dorchester, MA. Present were the DCF Response Supervisor, K.H. and the Appellant; both of whom were sworn in 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 June 28, 2017 [Exhibit A] and the corresponding 51B Response Supported on July 18, 2017 [Exhibit B]. The Appellant made no submissions. The Hearing record was closed on December 19, 2017 without submissions from the parties.<sup>1</sup>

<sup>1</sup> The Appellant testified at Hearing that both children were at a neighbor’s home during the domestic of June 27, 2017 and she told the response social worker about this. The Hearing Officer requested that the Appellant provide a notarized letter from the neighbor indicating that both children were with her at this time. The Hearing Officer asked

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 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. [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<sup>2</sup> and her husband, R.S, are the mother and father, respectively, of a nine month-old son named N, and the mother and stepfather of a seven year-old daughter named M. [Exhibit A; Exhibit B]
2. The family has a DCF history. Of relevance is a support for neglect of the aforementioned children by the Appellant on May 27, 2017, due to her untreated mental health and her inability to self-regulate. The Appellant had an explosive episode at the hospital while with her children and left prior to the child's emergency room discharge. In addition, the Appellant, [who had separated from her husband], had moved her husband back into her home. The Department reopened the family's case for an assessment, which was pending when the under appeal 51A Report of June 28, 2017 was filed with the Department. [Exhibit A, p.5; Exhibit B, p.1; Testimony of the Supervisor]

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the Department to provide a letter from the response social worker as to whether she was told this or not. Although the record remained open, the parties did not respond.

<sup>2</sup> The Appellant retained her maiden name when she married R.S. [Testimony of Appellant]; thus she is noted herein as R.T., not R.S.

3. At the time of the June 27, 2017 altercation under review, the Appellant had already modified the full restraining order she previously took out against her husband for a previous domestic, to a no abuse order. [Exhibit B; Testimony of the Appellant] She did this so her husband could move back in and they could work on their relationship [Testimony of the Appellant]; although her husband said otherwise, i.e., he was staying elsewhere, going to the home to get N ready for day care, and denied reuniting with the Appellant. [Exhibit B, p.4]
4. On June 27, 2017, the Appellant and her husband engaged in an argument, which turned physical. [Exhibit B, pp.2 & 4] The Appellant called the police who responded, arrested her husband, and charged him with assault and battery, violation of a restraining order, and assault and battery on a pregnant person [the Appellant]. [Testimony of the Appellant; Exhibit A, p.3; Exhibit B, pp.4-5]
5. Although the Appellant and father conveyed different stories to the police as to who hit whom, both parties agreed that the argument turned physical and that the Appellant was wielding a knife during the incident. The Appellant did inform the response social worker on July 5, 2017 that they were hitting and beating on each other. The police observed that father had blood coming from his lower lip and a scratch on the left side of his stomach. The disposition comment of Exhibit B indicates that both were injured. [Exhibit B, pp. 2 & 4-6]
6. The response social worker opined that the inability of the Appellant to regulate her emotions, as in Finding #2, was a contributing factor to the domestic of June 27, 2017. [Exhibit B, p.6-7]
7. Father has not been in the home since the incident. [Exhibit B, p.4 & 6] The Appellant testified that she has since obtained a new restraining order against him.
8. On July 18, 2017, the Department supported allegations of neglect of N by the Appellant and father in connection with their failure to provide the child with minimally adequate supervision and emotional stability and growth during the altercation of June 2, 2017. N was present in the home when the domestic occurred; M was not. [Exhibit B, p.6; Testimony of the Supervisor]
9. The whereabouts of N during the domestic of June 27, 2017 and the police response came into question during the Appellant's Hearing:
  - (a) The 51A Report of June 28, 2017 notes, as argued by the Appellant at Hearing, that the reporter [presumably an officer] did not see the child, when the police arrived on scene. The child was with a neighbor. The Appellant stated she picked up the child, following the arrest of father. [Exhibit A, p.3] At Hearing, the Supervisor agreed that the child referred to within this 51A Report was N. [Testimony of the Supervisor]
  - (b) During her interview with the response social worker on July 5, 2017, the Appellant said that her daughter, M, was in another apartment within the building with a friend of hers on the day of the domestic, but made no mention that her son, N, was also with the neighbor. [Exhibit B, p.2]

- (c) The police narrative of the response to the home on June 27, 2017, inserted into the 51B response, documents an interview with the father, who said that the verbal argument with the Appellant ensued, because the Appellant picked N up by his arms in an aggressive manner. [Exhibit B, p.4]
  - (d) Nine month-old N was viewed by the response social worker at the home visit of July 5, 2017 while sleeping [Exhibit B, p.2; Testimony of the Supervisor], but not interviewed due to his developmental age.
  - (e) At Hearing, the Appellant testified that both of her children were at a neighbor's home in another building, when the argument and physical aspects of the domestic occurred. The Appellant said she told the response social worker this during the 51B response. [Testimony of the Appellant]
  - (f) The Hearing Officer asked the Appellant to provide a notarized letter from the neighbor documenting that N, in addition to M, was at this neighbor's home during the domestic of June 27, 2017 and the police response. This was not provided. [Administrative Hearing Record]
  - (g) The Hearing Officer asked the Supervisor to provide information from the response social worker indicating that the Appellant told her that both children were at the neighbor's home during the domestic, or not. This was not provided. [Administrative Hearing Record]
10. The Hearing Officer finds the evidence insufficient to concretely establish the location of nine month-old N, when the verbal and physical domestic of June 27, 2017 occurred.

#### Applicable Standards and Analysis

A party contesting the Department's decision, to support a 51A Report for neglect, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellant requested a Hearing, which was granted and held on December 5, 2017.

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]**

A substantiated concern finding means there was reasonable cause to believe that the child was neglected and the actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child(ren)'s safety or well-being. Examples include neglect that resulted in a minor injury and the circumstances that led to the injury are not likely to recur, but parental capacities need strengthening to avoid future abuse or neglect of the child; neglect that does not pose an imminent danger or risk to the health and safety of a child; and, educational neglect. **Protective Intake Policy #86-015 [2/28/16]**

An unsupported finding means there is not reasonable cause to believe that a child(ren) was abused and/or neglected, or that the child(ren)'s safety or well-being is being compromised; or the person believed to be responsible for the abuse or neglect was not a caregiver, unless the abuse or neglect involves sexual exploitation or human trafficking where the caregiver distinction is not applied. **Protective Intake Policy #86-015 [2/28/16]**

Caretaker means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with the responsibility for a child's health or welfare, and (e) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including baby-sitting), a foster home, a group care facility, or any other comparable setting. As such, "caretaker" includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person

who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child, i.e., a baby-sitter. [110 CMR 2.00]

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 Appellant in the matter under appeal. See Findings #1 to #10 and the below discussion.

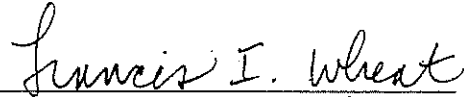
The Appellant was and is a *caretaker/caregiver* of her nine month-old son, N, consistent with the definition of that term cited herein and at 110 CMR 2.00 and within the Department's Protective Intake Policy.

Based on the record as a whole, the evidence was insufficient to meet the Department's policy definition of a support for neglect of N by the Appellant. Given the lack of credible evidence as to N's whereabouts during the parents' physical altercation, the Hearing Officer was unable to conclude if Appellant's actions in engaging in a physical altercation constituted neglect of N and if Appellant's actions did constitute neglect whether her actions posed a substantial risk to the child's safety or well-being of N. The Hearing Officer therefore finds that the Department's decision, to support for neglect of N for her failure to provide her son with minimally adequate supervision and emotional stability and growth on June 27, 2017, was not made in conformity with its regulations and policies.

The Appellant met her burden of proof in this appeal. [110 CMR 10.23]

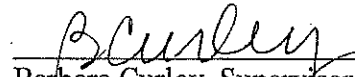
**Order**

1. The Department's decision of July 18, 2017, to support the 51A Report for neglect of N by the Appellant, his mother, is REVERSED.



\_\_\_\_\_  
Frances I. Wheat  
Administrative Hearing Officer  
Office of the General Counsel

May 14, 2018.  
Date

  
\_\_\_\_\_  
Barbara Curley, Supervisor  
Fair Hearing Unit

\_\_\_\_\_  
Date

\_\_\_\_\_  
Linda S. Spears  
Commissioner