

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

Linda S. Spears  
Commissioner

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

IN THE MATTER OF

GG #2017-1369

**FAIR HEARING DECISION**

GG appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

**Procedural History**

On September 15, 2017, the Department received a 51A report alleging neglect of H and B by their father, GG. The Department screened-in the report for a non-emergency response. On October 5, 2017, the Department made the decision that the allegation of neglect of H and B by GG was supported. The Department notified GG of its decision and his right to appeal.

GG made a timely request for a fair hearing to appeal the Department's decision. A hearing was held on February 1, 2018, at the DCF Lowell Area Office. GG, the Department response worker and the Department response supervisor testified at the hearing. GG was represented by an attorney.

The Department submitted the following exhibits which were entered into evidence at the hearing.

Exhibit A: 51A report.

Exhibit B: 51B report.

Exhibit C: Police Incident report.

GG submitted no exhibits.

The hearing record was held open until February 14, 2018, to allow GG's attorney an opportunity to review the police report submitted by the Department at the hearing and

submit a response or request that the hearing be reconvened for further testimony. GG did not submit further evidence or request that the hearing be reconvened, however, GG objected to the admission of the police report for several reasons addressed below. The police reports are admissible in this case.

First, GG objects to the police reports being entered into evidence because they are hearsay. Department regulations confer upon the hearing officer the duty and power to receive, rule on, exclude or limit evidence or request that any party produce additional evidence. 110 CMR 10.20. Department regulations specifically state that the hearing officer need not strictly follow the rules of evidence, and that the hearing officer may consider any evidence that is relevant, material, not unduly repetitious, authenticated to the satisfaction of the hearing officer and not subject to a privilege conferred by statute. 110 CMR 10.21(1) and (4). Therefore, the police reports are within the scope of allowable evidence under Department regulations.

Second, GG asserts three (3) objections related to the timing of the Department's submission of the police reports, specifically, the Department did not disclose them prior to the hearing, the Department did not submit them during the Department's presentation of its case at the hearing and until GG's attorney requested them at the hearing.

There is nothing in the procedural regulations governing fair hearings that precludes the submission of evidence by either party not disclosed prior to the hearing, after the party's initial presentation of evidence or even after the hearing. There is no evidence in the hearing record that GG or his attorney requested GG's file prior to the hearing. GG's attorney during the fair hearing was also his attorney during the criminal proceeding resulting from the police reports and, therefore, she would have had access to the reports in question prior to the hearing. (Exhibit B, p. 2) GG was given the opportunity to review and address the police reports either through submission of additional evidence or a request to reconvene for additional testimony. Therefore, the police reports need not be excluded due to the timing of their submission.

Finally, GG objects to the admission of the reports because there is no indication that the Department reviewed or considered them. GG's assertion is contradicted by the Department's contact notes in the 51A report which clearly state that the reporter submitted the police report along with the "hard copy" of the 51A. The police report was reviewed during the screening and available for review during the Department's decision making process. Even if it had not been provided to the Department during the course of the screening or response, the hearing officer may consider new information subsequently discovered or provided that would either support or detract from the Department's decision. 110 CMR 10.21(6).

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 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. 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; 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 Rev. 2/28/16, 110 CMR 10.05.

### Findings of Fact

1. GG (hereinafter "father") and AG (hereinafter "mother") are the parents of H (d.o.b. [REDACTED] 2004) and B (d.o.b. [REDACTED], 2007). (Exhibit A, pp. 1-2).
2. Father and mother have been married since 1999. (Exhibit B, p. 6).
3. They began having problems in their relationship several years ago. The problems became increasingly worse over time. They argued a lot and the arguments escalated. There were two (2) incidents in 2016, during which father became physically violent with mother. On one (1) occasion, father put his hands around mother's neck so that she had difficulty breathing. The incident occurred in their bedroom. Mother started screaming. The children heard her screaming and they came into the room after the physical assault. On another occasion around that same time, father threw mother to the ground. There were occasions during arguments when father blocked doorways preventing mother from leaving and she would try to push him out of the way. There were times during arguments when father has taken mother's phone away from her. (Exhibit B, pp. 6, 8; Exhibit C, p. 13).
4. H and B were both aware that mother and father did not get along. They heard them arguing in their bedroom and elsewhere in the home. Both children have seen father take mother's phone away from her. H has woken up to the parents yelling and sometimes he has had to tell them to stop. B has seen father shove mother. When they fight, it makes H sad and he wants to hide in his room. B gets really angry when the fight. They denied seeing mother act physically violent toward father other than when she is trying to get her phone back from him. B reported to his pediatrician

during an appointment in April 2017, that he was worried that his parents would be getting a divorce. (Exhibit B, pp. 8, 9).

5. In late August or early September 2017, there was an incident when the parents had an argument that escalated. Father took mother's phone and held it over his head. She reached up to get it and he twisted her arm. She then left the house. Father followed her in his car. They eventually both went home and slept in different rooms. (Exhibit C, p. 13).
6. On September 13, 2017, father and mother had an argument that started around 11:30pm after the children went to bed. At around 2:00am, father retrieved a handgun from the parents' gun safe. He placed it on their bed and told mother if she did not leave his house he would shoot her in the head and her brains would be splattered on the wall. Mother told father that if he did not leave her alone, she would call police. Father told her to "go ahead" and "guns will be blazing when they get here" and indicated that they would not be alive if she called police. Mother left the residence, went to a parking lot and attempted to book a hotel room for the night, but she was unsuccessful. Father called mother and advised her she could return and sleep in the spare bedroom. Mother returned and went to the spare bedroom. She found that father had placed a full size mattress and box spring on top of the king size bed in the room. Mother removed the extra mattress and box spring from the king size bed. Father told mother that he had reported all of her credit cards lost. She told him he could not do that. Father pushed the mattress that was on the bed up against mother and pushed her against the wall. Father told mother that he hated her and wanted to slap her and he made slapping motions with his hands at mother's face. Mother left the residence again. She returned in the morning after father left for work. (Exhibit B, p. 6; Exhibit C, p. 7).
7. Mother went to court with her attorney that morning (September 14, 2017) and requested a restraining order against father. The court issued a restraining order which included the children and advised mother to report the incident to the police. (Exhibit A, pp. 3, 6; Exhibit B, p. 6; Exhibit C, pp. 10, 13).
8. Mother went to the police station and reported the incident that day. (Exhibit C).
9. Father was arrested and charged with assault with a dangerous weapon, domestic assault and battery, domestic assault and intimidation of a witness. He was served with the restraining order. Police confiscated numerous shotguns, rifles, handguns and magazines and ammunition from the couples' home. Father was arraigned on September 15, 2017, and he was released on personal recognizance. (Exhibit B, p. 2; Exhibit C, pp. 7-8, 10, 14).
10. Later that day, mother met with a police detective. She provided additional information regarding incidents that occurred a year earlier during which father put his hands around her neck and threw her to the floor. She indicated that H and B witnessed the incidents. (Exhibit C, p. 13).

11. Father was arrested again that day and charged with strangulation. He was held without bail over the weekend and arraigned on September 18, 2017. During the arraignment the assistant district attorney requested a dangerousness hearing. Father's attorney did not dispute that father posed a danger. It was agreed that father would go to ██████████ Mental Health Center instead of being held without bail. Father agreed to a lengthy list of conditions before he was released. He was to remain at the mental health center until discharged, notify the police and the court upon his discharge, wear a GPS monitoring device within 24 hours of discharge, refrain from alcohol or drug use, submit to random drug screens, remain on house arrest with a few exceptions and have no contact with mother or the children. (Exhibit B, pp. 2-3).
12. On September 15, 2017, the Department received a 51A report alleging neglect of H and B by father based upon what mother told police. The Department screener obtained and reviewed a "hard copy" of the 51A report and the related police report. The Department screened in the report for a non-emergency response. (Exhibit A, pp. 1, 3, 6).
13. The Department response worker spoke with mother, father, the children and the children's pediatrician and reviewed a newspaper report about father's arrest. Mother and the children provided information consistent with the above findings. Father did not discuss any of the allegations related to his arrest on the advice of his attorney. (Exhibit B).
14. On October 5, 2017, the Department made the decision that the allegation of neglect of H and B by father was supported. The Department determined that father exposed the children to verbal and physical domestic violence impacting the children's emotional well-being. (Exhibit B, pp. 9-12).
15. Considering all of the credible evidence, I find that there is reasonable cause to believe that father failed to provide minimally adequate emotional stability and growth and essential care for H and B and that his actions placed the children in danger and posed a substantial risk to the children's safety and well being.

#### Analysis

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 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 C.M.R. 4.32(2).

“[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 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 s. 51B. Id. at 64; M.G.L. c. 119, s. 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.

“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 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. 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) 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

“Domestic violence” is a pattern of coercive control 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. DCF Protective Intake Policy #86-015, rev. 2/28/2016

“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 father neglected the children by exposing them to verbal and physical domestic violence which has emotionally impacted the children.

Father argued that the children did not witness any physical violence, the criminal charges have been dismissed, the evidence indicated that both parents engaged in the arguing and it was unclear what, if anything, the children actually heard.

With regard to the criminal charges, the status of the charges is irrelevant given the vastly different standard of proof required for a criminal conviction and the Department is not precluded from making a finding of neglect in the absence of a criminal conviction.

The evidence showed that the parents had marital problems for at least the past few years. Their conflict mainly consisted of verbal arguments. The parents both claimed that the other has become physically violent during arguments. Mother claimed that there were two (2) incidents about a year ago including one (1) occasion when father put his hands around her neck and another when he threw her down. She told police that she screamed during the first incident and the children heard her scream and came in the room after the assault. Father claimed that mother punched, kicked and scratched him. Mother denied being physically violent with father except when he blocked her exit or he took her phone and she tried to get it back. The most significant incident was the most recent incident during which father retrieved a handgun and threatened to kill mother and have "guns blazing" if she called the police and they both would be dead. That same night, when mother returned to the home to sleep in the spare room, father assaulted mother by pushing her against a wall with a mattress and then threatened to slap her. Although the children did not specifically report hearing or seeing that incident, they have responded to the parents' fighting before and father knew that they could have come in the room during the incident. I find that he acted without any regard for whether they would hear his statements or witness his actions.

Although father suggested that the children could not have heard anything because the incidents occurred in their bedroom on the opposite of the house, the children clearly stated that they often heard their parents fighting. H reported that he has woken up to their yelling and he has had to tell them to stop. B reported that they scream at each other in their room. The children were well aware of the parents' fighting even when it occurred in the parents' bedroom. It was also noted that the most recent incident ended in the spare bedroom which according to father is on the same side of the house as the childrens' bedrooms.

The children also reported that they have seen some level of physical violence. H reported that he has seen father take mother's phone and mother trying to get it back. B also reported seeing father take mother's phone away and he has seen father shove her. He said that he has only seen his mother become physical when she was trying to get her phone back.

Both children also expressed how they feel about their parents fighting. H said that it makes him sad and he wants to hide in his room. B said that he gets "really angry" when he sees them fighting and he told his pediatrician that he was worried his parents would be getting a divorce.

Both parents have acknowledged contributing to the verbal arguments and the Department may have been justified in finding mother neglectful along with father, however, the Department's failure to also find mother neglectful does not necessitate a reversal of the finding of neglect by father.

Considering all of the evidence, I find that there is reasonable cause to believe that father failed to provide minimally adequate emotional stability and growth and other essential care and that his actions posed a danger to the children and posed a substantial risk to their safety and well-being and, therefore, he neglected them under Department regulations.

#### **Conclusion and Order**

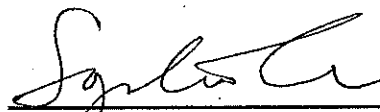
The Department's decision to support allegations of neglect of H and B by father was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which she resides, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Anne L. Dale Nialetz,  
Administrative Hearing Officer

3/29/2018  
Date



Sophia Cho, LICSW  
Fair Hearing Supervisor