

**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)
)
 D.L.) **FAIR HEARING DECISION**
)
 FH # 2017-1388)
)

The Appellant (DL) in this Fair Hearing is the mother of the subject child. The Appellant 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 15, 2017, the Department received a 51A alleging the neglect of child by the Appellant and sexual abuse of the child by her maternal uncle, LH. That report was screened in and assigned for a response. On October 25, 2017, the Department made the decision to support the allegation of neglect of the child by the Appellant.¹ The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on January 24, 2018, at the DCF Haverhill Area Office in Bradford, MA. All witnesses were sworn in to testify under oath. The record remained open until February 9, 2018, to allow the Appellant time to submit a summation which was received and reviewed.

The following persons appeared at the Fair Hearing:

Ms. Lisa Henshall	Fair Hearing Officer
Ms. D.L.	Appellant/mother
Mr. V.V.	Appellant's Advocate
Ms. S.P.	DCF Response Worker (RW)
Mr. M.W.	DCF Response Supervisor (RS)
Mr. D.G.	Witness DG
Ms. E.V.	Witness EV

¹ The allegations of sexual abuse and neglect of the child by LH was also supported and a referral was made to the District Attorney (DA). These allegations were not being appealed at this hearing.

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 recorded pursuant to DCF regulations. 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A: Child Abuse/Neglect Report dated 9/15/17
- Exhibit B: Child Abuse/Neglect Non-Emergency Response dated 10/25/17

Appellant:

- Exhibit 1: Texts from HM (child's father) to the Appellant
- Exhibit 2: Texts and pictures to demonstrate positive relationship with child and mother's boyfriend
- Exhibit 3: Letter from SW and services the Appellant secured for H (2017)
- Exhibit 4: Trial Court child support and Department of Revenue sheets
- Exhibit 5: Temporary Court Order dated 3/8/17
- Exhibit 6: Affidavit when child's father attempted to secure a restraining order against the Appellant

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 CMR10.21

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. The subject child of the Fair Hearing was H, who was fifteen (15) years old at the time of the reported incident. (Exhibits A & B)

2. The Appellant is the mother of the child, therefore, she was a caregiver pursuant to Departmental regulation 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.(Fair Hearing Record)
3. On September 15, 2017, the Department received a 51A report alleging the neglect of the child by the Appellant and sexual abuse of the child by LH. The report alleged that the child went into the police station on 9/15/17 and disclosed that she was sexually assaulted by LH from the time she was eight (8) until she was thirteen (13) years old. It was reported that the child informed her mother of the abuse and her response to every incident was reportedly the same; "you're okay, don't pay any mind to it, and keep this between us it's not anybody's business." The report was screened in, pursuant to M.G.L. c. 119, §51B, and the report was assigned for a non-emergency response. A DA referral was made with respect to the allegations of sexual abuse. (Exhibit A, pgs. 3 & 9; Testimony of the RW)
4. The family had a history with the Department. In 2017, a report was filed which alleged the neglect of H by her mother. The report was unsupported as the child stated denied that she did not feel safe with her mother but that she wanted to live with her father and she and her mother were arguing and she was upset about their divorce. It was noted that H was "splitting between both parents." On October 13, 2009, H made allegations of physical abuse by her father, HM. The allegations were unsupported as the child later denied that he had hit her and stated she made the allegations up. At that time the Department questioned the child's credibility "due to some of the behaviors described by the school and parents of her lying and manipulating." In 2003, there was a report based on allegations made by the child alleging physical abuse of her by her mother (the Appellant). When the child was interviewed, she reported that she made up the allegations because her mother had embarrassed her in front of her boyfriend. All other involvement with DCF was either screened out or unsupported. (Exhibit A, pgs. 6-8; Exhibit B, p. 1; Testimony of the Appellant)
5. At the time the child made the report to the police she was residing with her father, HM, and had been for the past nine months due to issues with her mother. The parents share legal custody but the Appellant had physical custody. (Exhibit B, p. 2; Testimony of the RW; Testimony of the Appellant)
6. H participated in an CAP (██████████ Child Abuse Project) on September 25, 2017, during the response. The child reported that she told her mother about the abuse when the incidents occurred and her mother "told her it was a secret." H's mother did not protect her so she cannot stay with her anymore. The child disclosed two incidents of sexual abuse by LH which she had told her mother. The first occurred when she was 7 years old and she was at her grandmother's home and went up to her mother's room to tell her. Her mother "hugged and her told her it will be ok." The second when she was 9 or 10 years old and she was at her grandmothers and her cousins were present. The child later told the Appellant who told her "not to tell (her) dad and keep it to herself."The disclosures made by D were not detailed and were inconsistent. (Exhibit B, pgs. 3-4; Testimony of the RW; Testimony of the Appellant) Therefore, I find that H was not a reliable reporter. Edward

E. v. Department of Social Services, 42 Mass. App. Ct. 478, 484 (1997)

7. The Appellant disputed that she or the child ever had a room at the maternal grandmother's house, which contradicted what the child reported. (Testimony of the Appellant)
8. The child provided contradictory statements with respect to who she told about the sexual abuse prior to the recent disclosure that she made which generated the 51A report. The child reported that she disclosed the abuse to her father after watching a movie about abuse. Later she disclosed that she told her boyfriend who told her to tell her father. (Exhibit B, p. 3) I find this significant as it showed there were inconsistencies in the child's reporting and there was not further questioning or evidence to explain this.
9. The child was said to have disclosed the sexual abuse to her grandmother around the same time she told the Appellant. The Department did not speak to the grandmother during the response. (Exhibit B)
10. The Department attempted to interview the child's boyfriend, but was not able to as his parent refused access. (Testimony of the RW)
11. The Department did not interview either of H's siblings (DG or EV) during the response. (Exhibit B; Testimony of the Appellant)
12. The Appellant disputed that her child ever told her that LH was sexually abusing her. If the child had told her she "absolutely would have done something." (Testimony of the Appellant; Exhibit B, pgs. 5-6)
13. The Appellant would have taken action if her child told her she was being sexually abused. (Testimony of EV)
14. At the end of its response, the Department supported the aforementioned report for neglect of the child by the Appellant. The Department found the child to be consistent and credible with her statements when interviewed. The Department made the decision to support the allegation of neglect as the child reported that she had told her mother and her mother said she would handle but didn't. The case remained open for an assessment. (Testimony of the RW; Exhibit B) The Department concluded this constituted neglect as defined by its regulations 110 CMR 2.00; Protective Intake Policy #86-015 Rev. 2/28/16
15. Based on the credible evidence, I find that the Department did not have reasonable cause to believe that the child was neglected by the Appellant. There are no other protective concerns about the child. There was no evidence that the Appellant would not have addressed these concerns if the child had told her. In the past, the Appellant had secured services for the child. There was evidence that the child had lied in the past. There was evidence that the child made inconsistent statements throughout the response so I found her to not be reliable, without speaking to the merits of the sexual abuse. The Department documented that they found the child to be credible this time but there was no evidence to determine why or how the Department made this determination. The child was inconsistent in how often she told the Appellant about the alleged abuse and how she

knew about it. (Exhibit A; Exhibit B; Testimony of the Appellant; Exhibit 3; Testimony of the RW) (Fair Hearing Record, See Analysis)

Applicable Standards

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.
- 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)

“Reasonable cause” implies a relatively low standard of proof which, in the context of the 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990). “[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of § 51A. Id. At 63. This same reasonable cause standard of proof applies to decisions to support allegations under §51B.” Id. At 64; G.L. c.119, s 51B

A “caregiver” 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, “caregiver” includes (but is not limited to) school teachers, baby-sitters, school bus drivers, camp counselors, etc. The “caregiver” 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 himself/herself a child (i.e. baby-sitter). 110 CMR 2.00

Neglect is defined as failure by a caregiver, either deliberately or through negligence and 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 solely to the existence of a handicapping condition. 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. 110 CMR 10.23

Analysis

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I reverse the Department's neglect support decision.

The Appellant, assisted by her advocate, contested the Department's decision to support the allegations of neglect. The Appellant argued that the child has a history of lying and not being credible as was documented by the Department in the DCF history search. The Appellant argued that the Department's response was one sided as they chose not to interview people that she had thought would be beneficial. The Appellant argued that the 51B report had evidence and information that was picked and did not contain all the facts. In addition, the Appellant cited various inconsistencies throughout the report. The Appellant presented evidence that supported her argument, which was persuasive.

The Department argued that they found the child to be credible and consistent with her disclosures that she had told the Appellant about the sexual abuse by her uncle, LH. The Department determined that the child told the Appellant, on two occasions, once when she was 7 years old and the second time when she was 9 or 10 years old, that LH had sexually abused her and her response was that she would handle it and did nothing.

The Department had determined that the child was not credible in the past and had a history of lying when she was in trouble. At the time of this response, the child had been living with father because she and the Appellant were not getting along. As indicated in the findings, there was no evidence that the Appellant had ever failed to address the child's needs or secure services when issues had presented themselves in the past. Without speaking to the merits of the sexual abuse, the child's stories were inconsistent and there was no follow-up to clarify these discrepancies. The child had initially reported that she told the Appellant after every incident but later indicated that there were two occasions where she had told her mother. The child had told the grandmother about the abuse but she was not interviewed during the response.

Based on a review of the evidence, presented in its totality, there was no reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulation.(Protective Intake Policy #86-015 Rev. 2/28/16) (See Findings)

