

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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<p>IN THE MATTER OF</p> <p>LB and MW #2017-1390</p>

FAIR HEARING DECISION

LB and MW appeal 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 September 14, 2017, the Department received a 51A report alleging neglect of A and S by LB and MW. On September 15, 2017, the Department received a 51A report alleging physical abuse and neglect of A by LB and MW and neglect of S by LB and MW. On September 22, 2017, the Department received a 51A report alleging physical abuse of A by LB and MW. On October 5, 2017, the Department received a 51A report alleging physical abuse of A by an unknown perpetrator. The Department screened-in all 4 reports for a non-emergency response. On October 20, 2017, the Department made the decision that the allegations of neglect of A and S by LB and MW were supported. The allegation of physical abuse of A by an unknown perpetrator was also supported. The Department notified LB and MW of its decision and their right to appeal.

LB and MW made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on January 3, 2018, in the DCF Dimock St. Area Office. LB, the Department response worker and Department supervisor testified at the hearing. MW was not present at the hearing. LB indicated at the hearing that she was representing MW's interests at the hearing.

The Department submitted the following exhibits.
Exhibit A: 51A report, dated September 14, 2017.
Exhibit B: 51A report, dated September 15, 2017.
Exhibit C: 51A report, dated September 22, 2017.
Exhibit D: 51A report, dated October 5, 2017.

Exhibit E: 51B report completed October 20, 2017.

LB and MW submitted no exhibits.

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. LB (hereinafter "mother") is the mother of A ([REDACTED], 2014) and S ([REDACTED] 2017). (Exhibit A, p. 1).
2. Mother is a caregiver for A under Department regulations. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015 Rev. 2/28/16.
3. There is no information in the hearing record detailing mother's relationship with A's father, however, it is apparent that they did not continue their relationship after A's birth. After they separated, A had visits with his father and paternal relatives. Mother had a good relationship with A's father and A's paternal grandmother. (Exhibit E, pp. 4-6).
4. The Department received numerous 51A reports with various allegations against mother since A was born. In October 2014, the Department received a 51A report alleging neglect of A by mother. It was reported that mother is a first time mother with developmental delays and she was having a hard time taking care of A, particularly with feeding. The Department determined that the allegations were

supported and opened a case for mother and A. The case remained open until January 2017. (Exhibit A, pp. 4, 6, 8).

5. The Department received 51A reports in January and December 2015, alleging neglect and/or physical abuse of A by mother. The Department screened-out both reports. (Exhibit A, pp. 4, 7-8).
6. Mother and A's paternal aunt apparently did not have a good relationship. In June 2016, the Department received a 51A report alleging physical abuse of A by mother and A's paternal aunt. The report was based upon an incident during which paternal aunt refused to give A to mother when she was supposed to be dropping him off to mother after a visit. Mother and paternal aunt engaged in a physical struggle pulling A back and forth. The Department determined that both mother and the paternal aunt had neglected A. (Exhibit A, pp. 4, 7).
7. Mother and MW (hereinafter "father") became involved in a relationship in the early fall of 2016. They are currently married and living together. (Exhibit A, pp. 1-3; Exhibit E, p. 6; Testimony of mother).
8. The Department closed mother and A's case in January 2017. Around that same time, mother became pregnant by father with her second child, S. (Exhibit A, pp. 1, 4).
9. Mother and father are caregivers for S under Department regulations. As A's step-parent, father is also a caregiver for A. 110 CMR 2.00(5). DCF Protective Intake Policy #86-015 Rev. 2/28/16.
10. In March 2017, the Department received a 51A report alleging neglect of A by mother. The reporter stated that mother does not take care of A, A is constantly crying, mother yells and swears at A and she has no food, milk or diapers for A. The Department initiated a response and did not support the allegations. (Exhibit A, pp. 4, 7).
11. In June 2017, there was an incident during which father was assaulted by four males with mother and A present. Father ran into their apartment. He got his guns and ran back outside to re-engage with his assailants. The Department received two 51A reports alleging neglect of A by father and mother. The Department screened-in the reports and conducted a non-emergency response. On July 11, 2017, at the conclusion of the response, the Department determined that the allegations of neglect were unsupported. (Exhibit A, pp. 4, 7).
12. A's father died of a heart attack in or around June 2017. (Exhibit E, p. 4).
13. After A's father died, mother agreed to allow A to continue spending weekends with his paternal relatives, specifically with his paternal grandmother. Typically, A's paternal aunt picked him up from daycare on Fridays and dropped him off at daycare on Mondays. (Exhibit E, pp. 4, 5).

14. On one occasion shortly after father died, paternal aunt returned A with a bruise and a cut on his forehead. Paternal aunt told mother that A hit his head on the pavement. Mother did not believe her explanation and she did not allow A to visit his paternal relatives for the next two weeks. (Exhibit E, pp. 4-5).
15. S was born on [REDACTED] 2017. (Exhibit A, p. 1).
16. Between September 14 and October 5, 2017, the Department received 4 reports alleging neglect and/or abuse of A and S by mother and father. (Exhibits A, B, C and D).
17. On September 14, 2017, the Department received a 51A report alleging neglect of A and S by mother and father. The reporter stated that mother and father fight every night over drugs, father chased people with a firearm two months ago, A often cries for hours, mother has been heard yelling at father to stop hitting A and mother chased father out of the home with a knife. (Exhibit A, p. 3).
18. The next day, the Department received a 51A report alleging physical abuse and neglect of A and neglect of S by mother and father. The reporter stated the following. A cries when it is time to go home to mother. He had marks that looked like finger prints on his back and buttocks 3 days ago and a few weeks ago he had scratches on his face. Mother does not know how to care for a newborn and she had the same problem when A was a baby. She almost poisoned him by accident. Father posted on Facebook that mother held a knife to his throat and made him marry her. Over the summer father got "jumped" possibly over a drug deal and he ran out of the home with two loaded handguns. (Exhibit B, pp. 1, 3-4).
19. The Department screened-in the reports for a response. (Exhibit A, p. 10; Exhibit B, pp. 9-10).
20. On September 18, 2017, the Department response worker spoke with someone from A's daycare. She reported that A has not had any physical injuries, A is doing well, his attendance is good and she had no concerns about mother's care of A. (Exhibit E, p. 2).
21. On September 22, 2017, the Department received a 51A report alleging physical abuse of A by mother and father. The reporter stated that father sent her a message saying A injured his eye when playing with his dinosaurs. A has a black eye and he said that mother did it. The reporter stated that mother does not know how to care for the baby and she is mentally ill. The reporter stated that A had finger marks on his buttocks and back last week. The Department screened-in the report to be investigated with the other reports. (Exhibit C, p. 1, 3, 11-12).
22. On or about September 25, 2017, A's paternal aunt went to court seeking custody of him. The court denied her request. (Exhibit E, p. 3).
23. On September 26, 2017, the Department response worker met with the family and spoke with mother and father. They reported that A's paternal aunt is constantly

filing false allegations against them. Father played a voice message from A's paternal aunt during which she was clearly upset and swearing about A being in their custody. Mother and father denied fighting or using drugs. They denied physically abusing A. The response worker asked about the incident when father was attacked during the summer. Father explained that he was attacked by 4 men. One of them had a knife. His nose was injured and he was bleeding and pleading for his life. Mother and A were present and crying. He acknowledged that he went home and got his guns because he wanted to scare the men off. Mother reported she receives Social Security Disability payments. When asked about her disability, she reported that she has been diagnosed with ADHD and bi-polar disorder. She noted that she is not on any medication or in therapy. (Exhibit E, pp. 2, 3, 4, 5).

24. The response worker observed mother with both children. She was appropriately holding and nurturing S. The response worker checked A's body for any visible marks or injuries. No injuries were observed. The response worker asked A about his "booboo" and he did not respond. (Exhibit E, pp. 4, 6).
25. The Department response worker contacted the children's pediatrician who reported no protective concerns. (Exhibit E, p. 6).
26. On October 5, 2017, the Department received a 51A report alleging physical abuse of A by an unknown perpetrator. The reporter stated that A was observed to have a bruise near his eye and on his cheek when he arrived at daycare. The Department screened-in the report to be investigated along with the other reports. (Exhibit D, pp. 1, 3, 9-10).
27. On October 5, 2017, the Department response worker spoke with the Director of A's daycare who confirmed that A had a bruise on his right cheek and eye when he arrived that morning. She reported that they contacted mother and father and they were surprised about the bruise and said he did not have a bruise when he left home that morning. (Exhibit E, p. 7).
28. Mother, father and A met with the response worker at the daycare later that day. A was observed to have a mark on the right side of his eye. It was not clear to the response worker if it was a bruise or an allergic reaction. He had no mark on his cheek. Mother and father denied A had any marks on his face in the morning. A did not respond when asked about the mark. (Exhibit E, p. 7).
29. On October 6, 2017, A's paternal aunt returned to court to seek emergency custody of A. On that date, the court gave temporary emergency custody (30 days) of A to his paternal aunt. A hearing was scheduled for November 9, 2017. (Exhibit E, pp. 7, 8).
30. On October 13, 2017, the Department made the decision that the allegations of neglect of A and S by mother and father were supported due to their exposure to the incident in June 2017, when father was attacked. The Department's decision notes that mother "stayed in the hallway with the children instead of removing them from an unsafe situation." The Department's conclusion notes that the parents denied all

other allegations and the Department cites no evidence to the contrary. The Department found that the allegation of physical abuse of A by mother and father was unsupported. (Exhibit E, pp. 9-14).

31. At the hearing, Department staff testified that the "support" decision was also based upon concerns about mother's mental health citing mother's admission that she has been diagnosed with ADHD and bi-polar disorder. The Department found her neglectful because she is not on medication or in treatment. Upon further questioning, the Department staff conceded that there is no evidence that mother's mental health and/or lack of treatment has had any negative impact on her ability to care for the children. (Testimony of Department response worker; Testimony of Department supervisor).
32. Considering all of the evidence, I find that there is no reasonable cause to believe that mother and father neglected A and S.

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.

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

"Neglect" is defined as 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; malnutrition; or failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. 110 CMR 2.00(DCF Protective Intake Policy #86-015 Rev. 2/28/16.

The Department determined that mother and father failed to provide minimally adequate safety for A and S due to the incident when father was attacked because mother did not remove the children from the situation. The Department also claims that mother neglected the children due to her mental health issues and lack of treatment; however, the Department has failed to identify any aspect of care mother failed to provide to the children due to her mental health.

Mother and father argue that S was not born at the time of the June 2017 incident and they were only trying to protect themselves when they were attacked. Mother and father denied failing to provide adequate care for the children due to mother's mental health or any other factor.

First, regarding mother's mental health, the Department has not shown or asserted that mother failed to provide minimally adequate food, clothing; shelter, medical care, supervision, emotional stability and growth or other essential care due to her mental health and/or lack of treatment; therefore, the Department did not have reasonable basis for finding that mother neglected the children due to her mental health or lack of treatment. Furthermore, the Department's decision is based solely on her mental health diagnoses and not on any failure by her to provide adequate care to the children. Mother's mental health diagnoses qualify her for Social Security Disability benefits, therefore, I find that those diagnoses constitute handicapping conditions. I find that the Department's decision resulted solely from the existence of a handicapping condition and therefore, the Department's decision was not made in conformity with Department regulations. I find that the Department's regulatory violation resulted in substantial prejudice to mother as the Department's finding of neglect by her will likely negatively impact her in the custody case involving A.

Regarding the incident during which father was attacked, the evidence shows that the incident occurred sometime in June 2017; and that S was born in [REDACTED] 2017. Department regulations specifically prohibit the Department from making a finding of neglect of a child prior to the child's birth. Department regulations define a "child" as "a person who has not reached his/her 18th birthday, but does not include unborn children." Since S was not yet born at the time of the June 2017 incident, the Department did not have reasonable cause to believe that mother and father neglected her due to that incident.

It is undisputed that A was present during the incident. The evidence also shows that the Department received a 51A report alleging neglect of A by mother and father at the time the incident occurred. The Department screened-in that report and conducted a non-emergency response. On July 11, 2017, the Department determined that mother and father did not fail to provide minimally adequate care for A or place A's safety or well-being at risk and the allegation of neglect was unsupported.

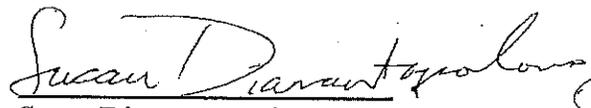
Considering all of the evidence, the Department did not have reasonable cause to believe that mother and father failed to provide adequate care for A or that their actions/inactions posed a risk to A's safety and well-being and, therefore, they did not neglect A under Department regulations.

Conclusion and Order

The Department's decision to support allegations of neglect of A and S by mother and father was not made in conformity with Department regulations or with a reasonable basis and, therefore, the Department's decision is REVERSED.


Anne L. Dale Nialetz
Administrative Hearing Officer

5/25/2018
Date


Susan Diamantopoulos
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner