

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 )  
 )  
 DA ) FAIR HEARING DECISION  
 )  
 FH # 2017-1391 )

The Appellant in this Fair Hearing was DA (hereinafter "DA" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On September 29, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of Av, Al and Ar (hereinafter "Av" or "Al" or "Ar" or "the children") by their maternal grandmother and legal guardian, DA. The reporter also alleged neglect of the children by their biological mother<sup>1</sup>. A non-emergency response was conducted and concluded on October 24, 2017, when the Department made the decision to support the allegation of the neglect of the children by their maternal grandmother, DB. 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 9, 2018, at the Department's New Bedford Area Office in New Bedford, MA. All witnesses were sworn in to testify under oath. The record was closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Jorge F. Ferreira                      Fair Hearing Officer  
DA    Appellant

<sup>1</sup> The following information was redacted from this administrative hearing and the allegation of neglect was not under appeal in this instant matter.

CA  
SG  
AM

Appellant's Support  
DCF Response Worker  
DCF Supervisor

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 digitally recorded pursuant to Department regulations 110 CMR 10.26.

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

For the Department:

Exhibit A: 51A Report, dated 9/29/2017

Exhibit B: 51B Response, completed on 10/24/2017

For the Appellant:

None

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 CMR 10.21

**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**

On the basis of the evidence, I make the following factual findings:

1. At the time of the filing of the subject 51A report, Al was four (4) years old, Av was one (1) years old and Ar was six (6) years old. They resided with their maternal

grandparents in ██████████, MA. (Exhibit A, pp 1-2; Exhibit B, p. 1)

2. The Appellant was the maternal grandmother and legal guardian of the children; therefore she was deemed a "caregiver" pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
3. Since December, 2015 the children had been known to the Department due to eleven (11) supported 51A reports that alleged neglect by their mother and their mother's boyfriend. Issues revolved around the children's medical neglect, their exposure to domestic violence and their mother's untreated mental health issues, which impacted her ability to care for the children. The family had an open case with the Department when the most recent 51A was filed on September 29, 2017. It stemmed from another 51A report from August 3, 2017, due to the children witnessing their mother being assaulted by her boyfriend and ongoing concerns that their mother was unable to keep the children safe and provide them with essential care despite supports being in place. Consequently, the Appellant obtained legal guardianship of the children via Probate Court. (Exhibit A, pp. 3, 8-9; Exhibit B, p. 1)
4. On ~~September 29, 2017~~, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of the children by the Appellant pursuant to M.G.L. c. 119, § 51A. The mandated reporter alleged that the Appellant voiced her concern over her daughter because she believed that her daughter's boyfriend was abusing her. The Appellant disclosed that the boyfriend was dealing drugs and had a gun and the "the kids are around their mother a lot." The reporter stated the children resided with the Appellant during the week and visited their mother during the weekend. The reporter expressed additional concerns because the children's mother had a history of substance abuse and untreated mental health issues and the reporter was therefore concerned regarding the children's safety while in the care of their mother. (Exhibit A, p. 3)
5. The report was screened in and assigned for an emergency response, pursuant to M.G.L. c. 119, § 51B. The allegation of neglect of the children by the Appellant was supported by the Department following the conclusion of its response. The allegation was supported because the Appellant violated a safety plan that was in place since the children were placed in the Appellant's care. The Appellant allowed the children's mother to babysit the children when she and the maternal grandfather went out to dinner. The children's mother then snuck her boyfriend into the home; exposing the children to a man with whom she had a history of domestic violence. Subsequently, the Department determined there was reasonable cause to believe that the children were neglected due to lack of supervision by the Appellant as she left the children with a known inappropriate caregiver, with a history of poor judgement, substance abuse and domestic violence. The Department also supported allegations of neglect of the children by their mother and her boyfriend. (Exhibit B, p. 8; Testimony of the DCF Response Worker)
6. The DCF Response Worker met with AI at her daycare. The daycare director denied

any concerns regarding Al and Av, who also attended but was not present for the interview. Al confirmed that she resided with the Appellant and that her mother visited her. She also disclosed that the Appellant would leave her and her siblings with her mother when she went grocery shopping. Al reported that her mother had a boyfriend who was nice to her; that she had seen them argue and that the Appellant was present when this took place. Al disclosed she felt safe being with the Appellant. (Exhibit B, p. 2)

7. When interviewed, the Appellant reported she wanted the 51A to be filed because she had concerns regarding her daughter. The Appellant disclosed the children told her that when they were left alone with their mother, while she went out on a date with their grandfather, the children's mother "snuck" her boyfriend into the home. The Appellant reported she had not allowed the children to be alone with their mother since that incident. (Exhibit B, p. 3)
8. During the interview, the Appellant wanted a visitation schedule to be in place as the children's mother chose men over her children and her current boyfriend was "no good." The Appellant alleged that the children's mother was verbally, emotionally and "likely" physically abused by her boyfriend. The Appellant also advised the children's father was incarcerated and their mother had a "horrible past with men." (Exhibit B, p. 3)
9. The children's mother acknowledged she visited the children at the Appellant's home and had taken the children out alone with her boyfriend (now ex-boyfriend). She denied that he was a drug dealer or that he had access to gun. (Exhibit B, p. 3)
10. The children's mother also acknowledged she was aware that she was not to take the children without permission from the legal guardian/Appellant and should be engaged in DCF services; but denied any substance abuse/alcohol abuse history and treatment, acknowledging she smoked marijuana and drank alcohol socially. (Exhibit B, p. 4)
11. The maternal grandfather reported he was not aware what was taking place between the children's mother and her ex-boyfriend and stated that he "stays out of it." He confirmed that the children's mother had not been alone with the children for the past three (3) weekends. (Exhibit B, p. 4)
12. When interviewed, the Appellant stated the children's mother visited the children almost every day but when she did not visit, the children would not ask for her. The Appellant did not believe that the current visitation schedule was appropriate. The children's mother reluctantly agreed for weekend-only visitation between her and the children. During the interview, the Appellant appeared to have difficulties speaking up in front of her daughter who appeared "angry" at the end of the meeting. (Exhibit B, p. 4; Testimony of the DCF Response Worker)
13. The children were reported to be healthy and up-to-date with their medical and dental care. (Exhibit B, pp. 4-5)

14. Ar disclosed she witnessed her mother and her ex-boyfriend argue and hit each other. Ar added she had been alone with her mother. She also disclosed she felt safe being with the Appellant in her home as opposed as to when she resided with her mother. (Exhibit B, p. 5)
15. The Appellant and her husband both maintained they were not aware that the children were not supposed to be left alone with their mother. However, the ongoing social worker reported the Appellant knew this policy since the children were removed from the mother's care and placed with them. The Appellant was concerned how this would impact her legal guardianship status of the children. (Exhibit B, p. 5)
16. After review of the evidence and testimonies presented by both parties, I find that the Department did have reasonable cause to believe that the Appellant did not provide the children with minimally adequate care and supervision by allowing an inappropriate substitute caregiver with a history of poor judgment to be the primary caregiver while the Appellant was unavailable. The Appellant's actions placed the children in danger or posed a substantial risk to their safety and well-being. Subsequently, the Department's decision to support the allegation of neglect of the child by the Appellant was made in compliance with its regulations. (110 CMR 4.32, DCF Protective Intake Policy #86-015, rev. 2/28/16; See, Analysis)

#### Applicable Standards of Review

A "support" finding of abuse or neglect means that 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) placed 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 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)

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

"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

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; and (e) 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

"Danger" is defined as a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. DCF Protective Intake Policy #86-015, rev. 2/28/2016

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party; . . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

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, or (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, or (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

### Analysis

It is undisputed that the Appellant was a "caregiver" pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/2016

The Appellant disputed the Department's decision to support the allegation that she neglected the children. She argued the court did not stipulate any visits when she obtained legal guardianship of the children; that because legalization of the children's guardianship was done independently of the Department, they could not mandate any conditions regarding the care of the children with the Appellant. Finally, the Appellant argued she and the maternal grandfather were never told by the Department to not have the children be left alone with their mother. The Appellant reported that when the allegation was made, a case was opened with the Department and the assigned social worker never made them aware of any visitation conditions between the children and the Appellant. Subsequently, the Appellant argued that 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

This Hearing Officer was not persuaded by the Appellant's argument. The Department provided sufficient evidence that the children had been left alone with their mother and exposed to her ex-boyfriend. This was corroborated by the Appellant herself as well as the paternal grandfather, in both testimony and documentary evidence. The Department was able to show that the Appellant knew that the children were not supposed to be left alone with their mother stemming from the previous supported 51A report of August 2017. (Fair Hearing Record) The Department had reasonable concerns for this decision due to the children's mother's history of domestic violence and substance abuse, which evidence suggested the children had exposure to. Moreover, both Al and Ar disclosed that they had witnessed their mother engaging in an altercation with her ex-boyfriend and that Ar felt safer since being with her maternal grandparents. The Appellant also reported that the children's mother had history of involving herself with questionable men; yet allowed her to babysit the children while she went out with the maternal grandfather. This decision by the Appellant created an opportunity for the children's mother to sneak in her ex-boyfriend, someone described as a perpetrator of violence and drug dealer. The Appellant's decision to leave the children with an inappropriate caregiver resulted in a lack of minimal adequate supervision for the children; which posed danger or a substantial risk to their safety and well-being. The Court has concluded that the Department's determination of neglect does not require evidence of actual injury or harm to the child. Lindsay v. Department of Social Services, 439 Mass. 789 (2003) Additionally, "...if children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing physical or emotional injury." Id. at 795

In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there was a reasonable basis for the decision. 110 CMR 10.05 After a review of the testimonial and documentary evidence presented, the Appellant did not demonstrate a failure by the

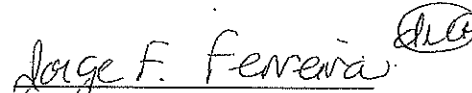
Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. 110 CMR 10.06(8)

As provided for in the regulations quoted above, the Response Worker relied on available documentation, observable behavioral indicators and her clinical knowledge to support the decision made. Based on the totality of the circumstances, and the evidence gathered, the Department's finding that the Appellant's behavior constituted neglect was based on "reasonable cause" and made in conformity with Departmental regulation and policy. 110 CMR 2.00; 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

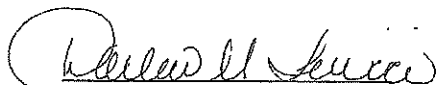
**Conclusion**

The Department's decision to support the allegation of **NEGLECT** of the children by the Appellant 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, they may do so by filing a complaint in the Superior Court for the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

  
Jorge F. Ferreira, MSW  
Administrative Hearing Officer

5/21/18  
Date

  
Darlene M. Tonucci, Esq.  
Supervisor, Fair Hearing Unit