

**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 Spears
Commissioner

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IN THE MATTER OF)
)
) **FAIR HEARING DECISION**
 LM)
 FH #2017-1394)
 &)
 FH #2017-1395)

The Appellant in this Fair Hearing is LM (hereinafter "LM" or "Appellant"). 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 27, 2017, the Department received two (2) 51A reports alleging neglect of L (hereinafter "L" or "the children" and Ly (hereinafter "Ly" or "the children") by CC (hereinafter "CC") and the Appellant. The Department conducted a response¹ and, on October 19, 2017, the Department made the decision to support the allegations of neglect by CC and the Appellant. The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing scheduled for January 23, 2018 was rescheduled at the request of Counsel for the Appellant. The Hearing was held on April 17, 2018 at the DCF New Bedford Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the Hearing.

The following persons appeared at the Fair Hearing:
Carmen Temme Fair Hearing Officer

¹ The 51A reports were associated to different cases. The RW conducted the 51B response on both reports. This hearing represents a consolidation of Fair Hearing requests associated to the two responses.

LM Appellant
KA Attorney for Appellant
JF (hereinafter "JF") Department Response Social Worker

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 DCF Intake Report/51A Report, dated 9/27/2017 @9:48am
Exhibit B DCF Child Abuse/Neglect/Non-Emergency Response, completed 10/19/2017
Exhibit C DCF Intake Report/51A Report, dated 9/27/2017 @12:16pm
Exhibit D DCF Child Abuse/Neglect/Non-Emergency Response, completed 10/19/2017

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. 2/28/2016

Findings of Fact

1. The subject children of this Fair Hearing are L and Ly; at the time of the subject 51A report, L was two years old and Ly was three (3) months old. (Fair Hearing Record)
2. The children's mother is CC. (Fair Hearing Record)
3. L's father is ED (hereinafter "ED"). (Fair Hearing Record)

4. CC and ED separated as a couple when L was an infant. According to ED, the relationship was “unhealthy” and “getting to the point” of being abusive; ED denied any physical altercations with CC. (Exhibit B, p.3; Exhibit D, p.4)

5. Ly’s father is the Appellant LM. (Fair Hearing Record) The Appellant and CC had been in a relationship since October 2015. (Exhibit A, p.5)

6. The Appellant had another child from his prior marriage to MM (hereinafter “MM”). On or about September 2014, the Appellant and MM divorced due to the Appellant’s in time substance abuse issues. (Exhibit B, p.7; Exhibit D, p.9: Testimony JF) According to the Appellant, following completion of his in-patient treatment program in 2014, he remained substance free. (Exhibit D, p.8)

7. On March 7, 2016, the Department became involved with the family following a 51A response, which supported allegations of physical abuse of L by CC and her maternal grandmother. L had several marks and bruises on her body, including a bite mark on her shoulder. At that time L resided with CC. (Exhibit A, pp.5-6; Exhibit C, pp.4-6)

8. Following the March 2016 supported 51A, L went to reside with ED; ED obtained custody through Probate Court. (Exhibit B, p.1; Exhibit D, p.1) Sometime thereafter, the Appellant moved in with CC. (Testimony Appellant)

9. On or about September 29, 2016, the Department closed its case involving L. (Exhibit A, p.5; Exhibit C, p.4)

10. Ly was born in 2017. Ly resided with the Appellant and CC. (Exhibit A; Exhibit B; Exhibit C; Exhibit D)

11. At the time of the subject 51A report, L visited with CC and the Appellant overnight, several times per week, as arranged through the Probate Court. According to ED, he and CC had “basic communication.” (Exhibit B, 3; Exhibit D, p.4)

12. The Appellant is deemed a caregiver for the children pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-016, rev. 2/28/2016.

13. The Appellant had no criminal history with the ██████████ Police Department. (Exhibit D, p.8) CC and the Appellant denied any police responses to the home or any criminal involvement. (Exhibit D, p.2, p.8, p.10; Testimony Appellant)

14. On September 27, 2017, the Department received a report from a non-mandated reporter pursuant to M.G. L. c. 119, §51A, alleging neglect of L by the Appellant and CC due to concerns of domestic violence. On Wednesday September 20, 2017, L visited as scheduled with CC. On the September 21, 2017, L informed her paternal grandmother, “{The Appellant} hit mommy.” The paternal grandmother “was able to glean” from the conversation that the Appellant “may have hit” CC on her head. During dinner, L informed ED, “{the Appellant} hit mommy.” L then

grabbed her wrist and slapped her hand. The reporter noted that the conversation was recorded. L then stated that she was “scared.” L continued by saying that the Appellant “hit mommy on her hand.” L grabbed her wrist and slapped her hand. When asked if L cried, L responded, “Yea, I was scared.” The child was unable to answer why the Appellant hit CC. L then stated that the Appellant “gave the door a boo boo.” L demonstrated by going to a door where she reportedly hit the door with her hand and her head. This was not captured on the video recording as the recorder stopped recording. The non-mandated reporter referred to CC as “volatile.” Since L’s report, she has reportedly been “acting out” She reportedly had hit the television and yelled at the television, saying the Appellant’s name when she did these things. (Exhibit A, pp.2-3; Exhibit C, pp.2-3) Testimony JF) No date was given regarding the reported incident. (Testimony JF)

15. Upon learning that the Appellant and CC had a two (2) month old child, the Department filed a separate 51A report regarding Ly, noting the same concerns for domestic violence. (Testimony JF; Exhibit C)²

16. The 51A reports were assigned for a response, pursuant to M.G.L. c. 119, § 51A to JF, Social Worker from the DCF New Bedford Area Office. (Testimony JF; Exhibit B; Exhibit D)

17. At the end of its response, the Department supported the aforementioned reports for neglect of the children by the Appellant and CC.³ The Department based this determination on the following:

- The consistent statements made by the child L to the paternal grandmother, in the video recording and to JF, that she “was scared and cried during {an} altercation of mother and “Appellant”
- The child L becoming “clingy” and whining” with concern for CC and having difficulty sleeping. L asking ED to hit the Appellant.
- CC’s admission that the relationship ended weeks prior to the 51A report due to the Appellant’s “demeaning” and becoming “verbally abusive.”
- “Although {CC} stated that she ended the relationship to avoid it becoming physically abusive, never confirmed or denied if {the Appellant} had ever assaulted her. Mother described {the Appellant} as being an “aggressive person by nature.”
- “Due to the reasons listed above, there is reasonable cause to believe that child was in fact exposed to domestic violence and if mother and {the Appellant} continue their relationship, children are in danger of continued exposure. Risk level scored low.”

The Department determined that the aforementioned impacted the children’s emotional stability. (Exhibit B, p.10; Exhibit D, p.11; Testimony JF)

18. During JF’s October 2, 2017 home visit with CC, CC reported that she left the residence she shared with the Appellant “on her own terms” on Labor Day weekend. CC then went to stay with her mother. CC reported that the Appellant was “verbally abusive” and “demeaning.” She did not answer whether he was physically assaultive to her. CC stated that she left the residence in an effort to “Avoid getting to that point” when asked about physical violence. CC did state, “By nature he is an aggressive person.” According to CC, she and the Appellant were not on “talking

² The Department completed two (2) separate 51B reports. (Exhibit B; Exhibit D)

³ On November 21, 2017, following an Area Review, the Department made the decision to overturn the support decision regarding CC. The Department upheld the support decision regarding the Appellant. (Exhibit B, p.11; Exhibit D, p.12)

terms.” CC reported that she left the residence, as she did not want to the children to be “exposed to an unhealthy relationship.” (Exhibit D, p.2) According to CC, the Appellant was willing to engage in couples counseling services. (Exhibit B, p.2; Exhibit D, p.4)

19. According to CC, at the time of the subject 51A report, she was in a “custody battle” with ED. (Exhibit B, p.3; Exhibit D, p.3) ED and CC were scheduled to return to Probate Court on October 27, 2017 for pretrial. (Exhibit A, p.2; Exhibit B, p.3; Exhibit D, p.4; Testimony JF) The Department did not contact the Probate Court. (Testimony JF)

20. CC believed that ED “vindictively” filed the 51A report, as his “motivation” was to obtain custody of L. According to CC, she informed ED of the “allegations;” when she did so, ED informed her that L “did report that to him in the past.” When CC asked L why she stated that the Appellant hit her, L reportedly replied, “Daddy told me that.”(Exhibit D, pp.3-4)

21. CC knew of the Appellant’s history with cocaine and opiate use. CC knew that the Appellant had been clean for approximately 2.5 years. She became concerned of a relapse when the Appellant stole money from her; she however did not observe him to be under the influence. Additionally, there had been a “gradual change in aggressive behavior.” CC denied the need for a restraining order and denied being in fear of the Appellant. (Exhibit B, p.2; Exhibit D, p.3)

22. Notwithstanding the pending Probate Court proceedings, I give significant weight to CC’s description of the Appellant and the discord within their relationship by virtue of her leaving the residence.

23. At the time of the 51A response, MM had no concerns regarding the Appellant use of substances. Their child visited unsupervised at the Appellant and CC’s residence. Their son had not reported any concerns when visiting with the Appellant. Approximately two (2) months prior to the subject 51A report, CC informed her that the Appellant was not acting himself; this “worried” MM. The Appellant agreed to take an over the counter drug test at MM’s request; the results were negative. MM referred to the Appellant as “reliable,” providing additional financial support when asked. MM reported having an “amicable” relationship with the Appellant. There were no concerns for domestic violence. (Exhibit B, p.9; Exhibit D, p.9)

24. At the time of the subject 51A response, the Appellant continued in voluntary counseling services with his therapist of approximately 2 ½-3 years. (Exhibit D, p.8) The Appellant was diagnosed with poly-substance use, in remission and ADHD, with some concerns of anxiety and depression. There had been no concerns of a relapse. Domestic violence had never been an issue. The Appellant could be “pretty loud, abrupt and blunt” however his therapist “never felt {the Appellant’s} behavior was unacceptable.” The therapist had no concerns for the Appellant’s parenting, referring to the Appellant as a “Devoted capable loving father.” The Appellant had voiced his concern to the therapist that the reporter filed the “false” 51A for “retribution.” (Exhibit B, p.9; Exhibit D, p.9)

25. ED reported that the limited interactions he had with the Appellant had been “positive.” ED noted that CC could be “aggressive.” He stated that he “was unsure if the allegations were true; however, he was fearful that child may be witnessing abuse and wanted it to be investigated.”

(Exhibit B, p.4; Exhibit D, p.4)

26. ED reported having no prior concerns for domestic violence between the Appellant and CC, until notified by the paternal grandmother of Ly's statement. JF viewed the video taken by ED of L speaking about the Appellant hitting CC. JF noted that ED did not ask leading questions during the video. L's report was "matter of fact" and there was no change in her behavior or demeanor. ED reported that he sent the video to his attorney. According to ED, he did not speak with CC about it, as he wanted to "avoid further conflict." (Exhibit B, p.4; Exhibit D, p.4: Testimony JF)

27. According to Ly's paternal grandmother, Ly's statement that the Appellant hit CC while pointing to her head came "out of no-where." L reportedly "wasn't acting herself and nervous and worried." [Sic] Exhibit B, p.10; Exhibit D, p.9) This account is inconsistent with ED's report that when he spoke with L upon her return home she was "not crying, showed any fear, or any other emotions when disclosing the information and has not had any fear when going to Mother's home." (Exhibit B, p.4; Exhibit D, p.4)

28. ED denied that the child's behavior changed immediately upon her return home following the reported incident. ED noted however that L had "begun to whine" for CC at "odd" times during the day. When asked why she wanted her mother, L reportedly answered, "Because {the Appellant} hit mommy." L reportedly experienced difficulty sleeping and wanted to sleep with ED. (Exhibit B, p.4; Exhibit D, p.4) During an October 18, 2017 telephone conversation, ED informed JF that L "continued to show concern for Mother as {L} asked {ED} to hit {the Appellant}." The Department did not contact L's in time daycare in an effort to corroborate ED's report of the changes in L's behaviors, in light of the upcoming Probate Court date. 110 CMR 4.27 (2) (Exhibit B; Exhibit D)

29. During JF's interview with L, ED remained present to calm L who started to cry and chase after ED. ED "sat on the couch and did not interrupt or participate in interview." L reported that the Appellant was nice to her. When asked if the Appellant was nice to her mother, L responded, "{The Appellant} hit mommy." She "tapped" her head and continued to play "without hesitation." When asked what she did, L replied, "I cried." L denied that anyone hurt either her or Ly. L did not respond to other specific questions. L continued to repeat that the Appellant hit her mother and that she cried. (Exhibit B, p.4; Exhibit D, p.5)

30. While L consistently reported that the Appellant "hit mommy," she stated or demonstrated varying accounts that the Appellant slapped CC on the hand or head. Additionally, L was unable to provide any additional information regarding the "hit." (Fair Hearing Record) L did not say that the Appellant hit CC hard or with force. (Testimony JF) The 51A report reflected that the paternal grandmother asked L whether she cried to which L responded, "Yea, I was scared." In the video, L stated that she cried and was scared. L informed JF that she "cried." (Fair Hearing Record) The influence of the paternal grandmother's query is questionable.

31. During JF's October 16, 2017 home visit with the Appellant, LM reported that he and CC separated approximately one (1) month prior due to issues in their relationship. The Appellant denied domestic violence. They admittedly argued a "like normal couple;" however, this never resulted in items being broken or thrown or daily arguing. JF saw no evidence of any holes in the

walls or signs of "aggressive behavior." (Exhibit B, p.6; Exhibit D, p.8; Testimony JF)

32. At Fair Hearing the Appellant maintained that he did not hit CC. The Appellant maintained that he is not a violent person. He and CC were no longer in a relationship, having parted "amicably." The Appellant felt caught in the middle of the custody dispute between ED and CC and their "constant bickering." (Testimony Appellant)

33. The Appellant cooperated with Departmental recommendations/safety plan, including supervised visitation with Ly. (Testimony JF; Exhibit D, p.6, p.8)

34. I find that it was reasonable for the Department to determine that the Appellant's behavior constituted a failure to provide the children with minimally adequate emotional stability and growth. 110 CMR 4.32(2), DCF Protective Intake Policy #86-015 Rev. 2/28/16. This is based in large part on CC's report of an increase in the Appellant's "aggressive" behaviors, including his being "verbal abusive," "demeaning" and that she made the decision to leave the residence in an effort to avoid further escalation. While L's statements are marred by questionable adult motivation, lack of corroboration and devoid of details, L did maintain that the Appellant hit CC. It is reasonable to believe that the children were present and exposed to their discord.

35. I find however, there is no evidence that the Appellant placed the children in danger or posed substantial risk to their safety through his actions. DCF Protective Intake Policy #86-015 Rev. 2/28/16.

36. Therefore, the Department's decision to support the allegation of neglect was not made in conformity with its policies and regulations. 110 CMR 2.00, 110 CMR 4.32, DCF Protective Intake Policy #86-015 Rev. 2/28/16.

Applicable Standards

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. 110 CMR 2.00

Neglect is the 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

“[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

“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 finding of support requires that there be: 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. 2/28/2016)

“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

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Police, (rev. 2/28/2016)

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. 2/28/2016

Analysis

It is undisputed that the Appellant was a caregiver for the children. 110 CMR 2.00

The Appellant through Counsel disputed the Department's decision to support neglect of the children arguing that the evidence was insufficient to establish that the Appellant's actions constituted less than minimally adequate emotional stability and growth as defined by Departmental regulations and policies.

The decision-making in the instant case presented multiple challenges as issues of potential influence, motivation, lack of corroboration and lack of detail permeated the documentary and testimonial evidence. The Department determined that L's consistent report that the Appellant hit CC, demonstrating the location by tapping her head and grabbing her wrist, constituted domestic violence. This coupled with the child's report that she cried and was scared and CC's report resulted in the Department's determination to support the allegation of neglect.

The timing of the 51A report and L's subsequent reported behaviors are questionable. CC moved out of the residence that she shared with the Appellant during the Labor Day weekend. Both the Appellant and CC acknowledged relationship issues. Throughout the 51A response and at Fair Hearing, the Appellant denied that he hit CC. According to CC, she moved out in an effort to avoid the relationship discord escalating into physical disputes. The Department noted concern with CC's failure to "confirm or deny" if the Appellant ever hit her. The Department relied on L's report to the paternal grandmother, father and to JF that the Appellant hit CC. L however was unable to provide additional details regarding the hit. On different occasions, L demonstrated what occurred by tapping her head and/or grabbing and holding her wrist. L denied that she was afraid of the Appellant and that the Appellant did not hurt her or her sister.

L's initial report to her grandmother occurred on September 21, 2017; approximately three (3) weeks after CC left the residence to stay with her mother. The record is absent information to suggest that the Appellant was present during subsequent visitation time with CC or to clarify this issue. Also noteworthy was the impending October 27, 2017 Probate Court case. According to CC, she and ED were involved in a contentious custody battle regarding L, making the timing of the reported allegations questionable.

ED's report of the changes in L's behaviors is also questionable. ED reported that there was no fear or crying when L told him that the Appellant hit CC. When JF interviewed L, there were no noted changes in her demeanor or behavior. ED however reported that in the ensuing days following the reported incident, L became increasingly clingy and whiney. The Department missed a valuable opportunity to corroborate this contention by not contacting the child's daycare provider raises concern regarding the veracity of the reported changes in behaviors. Additionally, the issue regarding when and where the reported incident occurred was not clarified, specifically prior to Labor Day or following the September 21, 2017 visit with CC.

The evidence reflected that CC moved in with her mother to avoid any further escalation in the relationship discord. CC reported that the Appellant was "verbally abusive" and "demeaning" to her. CC reported noticed an increase in the Appellant's aggressive behaviors, questioning a

possible relapse. While the Appellant denied any physical altercations with CC, he did acknowledge discord within his relationship with CC. The Court has determined that a physical or verbal altercation between caretakers, witnessed by the children, “constitutes a failure to provide the children with minimally adequate stability and growth.” John D. v. Department of Social Services, 51 Mass. Ct, 125, 132 (2001)

“Reasonable cause” implies a relatively low standard of proof which, in the context of 51A, “serves a threshold function” in determining whether there is a need for further assessment and/or intervention. “[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of Section 51A.” This same reasonable cause standard of proof applies to decisions to support allegations under 51B. Care and Protection of Robert, 408 Mass. 52, 63 (1990) The evidence was sufficient to determine that the Appellant failed to provide less than “...minimally adequate...emotional stability and growth...” for the children. 110 CMR 2.00

The Appellant cooperated with the Department and agreed to the safety plan to include supervised visits with Ly. The Appellant and CC understood the necessity of providing a safe and stable environment for the children. As a result, CC moved out of the residence. The record is absent evidence to suggest that the Appellant did not adhere to the aforementioned plan or attempt unwanted contact with CC. CC denied being in fear of the Appellant. Additionally, the Appellant remained in individual counseling; his long therapist saw not indicators of domestic violence, however noted that the Appellant could be “loud, abrupt and blunt.” While it was reasonable for the Department to be concerned about the emotional impact of the relationship discord, there is no evidence that the Appellant placed the children in immediate danger or posed substantial risk to their safety⁴ as delineated in its governing policies. DCF Protective Intake Policy #86-015, rev. 2/28/2016. The evidence around domestic abuse of CC by the Appellant was inconclusive. The Appellant has shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegations of neglect.

“...When reviewing a support decision or an Alleged Perpetrator listing, the hearing officer may consider information available during the 51A response investigation and new information subsequently discovered or provided that would either support or detract from the Departments decision.” (110 CMR 10.21 (6))

Conclusion and Order

The Department’s decision to support the 51A report of neglect on behalf of L and Ly by the Appellant is **REVERSED**.

⁴ Such evidence, that the child was in danger or the Appellant’s actions posed a substantial risk to the child’s safety or well-being would be necessary for the Department to support the allegations, as opposed to the Department making a finding of “concern” which would also require that the child was neglected, but that there is a lower level of risk to the child, i.e. the actions or inactions by the Appellant create the potential for abuse or neglect, but there is no immediate danger to the child’s safety or well-being. (See DCF Protective Intake Policy #86-015, Rev. 2/28/16, p. 28, 29)

Carmen Temme

Carmen Temme
Fair Hearing Officer *BC*

August 27, 2018
Date

B. Curley

Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner