

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda Spears
Commissioner**

**Voice: 617-748-2000
Fax: 617-261-7428**

IN THE MATTER OF

PR #2017 1399

FAIR HEARING DECISION

Appellant, PR (“Appellant”), appeals 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 October 6, 2017, the Department received a report which alleged neglect of C, D and N by the Appellant, their mother. The basis of the reporter’s concern was C’s disclosure of feeling depressed and overwhelmed due to Appellant’s verbal abuse and after the Appellant informed C, D, and N that they would be moving out as soon as they turned eighteen (18), which was months away. The Department screened-in the report and conducted a response. On October 26, 2017, the Department made the decision to support allegations of neglect of the children. The Department provided the Appellant with written notification of the decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at DCF Robert Van Wart Area Office on January 11, 2018. In attendance were Maura Bradford, Administrative Hearing Officer; PR, Appellant: VB, Witness; and KP, Response Supervisor.

In accordance with 110 CMR 10.03, the Administrative Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement or bias in this case.

The Fair Hearing was digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

Prior to the completion of the hearing, the record was left open until January 12, 2018 to

allow the Appellant time to submit a copy of an audio recording she presented, in part, at the hearing and which was entered as Exhibit 10 (See Fair Hearing Record). Due to technical issues and rejection of the email by the Department's email server, the Appellant was unable to send a complete audio file by email and did not otherwise provide a copy of the full recording. The excerpt of the audio recording that was played at the hearing remains on the record and was considered along with the rest of the evidence.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

- Exhibit A: 51A Report of October 6, 2017
- Exhibit B: 51B Report completed on October 26, 2017

For the Appellant(s):

- Exhibit 1: Letter from Appellant to Director of Areas, with post-it notes attached by the Appellant
- Exhibit 2: Screenshots of Text Messages
- Exhibit 3: Caregiver Affidavit
- Exhibit 4: Child Requiring Assistance (CRA) Docket Reports (C, D and N)
- Exhibit 5: School Disciplinary Reports (N and D)
- Exhibit 6: Medical Documents, (N)
- Exhibit 7: Medical Documents (C, D and N)
- Exhibit 8: Orthodontist Appointments (D)
- Exhibit 9: Schedule of Medical Visits (C, D and N)

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) 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. 110 CMR 10.05
DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The Appellant is the mother of triplets C, D and N. The children's father was DG. At the time of the report in question, the Appellant was 39 years old and the children were 17 years 9 months old. (Exhibit A)
2. The Appellant was a caregiver for C, D and N under Department policy and regulations. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00
3. The Appellant has an older child, SG.¹ At the time of the report in question, SG was 22 years old and resided with the Appellant. (Exhibit B, p. 5)
4. The Appellant was involved with the Department between 2000 and the report in question. Between 2000 and 2017 there were seventeen (17) reports involving the Appellant and her family; of the reports, three (3) resulted in supported allegations of neglect, the most recent of which was January 2011.² In November 2015, the Appellant obtained a Child Requiring Assistance (CRA) for each of the children and the Department provided supportive services until January 28, 2016.³ (Exhibit A, pp. 4-12; Exhibit 4; Testimony of KP and Appellant)
5. Between September 12, 2017 and September 15, 2017, the Department received five (5) reports which were screened-out. Of the reports, four (4) were precipitated by disclosures that the Appellant called the children names, did not do anything for them including buying food and clothes; and, that the Appellant planned to kick the children out of the home when they turned 18. C's disclosure of feeling depressed and suicidal due to such conditions precipitated three (3) of the reports. In July 2017, the Department determined that the children's claims regarding lack of food were not valid. (Exhibit B, pp. 1, 2; Testimony of KP)
6. Prior to the report in question, the Appellant was increasingly frustrated by the children's disrespectful behavior. (Exhibit B, p. 7; Testimony of Appellant)
7. On October 6, 2017, the Department received a report which alleged neglect of C, D and N by the Appellant, their mother. The basis of the reporter's concern was C's disclosure of feeling depressed and overwhelmed due to Appellant's verbal abuse and because the Appellant informed C, D, and N that they would be moving out as soon as they turned eighteen (18), which was months away. C played a recording of the Appellant for the reporter. The Appellant was described by the

¹ S's last name was not listed in the narrative and was presumed to be "G".

² The Response Worker's narrative report noted that in May 2011, the supported allegation was "overturned to unsupported". The record did not indicate the mechanism by which the decision was overturned (e.g., Area Office Review or Fair Hearing). (Exhibit B, p. 2)

³ The Appellant testified she reached out to the court for help and filed a petition for the CRAs in 2014 due to the children's disrespectful behavior.

reporter as “belittling” the children and was heard “using vulgarity, screaming at them, saying she [cannot] wait to kick them out and that she wished she had an abortion.” The Department screened-in the report (Exhibit A) and conducted a response. (Exhibit B; Testimony of KP)

8. The Response Worker did not review the recording referenced by the reporter. When asked about the recording, specifically the Appellant’s “abortion comment” the children laughed and told the worker “[the Appellant] really doesn’t like [them] right now.” (Exhibit B, pp. 4, 7)
9. On October 7, 2017, the children went to OW’s home, where they often stayed and had spent time over the preceding summer. OW is the children’s aunt. The Appellant had reservations about the children staying with their aunt long-term and contacted the Department regarding her concern. (Exhibit B, pp. 4, 6; Exhibit 1; Exhibit 2; Testimony of Appellant)
10. On October 11, 2017, the Response Worker interviewed the children without the Appellant’s knowledge. The children were interviewed together at school. C and N prefaced their statements by requesting an assurance that the Appellant would not get in trouble. The children opined that the Appellant did not provide them with minimally adequate care,⁴ citing limits on what they ate, their water usage and the Appellant’s failure to buy them clothes or pay for them to get their hair done. N in turn, stated the Appellant failed to provide follow-up for a medical appointment, and D opined that because he did not go to the orthodontist regularly, his teeth would be stained, he might require extensive dental work and would be responsible for any costs to repair his teeth. The children stated they had not visited the dentist in two (2) years. (Exhibit B, pp. 4, 5; Testimony of KP)
11. C told the worker she was depressed and “almost called crisis” and reached out to her former therapist, whom she identified during the interview. There is no indication that the Department contacted C’s former therapist regarding what, if any, contact C had with the therapist regarding the allegations and C’s state of mind under the circumstances.
12. When asked about their behaviors at home and why the Appellant was upset with them, the children admitted they were not “the most well-behaved children”, which I find corroborated the Appellant’s statements and testimony. (Exhibit B, p. 4; Testimony of Appellant)
13. C told the worker that their grandmother was not a support option, which contradicted information provided in the report in question. C told the Response Worker she did not want to stay with her aunt (OW) because she would have to pay rent and doing so would prevent her from completing her driver education class. (Exhibit A; Exhibit B, pp. 4, 5)

⁴ When asked if they thought the Appellant provided them with the “bare minimum” the children stated “no”. (Exhibit B, p. 4)

14. On October 11, 2017, C returned home, where the Appellant confronted her about the report in question. In an excerpt played during the hearing, C admitted she had spoken with the Department about “getting kicked out at 18” and that she was crying, stressed out and depressed because “...I don’t want to be homeless at 18.” C also stated, in apparent reference to the Department’s involvement: “I didn’t know this big thing was going to happen.” (Exhibit B, p. 7; Fair Hearing Record; Testimony of Appellant)
15. On October 11, 2017, in a meeting mediated by a police officer, the Appellant and C discussed the situation. C left a phone message for the worker on October 12, 2017, in which she confirmed the discussion and asked the worker if she had to go to OW’s house, since she wished to stay with the Appellant. (Exhibit B, p. 6; Testimony of Appellant)
16. In speaking with the children’s aunt (OW) she denied knowledge of “verbal abuse” of the children by the Appellant. There is no indication that the Department attempted to contact the children’s father (DG), the children’s older sister (SG), or the children’s grandmother regarding the veracity of the children’s statements and what, if any concerns they had for the children. (Exhibit B, p. 6)
17. I find that the Department did not comply with 110 CMR 4.27(2) by failing to pursue obvious contacts which were likely to yield some information to corroborate or disprove the allegations.
18. On October 16, 2017, the Response Worker spoke with the Appellant. The Appellant’s statements to the Response Worker were consistent with her testimony at the hearing where they regarded the children’s behavior, the Appellant’s mounting frustration with the children and concern that the children had made false statements to obtain the Department’s assistance. The Appellant felt helpless to control the children’s behavior⁵ given their age and so exasperated that she requested the Department take custody of the children. Regarding the recording of the Appellant referred to in the report in question, the Appellant expressed concern that the recording was “one-sided” and did not show what the children were doing that had prompted her response.⁶ (Exhibit B, pp. 7, 8; Exhibit 1; Testimony of Appellant)
19. On October 17, 2017, the Response Worker told the Appellant that if she did not sign a caretaker affidavit for the children, who remained at OW’s home, that “this alone would open the case as the children are without a caregiver who has any ‘rights’ to them”. During the hearing, the Department acknowledged that a

⁵ During the hearing, the Appellant was visibly upset and in tears regarding the allegations. In response to the Hearing Officer’s questions, the Appellant testified regarding her love of her children, her efforts to meet their needs and concern that the children misrepresented what was happening at home, which as a mother she found “hurtful”. The Appellant noted she installed cameras in her home to protect herself against C, D and N’s repeated and false allegations.

⁶ The Appellant told the Response Worker the children were calling her “a bitch”. (Exhibit B, p. 7)

caregiver affidavit only allows a substitute caregiver to make decisions regarding a child's education and medical care. The Appellant signed a caretaker affidavit at the Department's insistence. (Exhibit B, pp. 8; Exhibit 3; Testimony of KP and Appellant)

20. At the time of the report in question and contrary to the children's statements, the children were up to date with medical, dental, orthodontics and other essential care. (Exhibits 6-9; Testimony of KP)
21. VB has known the Appellant and the children since they were very young and provided hair care services to C and N every two (2) weeks; the Appellant paid for the children's hair care. During the hearing, VB recalled a conversation with C in which C told her the Appellant wanted her out of the house at 18 and that people at school told her that she could get help through the Department if they had an ongoing case. I find VB's testimony credible. (Testimony of VB)
22. The totality of the evidence suggests the children were motivated to obtain supportive services from the Department including therapy (C), housing (C, D and N), medical insurance and college assistance (C, D and N).⁷ (Exhibit B, pp. 4, 5; Testimony of Appellant and VB)
23. On October 26, 2017, the Department supported allegations of neglect of C, D and N by the Appellant. The Department determined that the Appellant failed to provide minimally adequate emotional stability and growth for the children and that her actions posed substantial risk to the children's safety and well-being, where the children were expressing mental health issues, including anxiety and self-harm at the threat of being "kicked-out" of their home when they turned 18. (Exhibit B, pp. 13, 14; Testimony of KP)
24. After a review of all the evidence and for the following reasons, I find the Department did not have reasonable cause to support allegations of neglect of C, D and N by the Appellant:
 - a) The Department did not have reliable and credible evidence that the Appellant failed to provide minimally adequate care for the children (110 CMR 2.00 and 4.32), and;
 - b) The Department did not have evidence that the Appellant's actions, in threatening the children with moving out when they turned 18, placed the children in danger or posed a substantial risk of harm to the children's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
25. On January 1, 2018, the children turned eighteen (18). The children continued to reside with OW at the time of the Fair Hearing. (Exhibit B, p. 1; Testimony of Appellant)

⁷ The children told the Response Worker they would not be able to focus on going to college if they were homeless. (Exhibit B, p. 5)

26. In reaching the instant decision, the Hearing Officer gave due weight to the clinical decision made by the Department. 110 CMR 4.32; 110 CMR 10.29(2)

Applicable Standards

In order to “support” a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred 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 2.00 and 4.32; 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.” Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caregiver; 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

“Neglect means 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition”; 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

Danger is “A condition in which a caregiver’s actions or behaviors 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. 2/28/16

Risk is “The potential for future harm to a child.” 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) 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. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

As the mother of C, D and N, the Appellant was their caregiver under Department regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department supported allegations of neglect of C, D and N by the Appellant. The Department determined that the Appellant failed to provide minimally adequate emotional stability and growth for the children and that her actions posed substantial risk to the children's safety and well-being, where the children were expressing mental health issues, including anxiety and self-harm at the threat of being "kicked-out" of their home when they turned eighteen (18). 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant argued she did not neglect the children and where she was requested to provide a caregiver affidavit (to ensure their caregiver could consent to care on their behalf), complied with the Department's request.

First, the children were at no time during the report in question left without a caregiver. It was undisputed that C repeatedly expressed anxiety over the looming threat of homelessness and there was a flurry of reports, all but one screened-out, concerning C's distress at the prospect of being "kicked-out" of the Appellant's home upon turning eighteen (18). A careful review of the evidence, including evidence submitted by the Appellant, revealed many of the children's statements were unreliable, including statements that the Appellant failed to provide even the most basic essential care for them. For these reasons, this Hearing Officer found that the children's statements were not credible.

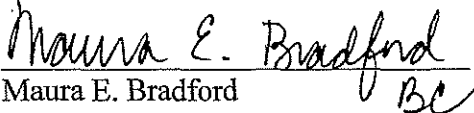
The Department gave weight to the children's statements despite evidence which tended to disprove the allegations and without consideration of the children's motivation, even if misguided, to make specious allegations against the Appellant to "open a case" and obtain support from the Department. The children acknowledged their role in upsetting the Appellant and admitted they were not the "most well-behaved" at home; facts which tended to corroborate the Appellant's statements that faced with the collective threat of disrespectful and unmanageable triplets who were making repeated, false allegations, she was compelled to tell them they were going to have to leave when they turned eighteen (18).

This Hearing Officer is obliged to consider the totality of evidence, taking into account

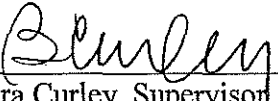
whatever in record fairly detracts from evidence's weight and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that the Appellant neglected C, D and N. Considering the aforementioned and for reasons enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by substantial evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691. Additionally, there was no evidence that the Appellant's actions or inactions placed the children in danger or posed a substantial risk to the children's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support allegations of neglect on behalf of C, D and N was not made with a reasonable basis; therefore, the Department's decision is REVERSED.


Maura E. Bradford
Administrative Hearing Officer

May 14, 2018
Date


Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner