

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF

JK

#2018-0013

FAIR HEARING DECISION

JK appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

Procedural History

On December 3, 2017, the Department received a 51A report alleging neglect of G by his father (JK) as well as his mother. The Department screened-in the report for a non-emergency response. On December 18, 2017, the Department made the decision that the allegation of neglect of G by JK was supported. The Department notified JK of its decision and his right to appeal.

JK made a timely request for a fair hearing to appeal the Department's decision. A hearing was held on February 28, 2018, at the DCF Arlington Area Office. JK, G's mother, the Department response worker and the Department response supervisor testified at the hearing. GG was represented by an attorney.

The Department submitted the following exhibits which were entered into evidence at the hearing.

Exhibit A: 51A report.

Exhibit B: 51B report.

JK submitted the following exhibits at and after the hearing. ¹

Exhibit 1: Letter from mother's therapist dated February 1, 2018.

Exhibit 2: Letter from G's pre-school teacher.

¹ JK requested additional time to submit additional documentary evidence. His request was allowed and the hearing record was held open until March 9, 2018.

Exhibit 3: E-mail from JK's neighbor

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. JK (hereinafter "father") and JK (hereinafter "mother") are the parents of G (d.o.b. [REDACTED]). (Exhibit A, p. 1).
2. Father and mother met on an on-line dating website in February, 2010. Mother became pregnant with G in August 2013. The pregnancy was unplanned. They married in October 2014, several months after G's birth. (Exhibit B, p. 2).
3. On December 1, 2017, mother called 911 after an incident that occurred between her and father at their home. She told police that father physically assaulted her. Mother had bruising and fingernail marks on her left arm. Father was arrested and charged with assault and battery, strangulation and intimidation of a witness. He was released the same day. (Exhibit A, p. 2; Exhibit B, p. 6).
4. On December 3, 2017, mother returned to police seeking an emergency restraining order. She reported that father had assaulted her on two other occasions, once in September and once in October, 2017. She reported father forced himself on her by holding her by her throat and ripping her clothes off. Father was charged for the

other two incidents. Mother was granted the restraining order. It was later extended after a hearing. (Exhibit A, p. 2; Exhibit B, pp. 4, 6).

5. On December 3, 2017, the Department received a 51A report alleging neglect of G by both parents based upon the incidents reported by mother. The Department screener spoke with mother. Mother said she obtained a restraining order because she was fearful of father. She indicated that things have been escalating since August. She stated that G was asleep throughout the December 1, 2017, incident. The Department screened-in the report for a non-emergency response. (Exhibit A).
6. The Department response worker had an interview with mother, she met with G and she spoke with mother's therapist, G's pediatrician and the director of G's pre-school. (Exhibit B).
7. The Department response worker made contact with father and attempted to schedule an interview. Father declined to speak with the Department response worker. (Exhibit B, pp. 1-2, 5).
8. During her interview, mother provided a detailed history of her relationship with father. Several significant events are summarized in the following: (Exhibit B, pp. 2-4).
 - a. When they first met, mother asked father about a tattoo on his arm in Japanese characters which he said meant "Master" and he explained that he was into a dominant/submissive lifestyle, but he did not need to continue that and he did not expect that from her. She noticed he had commitment issues and she often wondered where the relationship was going. (Exhibit B, p. 2).
 - b. When she became pregnant, father initially did not take it well and voiced concerns about settling down and becoming a father. He ultimately became supportive. They began preparing for the baby's birth together and mother felt that time period was the best part of their relationship. (Exhibit B, p. 2).
 - c. The relationship became difficult after G was born. Mother was nursing around the clock, sleep deprived and having a difficult time with hormonal and body changes following the birth. Father verbalized his frustration that she was not available to him and he felt neglected. (Exhibit B, pp. 2-3).
 - d. When G was about 6 months old, father began complaining that they were not having enough sex. He said, "I'm not getting what I need from you" and "I need you to offer me yourself every night." It was incredibly difficult for mother and it became very unpleasant. Mother was exhausted. G was sleeping in a crib in their bedroom and mother did not want him exposed to that and she felt she was not being heard. Mother and father began having increasing arguments. During one argument, father threatened to leave and take G with him. (Exhibit B, p. 3).
 - e. Around this time, there was an incident when G accidentally fell off of the bed and father accused mother of intentionally allowing him to fall. He said, "So help me

God I am this close." At this point, mother truly began to fear him. She had been verbally and physically abused by her father as a child (which father was aware of) and she began noticing these red flags with father. She had promised herself that she would not repeat her history. (Exhibit B, p. 3).

f. They were fighting all the time, except when someone else was around. The fights were always in the middle of the night or late at night when G was sleeping. (Exhibit B, p. 3).

g. When mother went back to work, they hired a nanny who almost dropped G twice. They let the nanny go and father asked mother to stay home with the baby. Mother had just returned to work which she very much wanted to do, but agreed to stay home. She stayed home with G for another two (2) years. She often felt pressured to stay home. (Exhibit B, p. 3).

h. During this time, she felt more and more unappreciated. Father often told her she was not a good mother or wife or not doing enough and she felt he was constantly shaming her. Mother decided to return to work for her own self esteem and confidence. She began working again in January 2017. She worked long hours and father became more and more upset. (Exhibit B, p. 3).

i. When they went on a vacation with Mother's aunt in August, 2017, father barely spoke to her and he failed to engage with G. She later learned that he was upset because she was not having sex with him. She was not comfortable having sex because they were all sharing the same room. He told her she was not submissive enough for him, she needed to offer herself to him and be available to him no matter what. (Exhibit B, p. 3).

j. Soon after, father became more aggressive in bed. On October 6, 2017, mother and father argued for several hours. Mother decided to sleep on the couch. Father came down periodically and insulted her and called her names. At 3:00am, father came down and began to pick her up to physically bring her upstairs. Mother did not feel safe and did not want to be near him and she began yelling, "No." Father continued to wrestle with her and he ultimately brought her to the bedroom and he forced himself on her. (Exhibit B, pp. 3-4).

k. Father became increasingly violent during intimacy over the next few months. At times he would choke her, strike her in the face with an open hand and bite her. Mother told him, "No," numerous times and that she was not comfortable with it but he continued. (Exhibit B, p. 4).

l. Father stopped helping with housework and childcare. He often told mother she was a bad wife and it was her fault their marriage was on the rocks. (Exhibit B, p. 4).

m. Father forced himself on her again on October 23 and 30, 2017. (Exhibit B, p. 4).

n. Mother began seeing a therapist in November, 2017. (Exhibit B, pp. 4, 6).

- o. In November 2017, father began purchasing various weapons that he found in hunting magazines. (Exhibit B, p. 4).
- p. Mother described the incident that occurred on December 1, 2017, when she called the police. She and father were arguing because he felt she was not doing enough to clean the house and he was upset that his dinner was not ready when he got home. She was telling him everything she had done that day and he said, "Enough with the attitude." Mother had had enough and said, "Fuck you." She started going upstairs and she could hear his feet pounding up the stairs behind her. She ran upstairs and yelled, "Do not touch me, I am calling the police." She ran into the bedroom and jumped onto the bed to reach her cell phone. Father grabbed her throat and threw her down onto the mattress and yelled, "Divorce? Is that what you want?" He held her by the throat and held her wrists behind her. She was having trouble breathing. Then he abruptly stopped, got off of her and threw her cell phone saying, "There's your phone." Mother called 911. Father began apologizing and begging her to hang up the phone. (Exhibit B, p. 4).
- q. Father went downstairs and let the police in when they arrived. Mother remained upstairs. Mother told police what happened. Father was speaking to an officer downstairs and she could overhear father telling the officer that she attacked him and he was only trying to get her under control. (Exhibit B, p. 4).
- r. Later mother reviewed recorded audio/video from the surveillance camera they had installed in G's room to monitor him. She could hear herself screaming for help and she could hear father during the December 1, 2017, incident. Twenty four (24) hours later father had erased the recordings. (Exhibit B, p. 4).
9. The response worker spoke briefly with G. When asked what his favorite thing about mother is, he said she likes to snuggle with him. When asked what his favorite thing about father is, his facial expression changed and he stopped smiling. He said, "Sometimes he a little mad," and "he looks like, his face looks mad and angry." When asked if this happens a lot, G said, "Yes." When asked if he feels safe with Mommy, he said he that he does. When asked if he feels safe with Daddy, he said, "I feel safe with Mommy." (Exhibit B, pp. 4-5).
10. The response worker spoke with mother's therapist. Therapist said she had been meeting with mother since November, 2017. They have been addressing mother's depression and anxiety stemming from her childhood experience and more specifically her relationship with father. She indicated that mother was moving toward separating from father and the "silver lining" of the December incident was that it led her to separate sooner and move things along. (Exhibit B, p. 6).
11. G's school and pediatrician expressed no protective concerns. (Exhibit B, pp. 6, 7).
12. On December 18, 2017, the Department made the decision that the allegation of neglect of G by father was supported based upon mother's report of a long history of

father's concerning violent, demeaning, domineering and aggressive behavior which escalated throughout their marriage. (Exhibit B, pp. 7-9).

13. Father appeared at his hearing along with his attorney and mother as a witness.² Mother was sequestered and waited outside the hearing room. After the Department presented its case, father's attorney called mother to testify. Mother recanted everything she reported to the police and the Department response worker. She denied father had ever been violent, demeaning, domineering or aggressive and provided various explanations for what she claimed was erroneous information provided by her to the response worker. She claimed that her trauma history distorted her perceptions. She denied making some of the statements attributed to her. She claimed others were based on her misunderstanding or misinterpretation of father's statements or actions and some were created out of her own feelings of anxiety and/or paranoia which led her to believe that events had occurred when they had not. Finally, she claimed that her attorney pressured her by telling her "we need a finding" referring to the Department's response. After her testimony, mother left the hearing room and father testified. He denied ever being aggressive with mother or making any of the statements that mother told the response worker he had made. His description of the relationship was different from either of mother's versions. He blamed mother for all of the problems in their relationship and claimed that she has a pattern of being hostile and acting aggressively toward him characterizing himself as the victim in the relationship. He described the December 1, 2017, incident saying that he was only trying to talk to mother. She came at him and he was only trying to calm her down. (Testimony of mother; Testimony of father).
14. I do not credit mother or father's testimony as the pivotal issue in this case is whether mother was telling the truth when she spoke to the response worker or during her testimony at the hearing. For several reasons, I credit her statement to the response worker. I do not find that everything mother reported to the response worker, which she believed to be true at the time, was imagined or misinterpreted and that, at some point between December 7, 2017, and the hearing, mother came to realize that none of it was true.
15. Considering all of the credible evidence, I find that father acted as alleged by mother during the response and that there was reasonable cause to believe that father failed to provide minimally adequate emotional stability and growth for G and that his actions posed a substantial risk to G's safety and well being.

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.

² It was established prior to commencing the hearing that there were no active restraining orders.

“‘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.

“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. 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) 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 means failure by a caretaker, 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." 110 CMR 2.00 (33).

The Department found that father neglected G based upon mother's report of a long history of father's concerning violent, demeaning, domineering and aggressive behavior which has escalated throughout their marriage.

Father did not dispute that, had he acted as alleged, his actions would constitute neglect under Department regulations or pose a risk to G's safety and/or well-being. Father denied that he acted as alleged and claimed that mother did not report accurately to the response worker.

However, as noted above, I credit mother's statement to the response worker and not her testimony. Mother described numerous incidents of father's demeaning and aggressive behavior in significant detail over the course of the 3 and half years since G's birth. These include father needing to always be mother's focus of attention regardless of the circumstances, disregard for mother's needs and wishes, statements aimed at eroding mother's self-esteem and confidence, blaming, name calling, insults, increased aggression in response to mother defying him, sexual aggression, apologizing after an incident to convince her not to report it and, when it was reported, claiming that not only was she the one being aggressive, but he was the victim. Father admitted to having a history of being involved in dominant/submissive relationships and having "Master" tattooed on his arm. According to mother's initial statement, father had threatened to leave and take G with him in the past and, at a time when his aggressive behavior was increasing; he began purchasing weapons.

The credible evidence shows that father's behavior toward mother, at least since G was born, has been controlling, demeaning, demanding, threatening and increasingly violent. He was constantly arguing with mother. G's responses to questions about father indicate that he was cognizant of father's demeanor. When asked what his favorite thing about him was, his expression changed and he stopped smiling. He described father as mad and angry and he said it happens a lot. When asked if he felt safe with father, he said he feels safe with mother. The evidence also shows that mother found that her screams for help could be heard in G's room when she listened to the surveillance camera recording afterward so it is likely that G would have been able to hear them fighting at night and mother protesting when father forcibly brought her upstairs, forced himself on her sexually and became violent during sexual relations. In any case, father acted without any regard for whether he heard them or not.

Our courts have repeatedly recognized that exposure to domestic violence has a profound impact on the development and well-being of children and constitutes a "distinctly grievous kind of harm." Custody of Vaughn, 422 Mass. 590, 595 (1996).

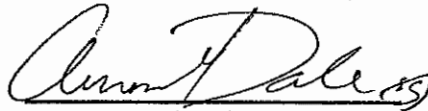
Considering all of the evidence, I find that father failed to provide G with minimally adequate emotional stability and growth and other essential care and that his actions

posed a substantial risk to his safety and/or well-being and therefore, he neglected him under Department regulations.

Conclusion and Order

The Department's decision to support allegations of neglect of G by father was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

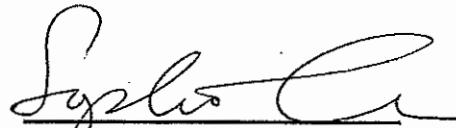
This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which she resides, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Anne L. Dale Nialetz
Administrative Hearing Officer

3/27/2018

Date



Sophia Cho, LICSW
Fair Hearing Supervisor