

**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

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IN THE MATTER OF)
)
 JS) **FAIR HEARING DECISION**
)
 FH # 2018-0018)
)

The Appellant in this Fair Hearing was JS (hereinafter "JS" 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 November 26, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect and physical abuse of C (hereinafter "C" or "the child") by his father, JS, the Appellant. A response was conducted and on December 14, 2017, the Department made the decision to support the allegation of the neglect of C by the Appellant. The allegation of the physical abuse of C by the Appellant was unsupported. The Department notified the Appellant of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on February 27, 2018, at the DCF Plymouth Area Office. All witnesses were sworn in to testify under oath. The record remained closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
JS	Appellant
SS	Support
HK	Department 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 digitally recorded pursuant to 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 11/26/17
- Exhibit B: 51B Report, completed 12/14/17

Appellant

- Exhibit 1: ██████████ Public School 2017-2018 report card
- Exhibit 2: South Shore Medical Center excuse medical absences
- Exhibit 3: South Shore Medical Center well child exam and health record
- Exhibit 4: Letter of AR, MSW, LCSW

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

1. At the time of the filing of the 51A report, C was nine (9) years old. He resided in ██████████, MA with his parents, JS and SS. (Exhibit A)
2. The Appellant is the father of the child; therefore he was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
3. The Department was involved with the S family upon C's birth in 2007, as C was a Substance Exposed Newborn. SS and JS had a history of opiate abuse. (Exhibit A)
4. On November 26, 2017, the Department of Children and Families received a report pursuant

to M.G.L. c. 119, §51A from a mandated reporter alleging the neglect and physical abuse of C by the Appellant. According to the reporter, upon arrival to the home, yelling and slamming doors could be heard. The Appellant appeared agitated and reported C was refusing to follow direction. SS stated the Appellant grabbed C by the neck and pushed him to the ground, then pushed her into a wall. No injuries were noted; however SS noted the reported events were a regular occurrence in the household. The Appellant was arrested for Assault and Battery. SS was granted a protective order. This report was screened in for a response. (Exhibit A)

5. During the response, the Department learned the Appellant and SS had a history of domestic violence in their relationship dating back ten (10) years. The Appellant had anger management issues and was frequently verbally abusive to SS and C. In 2015 the police had been called to the family home for a verbal domestic altercation. More recently, the Appellant placed SS in a head lock. (Fair Hearing Record)
6. The Appellant had been asked to step down from coaching because of his anger. He was also observed being rough with C during a hockey practice. (Exhibit B, p.4)
7. The reported incident was an “eye opener” for the Appellant and he sought mental health services, including individual counseling. (Exhibit B, p.4)
8. On December 14, 2017, pursuant to M.G.L. c. 119, §51B, the Department supported the allegation of neglect of C by the Appellant. Verbal and physical altercations involving the Appellant were frequently occurring in the home. C presented as scared to accurately describe the reported events to the response social worker; however, the Appellant was arrested for domestic assault and battery on November 26, 2017, for an incident C was present for, and more to the point, was physically involved in. (Exhibit B, p.8)
9. C was an athletic child who had a large friend group and did well in school. (Testimony of Appellant)
10. The Appellant struggled with grief and loss issues at the time of the subject altercation. He had lost twelve (12) important people in the previous five (5) years and had not appropriately dealt with his grief. (Testimony of Appellant)
11. In light of the totality of the evidence in this case, I find the Department did have reasonable cause to support the allegation of neglect.
 - a. “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 a physical or emotional injury.” Lindsay v. Department of Social Servs., 439 Mass. 789, 795 (2003).
 - b. The Department had sufficient evidence to support a finding that the Appellant neglected C under Department policies and regulations. The Appellant and SS had a history of violence of over ten (10) years in their relationship. The police had been called more than once to the couple’s home due to fighting. The Appellant was described as being verbally abusive to both his wife and son frequently. The

Appellant became physical with both SS and C. C was present and under the care of the Appellant when he engaged in a verbal and physical altercation which resulted in the Appellant's arrest.

- c. A physical or verbal altercation between caretakers, witnessed by children, constitutes neglect; it demonstrates a failure to provide a child with minimally adequate emotional stability and growth. John D. v. Dep't of Soc. Servs., 51 Mass. App. Ct. 125, 129 (2001).
- d. The Appellant failed to provide C with minimally adequate care, emotional stability and growth and his actions posed substantial risk to the C's safety and well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16.

Applicable Standards

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. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

"Domestic Violence" is defined as a pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ

in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts. (Protective Intake Policy 86-015, revised 2/28/16)

“Danger” is 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. 2/28/16

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Policy #86-015, rev. 2/28/16

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

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

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 a 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 Appellant was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant contested the Department's decision to support an allegation that he neglected C. He argued the subject altercation was out of character for him and his family. The Appellant maintained he had never injured anyone and the reported altercation was a result of anger management issues, grief, loss and stress of working at home with his wife, who also worked from home. The Appellant stated he was raising a well-adjusted child and that he learned from this altercation and had since engaged in services. While the Appellant is to be commended for realizing his anger and grief were unhealthy and engaging in therapeutic intervention, it did not negate the instant matter. The record reflected the altercation which resulted in the Appellant's arrest was not an isolated one, rather ongoing over many years. The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision for neglect. The undersigned will not pass clinical judgment on the Department's broad discretion as delineated in the regulations.

Our courts have repeatedly recognized that witnessing 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, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996) Even with no indication or evidence that the child has been injured, either physically or emotionally by the domestic violence, the State need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 876, 882-883 (1979). "A caretaker's actions that fail adequately to protect a child's well-being can constitute neglect, even in the absence of actual harm." B.K., 79 Mass. App. Ct. at 783.



Based on a review of the evidence presented, in its totality, the Department had reasonable cause to believe that the Appellant did not provide for C's emotional stability and growth in the home due to verbal and physical violence on an ongoing basis. C was neglected while in the care of the Appellant, as defined by Departmental regulations. There was no evidence that the Department acted unreasonably when supporting this report, the Appellant was not substantially prejudiced by the Department's decision, and the Appellant had not 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. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990). "{A} presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of § 51B. Id. At 64; G.L. c.119, § 51B.

Conclusion

The Department's decision to support the allegation of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

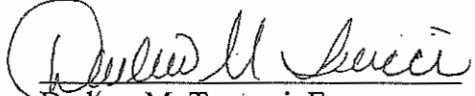
This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county in which he

lives, or within Suffolk County, 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.

Laureen Decas
Administrative Hearing Officer

Date: 6/13/18



Darlene M. Tonucci, Esq.
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