

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

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IN THE MATTER OF

MM #2018 0106

FAIR HEARING DECISION

Appellant, MM ("Appellant"), appeals 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 December 22, 2017, the Department received a report via the DCF Child at Risk Hotline, which alleged neglect of M by JM, the Appellant's ex-husband, after JM was involved in a motor vehicle accident and police determined he was Operating Under the Influence (OUI). M was a passenger in JM's car at the time. The Department conducted an emergency response and on December 27, 2017, made the decision to support an allegation of neglect of M by JM. The Department provided the Appellant and JM with written notification of the decision and their right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at the DCF Robert Van Wart Area Office on February 22, 2018. In attendance were Maura Bradford, Administrative Hearing Officer; KF, DCF Hotline Emergency Response Worker (ERW); MM, Appellant.

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.

The Appellant desired to make an audio and video recording of the hearing using a digital camera. The Appellant was permitted to make an audio recording of the hearing,

was advised the recording taken by the Hearing Officer comprised the official record and was provided with information to obtain a copy of the official digital recording. 110 CMR 10.26

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 December 22, 2017
Exhibit B: 51B Report completed on December 27, 2017 by MS

For the Appellant(s):

Exhibit 1: MB Request for Hearing

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 M. M's father is JM. At the time of the report in question, M was seven (7) years old. (Exhibit A)
2. The Appellant and JM were M's caregivers under Department policy and regulations. (DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00)
3. The Appellant was not involved with the Department at the time of the 51A

report. (Exhibit A)

4. The Appellant and JM were divorced and shared legal custody of M. M resided with MM and visited with JM. (Exhibit A, p. 4; Exhibit B, p. 3; Testimony of Appellant)
5. On December 22, 2017, M was visiting with JM. During the visit, JM was involved in a car accident. M was a passenger in JM's car at the time. The responding police officer(s) determined that JM was Operating Under the Influence (OUI). JM was arrested. A report was filed via the Department's Child at Risk Hotline which alleged neglect of M by JM. (Exhibit A) The Department screened-in the report and conducted an emergency response. (Exhibit B; Testimony of KF)
6. Following the accident and because the car's airbags had deployed, M was taken to the hospital for an evaluation. M did not require medical treatment and was released to his Paternal Great Grandmother, RC. RC and JM withheld information regarding the Appellant's address, providing only her phone number. (Exhibit A)
7. On December 22, 2017 the DCF Hotline On-Call Supervisor (OCS) contacted RC, who reported that M was returned to the Appellant. RC again failed to provide clear contact information for the Appellant. (Exhibit A, p. 4)
8. On December 22, 2017, DCF Emergency Response Workers (ERWs) KF and MS conducted an emergency response to ensure M's safety. MS contacted RC again regarding M's whereabouts. RC did not provide a phone number or specific address for the Appellant. The ERWs obtained the Appellant's address from the police and were instructed by the Hotline OCS to respond to the Appellant's home to assess M's safety. (Exhibit B; Testimony of KF; see 110 CMR 4.31[1])
9. The following was undisputed (Exhibit B; Testimony of KF and Appellant):
 - a) On December 22, 2017, DCF ERWs arrived at the Appellant's home at or after 11PM;
 - b) The ERWs told the Appellant they were required to interview M and all members of the family;
 - c) The Appellant attempted to take an audio and video recording of the ERWs, who did not give their permission for the recording¹;
 - d) The Appellant requested ERWs return the following day;
 - e) On December 23, 2017, the Appellant and JM refused to speak with the ERWs and began to record the workers. The ERWs were able to see M, who was with the Appellant and JM and that M appeared "clean and neat with no obvious marks or bruises";
 - f) The Appellant's repeated efforts to record the ERWs without their

¹ The Appellant told the workers she was recording them on "Facebook Live".

permission disrupted the worker's efforts to view M and quickly resolve concern for his safety during the visit to the Appellant's home and subsequent attempts to engage the family. (see 110 CMR 4.27[1]; Exhibit B, pp. 3, 4; Testimony of KF)

10. On December 26, 2017, following a legal consult, ERW MS separately contacted JM and the Appellant. JM declined comment. MS left a voicemail message for the Appellant advising the Appellant that her continued refusal to cooperate with the Department could result in legal action, including the Department taking custody of M. (Fair Hearing Record; Testimony of Appellant)
11. On December 26, 2017, ERWs spoke with the Appellant and JM and viewed M; the worker exchanged a greeting with M and saw no outward signs of injury. The Appellant declined to answer general questions regarding M's care and did not permit an interview with M. (Exhibit B, p. 5)
12. In the instant case, the Department conducted the response in accordance with Department regulations, policy and applicable statutes. (110 CMR 4.27; M.G.L. c. 119 §51B et seq.; DCF Protective Intake Policy #86-015, rev. 2/28/16)
13. The Appellant's grievance with the behavior of individual Department employees is not a proper subject of an administrative fair hearing and will not be further addressed. I advised the Appellant to contact the Area Office and/or Office of the Ombudsman to address her grievance. (Exhibit 1; see 110 CMR 10.06)
14. On December 26, 2017, the Department supported an allegation of neglect of M by JM. The Department determined that JM failed to provide minimally adequate supervision for M when he operated a car while under the influence and was involved in an accident while M was his passenger. The Department determined JM's actions placed M in danger and posed a substantial risk to his safety and well-being. (Exhibit B; 110 CMR 2.00 and 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16; Testimony of KF)
15. After a review of all the evidence and for the following reasons, I find the Department had reasonable cause to support an allegation of neglect of M by JM (also see Analysis):
 - a) The Department obtained sufficient evidence that JM failed to provide minimally adequate care for M when he operated his car under the influence of alcohol and was involved in an accident while M was a passenger (110 CMR 2.00 and 4.32), and;
 - b) The Department obtained sufficient evidence that JM's actions placed M in danger or posed a substantial risk of harm to M's safety or well-being (DCF Protective Intake Policy #86-015, rev. 2/28/16);
 - c) The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision.

16. 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

The Appellant and JM were caregivers for M under Department regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department supported an allegation of neglect of M by JM. The Department determined that JM failed to provide minimally adequate care for M when he operated a car while under the influence of alcohol and was involved in an accident while M was his passenger. The Department determined JM's actions placed M in danger and posed a substantial risk to his safety and well-being. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16)

The Appellant appealed the allegation that JM neglected M. The Appellant argued that during the Department's response, workers were "dishonest, harassing, and grossly negligent" in the administration of their duties and that the allegations were made and supported in retaliation for her efforts to record workers during their visit to her home. For these reasons, the Appellant requests the allegations and support decision be overturned.

First, this Hearing Officer appreciates that the Appellant took great exception to the way she was engaged by the Department. The Department has a unique mission which requires the Department to simultaneously balance the protection of children and the right of families to be free from unwarranted state intervention (110 CMR 1.01). The Appellant was not the subject of any allegation, had no previous experience with the Department and the Department's initial engagement occurred late at night and without advanced notice, in part due to the failure of M's paternal great grandmother, RC and JM to immediately provide the Department with contact information for the Appellant.

Under the circumstances, this Hearing Officer understood the Appellant's desire to protect the rights of her family during the Department's response; however, noted that her repeated efforts to record the workers without their permission disrupted the engagement, and even with intentions otherwise, precluded a quick resolution. 110 CMR 4.26

This Hearing Officer was obliged to consider the totality of evidence, and whether the Department had reasonable cause to find that JM neglected M. 110 CMR 10.23;

In determining whether the Department had reasonable cause to support a finding of neglect, the Hearing Officer must apply the facts, as they occurred, to the Department's

regulatory definition of neglect; new information presented at the Hearing that was not available during the investigation may be considered as well. 110 CMR 2.00 and 110 CMR 10.21

In relevant part, the basic facts in the instant case were undisputed: JM was involved in a car accident and was found to have been driving under the influence of alcohol. M was a passenger in the car. The impact was significant enough to cause the car's airbags to deploy, which resulted in the need for M to be medically evaluated. M did not suffer obvious injury; however, the Department's determination of neglect does not require evidence of actual injury. JM's behavior, in driving while intoxicated and while M was a passenger, carried the potential for grave consequences. Given the accident, the evidence supports a reasonable cause to believe that JM failed to provide minimally adequate care for M; and, that his actions posed a substantial risk to M's safety and well-being as required to support an allegation of neglect. 110 CMR 2.00 and 110 CMR 4.32; see Lindsay v. Department of Social Services, 439 Mass. 789 (2003); DCF Protective Intake Policy #86-015, rev. 2/28/16

For these reasons and those enumerated in the above Findings of Fact, this Hearing Officer has determined the Department's decision was based on reasonable cause and supported by the 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

Conclusion and Order

Appellant has not shown by a preponderance of the evidence that the Department's decision to support an allegation of neglect on behalf M was not in conformity with Department policy and regulations, therefore the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in Suffolk County, or in the Superior Court for the county in which she lives, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, § 14)

6-7-18
Date

Maura E. Bradford
Maura E. Bradford
Administrative Hearing Officer

Cristina Tedstone
Cristina Tedstone
Deputy General Counsel
Director, Fair Hearing Unit