

**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**

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Commissioner

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IN THE MATTER OF            )  
  )  
                  RH                    )       **FAIR HEARING DECISION**  
  )  
                  FH # 2018-0121        )

The Appellant in this Fair Hearing was RH (hereinafter "RH" or "Appellant"). The Appellant appealed 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 December 12, 2017, the Department of Children and Families received a 51A report from a mandated reporter, alleging the neglect of R and E (hereinafter "R" or "E" or "the children") by RH. A response was conducted and on January 8, 2018, the Department made the decision to support the allegations that the children were neglected by RH. 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 was held on March 27, 2018, at the DCF Plymouth Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for three (3) days to allow the Appellant to submit additional evidence. On March 30, 2018, the record on this matter closed.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
RH	Appellant
EH	Witness
KH	Witness
MD	Attorney for Appellant
DM	Department Supervisor

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.

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The Fair Hearing was digitally recorded and transferred to one (1) compact disk according to regulations. 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

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Exhibit A: 51A Report, dated 12/12/17  
Exhibit B: 51B Response, completed 1/8/18

Appellant

Exhibit 1: Copy of Instagram Picture  
Exhibit 2: Screen copy of text message  
Exhibit 3: Copy of picture of Appellant and son

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, R was three (3) years old and E was one (1) years old. The children resided in ██████████, MA with their father, RH, and mother, SH (hereinafter "SH"). (Exhibit A)
2. The Appellant is the father of the children; therefore he was deemed a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy

3. The Department had a history of involvement with the H family. In 2014 a report was supported for the neglect of R by RH due to RH relapsing on heroin and Percocet's daily while living in the home. The protective case closed in 2015. (Exhibit B, p.1)
4. On December 12, 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 of R and E by the Appellant. According to the reporter, SH contacted the police reporting a domestic altercation with the Appellant. SH and RH were out the night before, consumed alcohol and engaged in an argument that continued into this day; whereby the Appellant threw things around the home. The Appellant agreed that while attempting to move SH he kicked her. This report was screened in for an investigative response. (Exhibit A, p. 2)
5. SH reported a history of verbal and mental abuse in her relationship with the Appellant. She disclosed the abuse escalated to physical violence including the Appellant throwing her phone, knocking groceries out of her hand, locking her out of the house, and throwing a pizza box at her face. (Exhibit B, pp. 2-3)
6. On the morning of the incident, SH alleged the children were present (she was holding E) and they were screaming when the Appellant kicked her, threw a picture frame down the stairs. Paternal grandfather, EH (hereinafter "EH"), was called as were the police. The Appellant was arrested. (Exhibit B, p.3)
7. R disclosed to the Department the Appellant and SH fought and "daddy was breaking glasses and threw the picture frame down the stairs ... he was breaking stools." "Mommy called the police. Daddy took the door handle and threw it so the cops couldn't get in." R reported this made him feel sad. (Exhibit B, p.4)
8. The instant matter occurred after an adult night out that included consumption of alcohol by both the Appellant and SH. The evening ended with SH returning home without the Appellant; who was awoken in Boston by the police. His ribs hurt and he took a cab home. There were events he did not recall. (Exhibit B, p.6)
9. The report was screened in and investigated, pursuant to M.G.L. c. 119, §51B. At the end of its response, the Department supported the allegations of neglect of the children by the Appellant. The Department supported based upon the following:
  - a. On December 12, 2017, SH called EH and the police to the home following an altercation between she and the Appellant. The children were present.
  - b. The Appellant was arrested for domestic assault and battery. The children were present.
  - c. Objects were thrown and furniture was broken on the day of the subject altercation. The children were present.
  - d. R was sad when the Appellant was breaking things in his home and his parents were fighting.
  - e. SH maintained there was a history and pattern of domestic violence in her seven

(7) year relationship with the Appellant.

- f. The Department found reasonable cause to believe that the Appellant's actions impacted the children's emotional stability and growth and placed the children in danger or posed a substantial risk to their safety and well-being.

(Exhibit B)

10. Prior to the night of December 11, 2017, the Appellant had not consumed alcohol in fourteen (14) months. He had been on the Vivitrol shot, which was an opiate and alcohol blocker. The Appellant consumed alcohol, vodka, on the night of December 11, 2017.

He missed his monthly Vivitrol shot; three (3) days prior to consuming the alcohol.

(Testimony of Appellant)

11. SH left Boston without the Appellant, who returned home in a taxi cab at approximately 3:00am. The Appellant denied kicking SH; or breaking a dresser or throwing items around the house, or that he was intoxicated to the point of not recalling what occurred. The Appellant denied he spoke with SH at all that night when he came home from Boston. (Testimony of Appellant)

12. Later in the morning an argument ensued between SH and the Appellant, SH wanted the Appellant to leave the home which he refused to do, as he did not have a car. (Testimony of Appellant)

13. The Appellant reported being present at the 209A hearing with SH and denied that SH told the court or wrote in the affidavit she presented to the Court, that the Appellant broke items in the house or kicked her; but that the Court "went by what she wrote in her affidavit". (Testimony of Appellant)

14. EH testified he was called to the home by SH and that the Appellant had been yelling and swearing at her since the night before. EH observed yelling back and forth between SH and the Appellant with R present. SH said she was calling the police. EH observed a small hole at the bottom of the staircase in the sheetrock that SH told him was from the Appellant throwing a picture. (Testimony of EH)

15. In light of the totality of the evidence in this case, I find the Department did have reasonable cause to believe that the Appellant's behavior constituted a failure to provide the children with minimally adequate care, emotional stability and growth.

- a. A determination of neglect does not require evidence of actual injury to the child. Lindsay v. Dep't of Soc. Servs., 439 Mass. 789,794-795 (2003). "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." Id.
- b. The Department had sufficient evidence to support a finding that the Appellant neglected R and E under Department policies and regulations.
- c. The children were present and sad in their home when the Appellant was swearing, yelling, and physically throwing objects.
- d. 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).

- e. The Appellant failed to provide the children with minimally adequate care, emotional stability and growth and his actions placed the children in danger and posed substantial risk to the children's well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16.

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16. Therefore, the Department's decision to support the allegations of neglect of the children by the Appellant was made in compliance with its regulations and policy. 110 CMR 4.32; 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

"Domestic Violence" is 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. DCF Protective Intake Policy #86-015, rev. 2/28/16

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

"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 Policy z386-015, 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. 2/28/16

### 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, through counsel, contested the Department's decision to support an allegation that he neglected the children. The Appellant argued there were no pictures or video documentation of domestic violence, and that the Department failed to corroborate SH's statements. The

Appellant asserted there were no stools or glasses broken as SH alleged, denied that he ever hit or kicked SH, and alleged it was he who was being yelled at to leave the home although he did not have a car to do so. The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's support decision for neglect.

The evidence supports that verbal fighting had been ongoing between the Appellant and SH. Contrary to the Appellant's argument, the Department did corroborate SH's statements, and did so when speaking with R. R said his father and mother were fighting and his father broke glass and threw a frame down the stairs which made him feel sad. The Appellant's witness, his father, testified to observing a hole in the sheetrock, further corroborating SH's claims. It was reasonable for the Department to find R and E were exposed to said fighting, given their young ages and sole dependence on their parents to meet their needs. "The purpose of the mandatory reporting regime under M.G.L. c. 119, § 51A is to provide the DCF with information necessary to protect a child's health, safety, and development before actual harm is done." B.K. v. Department of Children & Families, 79 Mass. App. Ct. 777, 782 (2011) R verbalized he was sad during the fighting and that his mother called the police.

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) 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. 879, 389 N.E. 2<sup>nd</sup> 68, 73 (1979) In the instant case, there was sufficient evidence to indicate R and E were exposed to chronic fighting, and the Department intervened appropriately.

In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29 After review of the testimonial and documentary evidence presented, the Appellant had not demonstrated any failure by the Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. See 110 CMR 10.06

As provided for in the regulations quoted above, the Investigator relied on professional opinions and recommendations, available documentation, observable indicators and her clinical knowledge to support the decision made. Based on the totality of the circumstances, and the evidence gathered, the Department's determination that the Appellant's actions constituted neglect was based on "reasonable cause" and was made in conformity with Departmental regulations. The Appellant's actions posed substantial risk to the children's well-being.

### Conclusion

The Department's decision to support the allegations of **neglect** of R and E 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, she may do so by filing a complaint in the Superior Court for the county in which she 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.

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Laureen Decas *(initials)*  
Laureen Decas  
Administrative Hearing Officer

Date: 6/22/18

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