

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

Linda S. Spears
Commissioner

Voice: (617) 748-2000
FAX: (617) 261-7428

IN THE MATTER OF

JS and TW #2018-0160

FAIR HEARING DECISION

JS and TW appealed the Department of Children Families' (hereinafter "DCF" or "the Department") decision to support allegations of physical abuse pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On November 16, 2017, the Department received a 51A report alleging physical abuse of T by his mother, JS. The Department screened-in the report for a non-emergency response and, on December 8, 2017, the Department made the decision that the allegation of physical abuse of T by JS was supported.

The Department notified JS and TW (father of T) of its decision and their right to appeal. JS and TW made a late request for a fair hearing to appeal the Department's decision. Their request was allowed and a hearing was held on March 27, 2018, in the DCF Cambridge Area Office. JS, TW, the Department response worker and the Department supervisor testified at the hearing.

The Department submitted the following exhibits.

Exhibit A: 51A report.

Exhibit B: 51B report.

Exhibit C: Family Assessment.

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 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. JS (hereinafter "mother") and TW (hereinafter "father") are the parents of T (d.o.b. [REDACTED]), I (d.o.b. [REDACTED]), and L (d.o.b. [REDACTED]). (Exhibit A, pp. 1-2).
2. The family had no prior history with the Department. (Exhibit A, pp. 4-5).
3. Mother and father have been married since 2005. (Exhibit B, p. 1).
4. Both mother and father work full-time out of the home. Mother is an accountant and father is a software engineer. (Exhibit B, p. 1).
5. Both parents have extended family members in the area including their parents (maternal and paternal grandparents) and mother's aunt (maternal aunt). Maternal and paternal grandparents as well as maternal aunt babysit the children regularly. (Exhibit B, pp. 2, 3, 4; Exhibit C, pp. 2, 11, 14, 17, 19, 20).
6. I and L were fairly well behaved at home and at school. They did not require much discipline. (Exhibit B, p. 2; Exhibit C, pp. 3, 11, 12, 14, 15, 20).
7. T exhibited behavior problems at school. Throughout the 2017-2018 academic year he was noted to act out and be destructive in class. He exhibited a lack of affect, defiant behaviors and, at times, he was noted to "zone out" and go completely "off topic." The school had concerns about his social competence. He talked to peers about death. He had accessed inappropriate (sexually oriented) websites and shared sexual content with peers. He had difficulty paying attention and focusing at home and at school. His lack of attention and focus impacted his ability to complete work

on time. He was asked to leave his after school program due to his disruptive behaviors. His pediatrician had questioned whether he had ADHD. The school sent the parents daily reports about T's behavior at school. T refused to do his homework and the parents had to push him to do his work. (Exhibit A, p. 3; Exhibit B, pp. 2, 3, 4; Exhibit C, pp. 2, 3, 5, 8, 17, 18).

8. When the siblings were together, they had difficulty sharing and they sometimes fought with each other. T got annoyed with his siblings because they were younger and always wanted to do whatever he was doing. He was bossy with his siblings. He teased them and scared them at times. T threatened to hit or scratch them with a screw driver. He brought them to the basement and not let them out and he forced them to swear before they can get out. He punched them. (Exhibit B, pp. 2, 3, 4; Exhibit C, pp. 11, 14, 17, 19, 20).
9. At times, the parents had difficulty managing the children, particularly T. When the children were running around the home, yelling and/or fighting, the parents were unable to get the children to listen and follow directions. (Exhibit B, p. 2; Exhibit C, pp. 2, 5, 19, 20).
10. When T misbehaved, mother has hit him with objects, including a stick and a spoon. When mother hit T, T got upset and then he hit the younger children. (Exhibit A, p. 3).
11. On or about November 16, 2017, I and/or L told school staff that T hit them with different objects. All of the children were interviewed individually and asked for further details. They reported that mother hits T all the time at home and, after he gets hit, he hits his siblings. They said that mother used a stick. They also stated that the babysitter hit T as well. The school staff did not check the children for marks. (Exhibit A, p. 3; Exhibit B, p. 3).
12. On November 16, 2017, the Department received a 51A report alleging physical abuse of T by mother based upon what the children told school staff. The reporter stated that the children also said mother hit T with a screwdriver. The Department screened-in the report for a non-emergency response. (Exhibit A).
13. The reporter contacted father and told him that the children said mother and the babysitter were hitting them. (Exhibit B, pp. 2, 3).
14. After the parents were informed of the allegations by the school, mother told the children that the Department was coming to the house and she told them to lie and say everything was fine. L told his teacher that mother told them not to tell the truth and he worried that they may not be able to live in their home. (Exhibit B, p. 3).
15. On November 27, 2017, the Department response worker met with mother. She provided some background information about T's behavior and how the children got along. She acknowledged that the children argued over toys, but she stated that she intervened. She reported they may push each other, but there was no aggressive hitting. She acknowledged that T was bossy. Mother acknowledged that she has hit

the children lightly on the hand if they misbehaved. She denied using a screw driver. She said she usually disciplined the children by putting them in time-out and making them do math or learn about countries or other educational things. (Exhibit B, p. 3).

16. That same day the response worker spoke with T. He reported that everyone in the family got along. He said that when they misbehaved, they were put in time-out. He denied being hit. He said his parents used to hit them, but it was softly and not too hard. He denied being hit with a screw driver. (Exhibit B, pp. 2-3).
17. On December 5, 2017, the response worker spoke with I and L at school. Both children appeared guarded. L was anxious. They said their parents punished them by putting them in time-out. I said they had to go to the basement and read the 50 states or math. L said T punched them, but I said that was not true and she whispered in L's ear that Mom said not to tell. I said that her mother told them what the response worker looked like and that she would like to talk to them. I said that, when T is mean to them, the babysitter told their mother. When asked about getting hit, I said T hit her a long time ago. When asked about a screw driver, they denied seeing mother with a screw driver. When asked about T not letting them out of the basement, I said that was a while ago. I said, when they (she and L) screamed, T ran away because he thought the babysitter was going to hit him, but she said the babysitter just made sure they were safe. I said when T got a bad score, he got scared and mother asked him why he got bad scores. I said when T hit them it was pretend and just a game. I said her parents used to hit them a long time ago, but they did not anymore. (Exhibit B, pp. 3-4).
18. While interviewing I and L, they asked the response worker, "Are you the lady that will take us away and put us in another home?" (Exhibit B, p. 6).
19. The response worker spoke with the reporter who confirmed that the children said mother told them to lie and say everything was fine and they were worried about being removed from the home. (Exhibit B, p. 3).
20. The response worker spoke with father who reported that there was conflict between the children, but they were working on that. He denied that mother or the babysitter hit the children. He said that the children were saying that for attention. He said that T was not nice to his siblings, but he was not physical with them. (Exhibit B, pp. 4-5).
21. On December 8, 2017, the Department made the decision that the allegation of physical abuse of T by mother was supported. The Department believed that the children were being truthful when they initially reported that mother hit T with a stick and spoon and that they recanted during the response after mother coached them to lie and told them they would be taken away. The Department determined that T's behavior at home was so challenging that mother and other caregivers resorted to using physical discipline to control his behavior. (Exhibit B, pp. 5-6).

22. After the Department's response, the Department opened a case and completed a family assessment. The family members continued to deny the allegations. The response worker observed that the parents had difficulty managing the children's behavior. During the assessment worker's visits, she observed the children running around and yelling and the parents were unable to get the children to listen and following directions. The children reported that they were not allowed to say certain things to the Department regarding what was happening in the home. The assessment worker concluded that it was clear the children have been coached and, consequently, the Department has been unable to get a sense of what was happening in the home. The assessment worker recommended that the case remain open to further assess the risk and safety of the children. (Exhibit C).
23. Mother and father testified at the hearing. The denied using any physical discipline. They acknowledged that the children got into conflict, but it was not serious. They acknowledged that they had to discipline T. They used time-outs and had the children do educational activities. They stated that T was almost as big as mother. He would resist if she hit him and she would not be able to abuse him. They also stated that there was no evidence that T has ever been injured. (Testimony of mother; Testimony of father).
24. I find the mother and father not credible and I do not credit their denials that mother hit T when he misbehaved. It was clear that the children were told that the Department response worker would be coming to talk to them and they should lie about the hitting or they would be taken away. They told school staff that their mother told them to lie and that they were worried about being taken away. When the response worker met with I and L, they appeared guarded and asked her if she was the lady who will take them away and put them in another home. When L disclosed that T has hit him, I spoke up and said that was not true and she audibly whispered in L's ear that mother told them not to tell. It was also notable that mother told the response worker that she did hit the children's hands when they misbehaved, but at the hearing mother and father denied any physical discipline.
25. Considering all of the evidence, I find that there is reasonable cause to believe that mother has disciplined T by hitting him with objects including a stick and spoon.

Analysis

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. 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

“[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.

“Abuse” means the non-accidental commission of any act by a caregiver upon a child under age 18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00(1), DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department regulations define “physical injury” as follows.

- a) death; or
- b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such non-trivial injury; or
- c) soft tissue swelling or skin bruising depending upon such factors as the child’s age, circumstances under which the injury occurred, and the number and location of bruises; or
- d) addiction to drug at birth;
- e) failure to thrive.

See 110 CMR 2.00(47).

Department Policy defines substantial risk of injury as “[a] situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse 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) 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
The Department made the decision that mother physically abused T by hitting him with objects as a form of discipline on a regular basis.

Mother and father deny that mother used physical discipline with T.

As noted above, I do not credit mother and father's testimony that mother has not hit T.

The evidence showed that I and/or L initially disclosed to school staff that T hit them. When they were spoken to individually they all reported that mother hit T with an object (stick and spoon). They said he was hit all the time and then he got upset and hit them.

Unfortunately, the response worker did not speak with the children prior to mother having the opportunity to coach the children to lie by threatening that they would be removed from home if they told the truth. The Department was unable to gather any additional information directly from the children regarding what type of stick was used, how often T was hit, how many times, where on his body he was hit, whether he has had injuries, etc.

Although the Department's regulations do not offer any explicit guidance regarding the evaluation of allegations when the response worker is prevented from obtaining information due to coaching by a parent, the regulations do address a similar situation. When an individual or family prevents the response worker from viewing a reported child and/or other children in the home, the Department must make a "support/unsupport" decision based upon an evaluation of the nature and contents of the 51A report and any collateral information. 110 CMR 4.27(3).

I find that there was little difference between being prevented from viewing a child and being prevented from having a meaningful interview due to a parent's interference with that process due to coaching the child to lie.

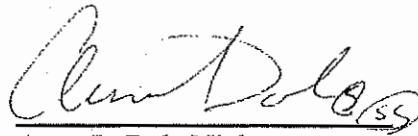
I find that the Department acted reasonably in making a decision based upon the information provided in the 51A report and from collateral contacts.

Given T's significant behavioral issues, the parents observed lack of control of the children using non-physical means, the children's initial statement that T was hit all the time and with a hard object, I find that mother's intentional act at a minimum created a substantial risk of physical injury to T and, therefore, she physically abused him under Department regulations.

Conclusion and Order

The Department's decision to support allegations of physical abuse of T by mother was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

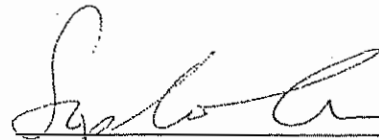
This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which they reside, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A,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



Anne L. Dale Nialetz
Administrative Hearing Officer

4/30/2018

Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit