

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

Linda S. Spears
Commissioner

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IN THE MATTER OF

WG #2018-0186

FAIR HEARING DECISION

WG appeals 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 19, 2017, the Department received a 51A report alleging neglect of E by her father, WG. The Department screened-in the report for a non-emergency response. On January 23, 2018, the Department made the decision that the allegation of neglect of E by WG was supported. The Department notified WG of its decision and his right to appeal.

WG made a timely request for a fair hearing to appeal the Department's decision. A hearing was scheduled to be held on April 5, 2018. The parties appeared on that date. WG requested a continuance because his attorney was not available to represent him. WG's request was allowed and the matter was continued. A hearing was held on May 3, 2018. WG appeared without an attorney. WG, the Department response worker and the Department response supervisor testified at the hearing.

The Department submitted the following exhibits.

Exhibit A: 51A report

Exhibit B: 51B report

Exhibit C: Police incident report, dated December 18, 2017.

Exhibit D: Police incident report, dated July 17, 2010.

WG submitted the following exhibits.

Exhibit 1: Phone records

Exhibit 2: Letter from WG's mother.

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. WG (hereinafter "father") and JM (hereinafter "mother") are the parents of the reported child, E (d.o.b. [REDACTED]). (Exhibit A, p. 1).
2. Father and mother have no history of involvement with the Department. (Exhibit A, p. 3).
3. In July 2010, father was arrested after he pulled down his pants and underwear and exposed himself in a public parking lot in front of several bystanders including young girls. Someone called police and police responded and located father. Father became aggressive with police and he had to be restrained. Ultimately, father was arrested and charged with open and gross lewdness, assault and resisting arrest. The police report notes that father was suspected of being under the influence at the time. (Exhibit D).
4. Father and mother have been together as a couple for a few years. They were married in July 2016. (Exhibit B, p. 4; Testimony of father).

5. Father and mother are caregivers for E under Department regulations. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015, rev. 2/28/16.
6. On at least three (3) occasions after E was born, father has physically assaulted mother with E present. On one (1) occasion, father had been drinking. E was asleep and mother went to the store to buy formula. When mother returned home, father was bathing E while intoxicated. Mother approached father to take E from him and he became angry. He grabbed mother by the throat and squeezed making it hard for her to breathe. Mother thought he was going to kill her. After he let go, she had trouble breathing and her throat hurt. On another occasion, mother and father got into an argument while father was holding E. He grabbed mother by the throat with his other hand. On December 8, 2017, father and mother were arguing because mother wanted E to be vaccinated and father did not. Father had been drinking and he became angry. He grabbed mother by the throat. On another occasion, father made a threatening statement to mother, saying she was lucky that he was who he was because, if not, she would already be in a dumpster somewhere. (Exhibit C, Narrative for Patrol KW and Supplemental Narrative for Patrol HM).
7. Mother brought E to the pediatrician in December 2017. Mother allowed the pediatrician to vaccinate E. (Exhibit B, p. 1).
8. On December 18, 2017, father apparently learned that E had been vaccinated against his wishes. He and mother started to argue. Mother was afraid the argument would escalate to physical violence. She texted her sister saying she needed help and her sister called the police. (Exhibit A, p. 5; Exhibit C, Narrative for Patrol KW and Supplemental Narrative for Patrol HM).
9. Police responded to the home and spoke with mother and father. Mother reported what occurred that day and the prior incidents when father assaulted her. Father acknowledged grabbing mother by the throat in the past. Father was arrested and charged. His bail was set at \$2,500. Mother declined a restraining that night because she knew father would not be able to make bail. She planned on going to court the next day to obtain a restraining order. (Exhibit B, pp. 1-2; Exhibit C).
10. On December 19, 2017, mother went to court to obtain a restraining order. Father was also in court. The court issued a restraining order for one (1) year. (Exhibit A, p. 4).
11. On December 18, 2017, the Department received a 51A report alleging neglect of E by father due to his physical assault on mother. The Department screened-in the report for a non-emergency response. (Exhibit A).
12. The Department response worker spoke with mother and reviewed the related police report as well as the 2010, police incident report. She attempted to speak with father, but he declined to be interviewed. (Exhibit B).
13. On January 23, 2018, the Department made the decision that the allegation of neglect of E by father was supported. (Exhibit B, pp. 6-7).

14. Father testified at the hearing. He acknowledged that mother had E vaccinated and he got very angry and he "lost it." He denied strangling mother on December 8, 2017. He said that on that date, he had "had it" and pushed her, but he did not knock her down. He acknowledged that there was a time when he strangled her, but it was during consensual sex and it was not violent. He declined to discuss the December 8, 2017 incident further due to the pending criminal charges. He stated that he called his mother (paternal grandmother) during the argument and paternal grandmother talked to mother. At that time, mother denied he choked her. (Testimony of father).
15. Father submitted a phone record and a written statement from paternal grandmother. In her statement, paternal grandmother said that she spoke with mother on or about December 8, 2017, when mother and father were arguing about vaccinating E. Phone records show she was on the phone for 9 minutes. She could hear mother and father yelling at each other and E crying. She noted that father sounded "pretty pissed." She suggested one (1) of them leave for the night. She said that mother told her that father put his hands up to her throat. She asked mother if father choked her and mother denied that he choked her. (Exhibit 1; Exhibit 2).
16. Considering all of the evidence, I find that there is reasonable cause to believe that father physically assaulted mother on at least three (3) occasions with E present and in close proximity. I find that he failed to provide minimally adequate emotional stability and growth, physical safety and other essential care for E and that his actions posed a substantial risk to her 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.

"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.

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 E based upon mother's report that he physically assaulted her while E was present placing her at risk.

Father argues that mother fabricated the allegations due to her immigration status and to avoid being deported. He concedes that he was angry and that he pushed her. He denies strangling her on December 8th and he contends that his mother's letter corroborates this.

The evidence shows that mother and father disagreed about whether to have E vaccinated. Mother wanted her to be vaccinated, but father was adamantly opposed to it. This was a point of contention between them since E's birth. By all accounts, they had a heated argument over this issue on December 8, 2017, and father physically assaulted her. Father minimized this saying he only pushed her, but did not knock her down. Mother claims that he grabbed her throat and paternal grandmother's statement verifies that she made that same claim on that day. Mother did not call police or report the incident at that time which suggests that she had no plan to claim she is a victim of violence to avoid deportation. If she had, I find it unlikely that she would have not taken the opportunity to report the incident that day.

By all accounts, mother and father had a heated argument about vaccinating E on December 18, 2018. On that date, mother texted her sister and her sister called police. Again, I find it unlikely that mother would not have called police herself, if she planned to claim she is a victim of violence.

Different police officers spoke to mother and father separately. They both reported that they had an argument. Mother was visibly upset and crying. Mother denied any physical assault by father that day once again failing to use the opportunity make a claim of

violence by father. She did claim that father had grabbed her by the throat during a prior recent argument. At the same time mother was disclosing the prior incident in one room, father could be heard in a different room admitting to grabbing mother by the neck during an argument about vaccinations in the past.

I do not give any weight to paternal grandmother's claim that father did not choke mother on December 8, 2017. She was not present during the incident. She was on the phone with mother and/or father for nine (9) minutes and she has no way of knowing what actually occurred during the incident or before or after that nine (9) minutes. In any case, she confirmed that mother told her that father grabbed her throat.

Father has presented no evidence to suggest that mother was at risk of deportation or that she had any other motive to lie. Father has a history of impulsive deviant behavior leading to criminal charges including aggressive behavior toward police. It is also compelling that the court, with both parties present, issued a restraining order for one (1) year. In addition, father's criminal charges are still pending.

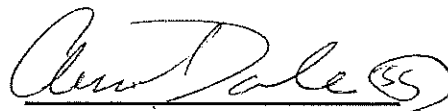
I find that there is reasonable cause to believe that father acted as alleged by mother specifically that he assaulted mother when she tried to take E from him when he was intoxicated, he assaulted mother while he was holding E and he assaulted mother during the December 8, 2017, incident. E was not only present, but literally in the middle of at least two (2) of the assaults which created a significant risk.

Considering all of the evidence, I find that there is reasonable cause to believe that father physically assaulted mother on at least three (3) occasions with E present and in close proximity. I find that he failed to provide minimally adequate emotional stability and growth, physical safety and other essential care for E and that his actions posed a substantial risk to her safety and well-being and therefore, he neglected her under Department regulations.

Conclusion and Order

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

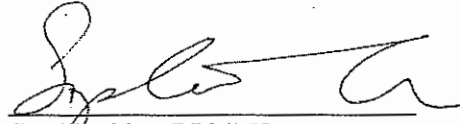
This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which he resides, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A,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



Anne L. Dale Nialetz,
Administrative Hearing Officer

6/22/2018

Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit