

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

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IN THE MATTER OF

DG

#2018-0211

FAIR HEARING DECISION

DG 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 February 1, 2018, the Department received four (4) 51A reports alleging neglect of K and I by their mother, DG. The Department screened-in the report for an emergency response. On February 5, 2018, the Department made the decision that the allegations of neglect of K and I by DG were supported. The Department notified DG of its decision and her right to appeal.

DG made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on April 18, 2018, in the DCF Park St. Area Office. DG, the Department response worker and that Department response supervisor testified at the hearing.

The Department submitted the following exhibits.

- Exhibit A: 51A report #1.
- Exhibit B: 51A report #2.
- Exhibit C: 51A report #3.
- Exhibit D: 51A report #4.
- Exhibit E: 51B report.

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. DG (hereinafter "mother") is the mother of K (d.o.b. [REDACTED]) and I (d.o.b. [REDACTED]). (Exhibit A, p. 1).
2. Mother does not know K's father. She met him on a website for "hooking up" and she asked him to impregnate her the second time they met. She does not know his real name, but believes he is a drug dealer. (Exhibit D, p. 6).
3. DC (hereinafter "father") is the father of I. (Exhibit C, pp. 1, 3).
4. Mother has a history of involvement with the Department. In September 2015, the Department received and supported a 51A report alleging neglect of K by mother due to her failure to provide K consistent pediatric care. It was also noted that mother did not have stable housing, she had mental health issues (Bi-polar disorder, ADHD), she was not consistent with treatment and medication, she had a substance abuse history and she had a history of engaging in risky behaviors. (Exhibit D, pp. 4, 5-6).
5. The Department opened a case for mother and K in September 2015, and the case has remained open since then. (Exhibit D, p. 6).
6. Mother and the children were living in a shelter in early 2018. Mother had a roommate who also had children. (Exhibit B, p. 3; Exhibit C, p. 3).

7. On January 31, 2018, mother was drinking and became intoxicated. At about 10:45pm, mother asked her roommate to watch K and I while she went to the liquor store. She told her roommate she would be back in about 10 minutes. The children were sleeping when mother left. (Exhibit B, p. 3; Exhibit C, p. 3; Exhibit D, p. 3; Exhibit E, p. 2).
8. Instead of returning home in 10 minutes, mother went to a bar and met with someone she knew and they had a few drinks. Mother then went back to his home where she spent the night. Mother's cell phone battery was dead and she did not contact her roommate to let her know where she was or that she was not coming home that night. (Exhibit E, p. 2).
9. The next morning, mother's roommate was concerned when she realized mother did not come home. The roommate called I's father and asked him if mother was with him. Father went to the shelter and spoke to the roommate. He then called the police. (Exhibit E, pp. 2, 3).
10. Police responded to the shelter. Police asked father if he wanted to take the children with him. Father said he did not and he wanted the Department to come and take the children. (Exhibit E, p. 2).
11. Police had the children transported to the hospital emergency room. Father went with them. (Exhibit A, p. 2; Exhibit E, p. 2).
12. On February 1, 2018, the Department received four 51A reports alleging neglect of the children by mother due to her leaving them with her roommate and not returning home that night. The Department screened-in the reports for an emergency response. (Exhibit A; Exhibit B; Exhibit C; Exhibit D).
13. The Department response worker went to the shelter. She was home by the time they arrived. Mother explained that she went out, met a friend and went home with him. She felt that the children would be fine because they were asleep when she left and in the care of her roommate. (Exhibit E, p. 2).
14. The Department response worker met with I's father at the hospital. He described the events of the morning. He expressed concern about mother's care of the children, her substance abuse and her lifestyle. He said that he wants to have a paternity test because, if he is not I's father, he wants nothing to do with mother. (Exhibit E, p. 3).
15. Mother went to the hospital and met with the hospital social worker. Mother told the hospital social worker that, due to her mental health issues, she does not think she can parent the children. She said that she is considering placing them in foster care. (Exhibit E, p. 3).
16. The Department response worker met with mother again at the hospital. Mother began crying saying she wanted her life to be like it used to be. She stated that she had been an escort, but after she had I, she stopped escorting and lost her apartment. She said that she wanted the Department to take her children. The Department

response worker told her to think about what she is saying because she is upset. Mother said she knew what she was saying and doing. She gathered her belongings and left the hospital without making any plans for the children's care. (Exhibit E, pp. 3-4).

17. The Department obtained custody of the children. (Exhibit E, pp. 4, 6).
18. On February 5, 2018, the Department made the decision that the allegations of neglect were supported. The Department determined that mother abandoned the children at the hospital. (Exhibit E, pp. 5-6).
19. Mother testified to the following at the hearing. On the night in question, she had left her medication at I's father's home and she was self medicating with alcohol. She acknowledged that she made an impulsive decision when she left the children at the hospital. She indicated that she felt pressured after being there for a few hours and speaking with 3 social workers. She also stated that she is still drinking in order to cope. She drinks a lot and can drink until she blacks out. She said that she does miss her "old life" as a prostitute and she is not sure what is best for the children. She said that she should not get custody of the children back as long as she is living alone because she needs help. She said that she is trying to get her life together. She is back on medication, working and going to school. (Testimony of mother).
20. Considering all of the evidence, I find that mother failed to provide minimally adequate essential care for K and I and that mother's actions/inaction placed the children in danger and posed a substantial risk to their safety and well-being and, therefore, she neglected them under Department regulations.

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" 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.

The Department determined that mother failed to provide minimally adequate essential care for K and I by abandoning them at the hospital.

Mother does not dispute that she abandoned the children at the hospital. She argues that she was/is not sure what is best for them, she felt pressured and she made an impulsive decision. She acknowledged that she is unable to care for the children with help.

The evidence shows that mother has a history of impulsive and risky behavior. She has a history of untreated mental illness. She has a history of substance abuse and continues to drink excessively. She was self medicating with alcohol the night she left the children with her roommate and stayed out all night.

Mother's roommate called I's father the next morning and father called the police. Father refused to take the children with him so the police brought them to the hospital. Mother went to the hospital and spoke with the hospital social worker and the Department response worker. She told both of them that she did not feel she could parent the children and that she wanted the Department to take them. She was advised to re-think her decision, but she maintained that she knew what she was doing and she left without making any arrangements for the children's care. The Department had no choice but to obtain emergency custody of the children because they were left without a caregiver.

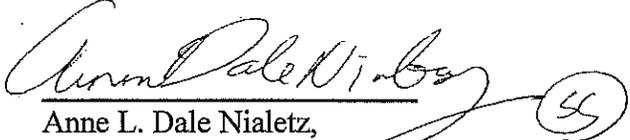
Considering all of the evidence, I find that mother failed to provide minimally adequate essential care for K and I and that mother's actions/inaction placed the children in danger

and posed a substantial risk to their safety and well-being and, therefore, she neglected them under Department regulations.

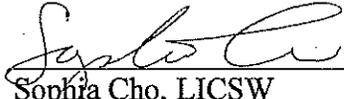
Conclusion and Order

The Department's decision to support allegations of neglect of K and I 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 Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which she 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

5/25/2018
Date


Sophia Cho, LICSW
Supervisor, Fair Hearing Unit