

**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**

Linda S. Spears
Commissioner

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

IN THE MATTER OF)
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 MW)
)
 FH # 2018-0274)
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)

FAIR HEARING DECISION

The Appellant in this Fair Hearing was MW (hereinafter "MW" or "Appellant"). The Appellant appealed 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 February 13, 2018, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of S (hereinafter "S" or "the child") by her father, MW. An emergency response was conducted and on February 21, 2018, the Department made the decision to support the allegation of the neglect of S by the Appellant. 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 April 10, 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 two (2) week to allow counsel for the Appellant to submit a Memorandum. The record on this matter closed on April 24, 2018.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
MW	Appellant
SG	Appellant's Wife/Support
LT	Attorney for Appellant
SM	Department Supervisor
PB	Department Response Social Worker
AL	Department Ongoing Social Worker

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.

The Fair Hearing was digitally recorded pursuant to 110 CMR 10.26.

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

For the Department:

Exhibit A: 51A Report, dated 2/13/18

Exhibit B: 51B Response, completed 2/21/18

Exhibit C: [REDACTED] Police Department Incident Report, dated 2/12/18

Appellant

None

Counsel for the Appellant submitted a Memorandum which was reviewed by this Hearing Officer and taken into consideration, along with all the evidence, in rendering this decision.

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, S was fourteen (14) years old and St was sixteen (16) years old. The children resided in [REDACTED], MA with their father, MW. (Fair Hearing Record)
2. The Appellant is the father of the child; therefore he was a caregiver pursuant to

Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

3. The W family had history of involvement with protective services both in the Commonwealth and South Carolina, where the children previously lived; there were concerns relative to the Appellant's presenting as erratic, very angry, and combative. At the time of the response, the family had an open case with the Department to assist S in remaining safe and the Appellant in addressing his emotional discord. (Exhibit B)
4. All members of the W family had significant mental health concerns. The mother of the children, SW, was diagnosed with Bipolar Disorder. St was diagnosed with Autism, Bipolar Disorder, Anxiety, Conduct Disorder and PTSD. S suffered from Depression and Anxiety. The Appellant reportedly had psychiatric hospitalizations which he would not discuss, nor would he share diagnosis or medications with the Department. The Appellant was reported to suffer from Depression and PTSD and had suffered a Traumatic Brain Injury in the past. (Fair Hearing Record)
5. On February 13, 2018, 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 S by her father, MW. According to the reporter, S had runaway on February 12, 2018, and was ultimately picked up by the [REDACTED] Police. S did not want to return home reporting the Appellant yelled at her too much and called her names like "disgusting". The Appellant was not willing to pick S up at the police station and was not able to make an alternative plan for her. This report was screened in for an emergency response. (Exhibit A)
6. S disclosed being afraid of the Appellant because she "knows what he is capable of" further stating the Appellant had beat her in the past; now currently screamed and yelled, threw things, broke things including his bedroom door, a printer and a table, and verbally argued loudly with S's stepmother, SG. (Exhibit B, p.3)
7. S's behaviors, including running away from home, meeting men in person that she met on line, spending an overnight with an Uber driver, placed her at a potential for high risk. S reported she does these things because she wanted to get away from her home. (Exhibit B, p. 3)
8. S's therapist, LD reported S was a high risk child. (Exhibit B, p. 6)
9. On February 13, 2018, the Department assumed 51B3 custody of S. The Appellant was not able to make a plan to keep S safe. (Exhibit B; Testimony of PB)
10. On February 20, 2018, at court hearing, S attempted to give her father a hug after the hearing. The Appellant was observed being aggressive with S, raising his voice at her and calling her a liar. S became emotional and tearful. The Appellant was removed from the court house after a court officer had to intervene. (Exhibit B, p.12; Testimony of PB)
11. At the conclusion of its investigation on February 21, 2018, the Department supported the

aforementioned report that the Appellant neglected S. The Appellant was not willing to take S home once she was located by the police; he yelled and was volatile; and has little to no insight into how his behavior impacted S's well-being. The Appellant's actions compromised S's safety and well-being. (Exhibit B; Testimony of PB)

12. MW testified that he filed for a CRA and had a court date two (2) days after S was found; that he was under the impression the Department was going to place S in a locked facility if she ran again, like she had earlier in February, 2017. MW denied he was neglected S. (Testimony of Appellant)

13. In light of the totality of the evidence in this case, I find the Department did have reasonable cause to support the allegation of neglect of S by the Appellant.

- 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)
- The Appellant failed to provide S with minimally adequate emotional stability and growth, by exposing her to ongoing verbal and physical altercations in her home. The Appellant was unable to contain his emotions appropriately, S "knew what he was capable of" and feared being at home.
- The Appellant's actions placed S in danger or posed a substantial risk to her safety and well-being.
- The Department had reasonable cause to intervene with this family in order to ensure S's safety and well-being.

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

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, or (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, or (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 the 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 contested the Department's decision to support an allegation of the neglect of S. The Appellant recognized S's acting out behaviors were concerning; however he failed to see how his actions and behaviors impacted her emotional stability and growth. The Appellant argued that he relied upon what the Department had told him previously would happen if S ran again; that he did not neglect S. The Department noted family members suffered from mental health issues and the Appellant's parenting style and techniques were not working. The Appellant was observed to be combative, erratic and unstable and was unwilling to provide verification of treatment of his own to the Department. There were concerns for the home environment and the Department could not discount the Appellant's role in S being unsafe.

"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 physical or emotional injury." Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 795 (2003) In this case, the Appellants' actions were sufficient to warrant the immediate and continuing intervention of the Department.

Considering all the evidence, the Department's concerns were valid and rose to the level of "reasonable cause to believe" that neglect did occur and that S was being emotionally injured, as the Appellant failed to take actions necessary to provide the child with minimally adequate emotional stability and growth.

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 his 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 placed S in danger.

Conclusion

The Department's decision to support the allegation of **neglect** 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, he may do so by filing a complaint in the Superior Court for the county in which he

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.

Lauren Decas (dtd)

Lauren Decas
Administrative Hearing Officer

Date: 6/26/18

Darlene M. Tonucci

Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit