

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF

RE and JE #2018-0278

FAIR HEARING DECISION

RE and JE 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 January 3, 2018, the Department received a 51A report alleging neglect of M, Jc and Jm by their mother, RE. The Department screened-in the report for a response. On January 25, 2018, the Department made the decision that the allegation of neglect of M, Jc and Jm by RE was supported. The Department found that there were "substantiated concerns" of neglect of the children by father, JE. The Department notified RE and JE of its decisions and their right to appeal.

JE and RE made a timely request for a fair hearing to appeal the Department's decisions to support allegations of neglect and the finding of substantiated concerns regarding father. The Department allowed the appeal of the "support" decision and dismissed the request for a fair hearing to address the decision that there were substantiated concerns as there is no right to a fair hearing to appeal that decision.

A hearing was held on April 5, 2018, at the DCF Framingham Area Office. RE, JE, the Department response worker and the Department response supervisor testified at the hearing.

The Department submitted the following exhibits which were entered into evidence at the hearing.

Exhibit A: 51A report.

Exhibit B: 51B report.

Exhibit C: Report of Child(ren) Alleged to be Suffering from Serious Physical or Emotional Injury by Abuse or Neglect.

Exhibit D: Police incident report dated January 3, 2018.

Exhibit E: Notes of M's school counselor, dated January 16, 2018.

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. RE (hereinafter "mother") and JE (hereinafter "father") are the parents of M (age 12), Jc (age 8) and Jm (age 5). (Exhibit A, pp. 1-2).
2. Mother and father are caregivers for the children. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05.
3. Mother and father have been together for 24 years and married for 13 years. (Exhibit B, pp. 5, 7).
4. Mother had significant mental health issues. She was diagnosed with anxiety and depression. She had psychotic postpartum depression after M's birth. Mother had been in therapy for at least 10 years. According to her therapist, she had poor judgment and her moods were "off the charts." (Exhibit B, pp. 4, 5, 6, 9).

5. Mother and father had marital problems. They argued all the time. The children were exposed to the arguing. (Exhibit B, pp. 4, 5, 9).
6. In 2016, mother began an extra marital affair with a neighbor who was also father's best friend. She also had an on-line relationship with someone else. (Exhibit B, pp. 4, 9).
7. Father began seeing mother's therapist occasionally (once every month or every other month) sometime in late 2016. The therapist saw him individually and she has seen mother and father together. (Exhibit B, pp. 5, 9).
8. When mother was angry, she lost control and became physically aggressive and verbally abusive. She hit father. She screamed and swore. She told father and M, "I wish you were dead." She told M, "I wish you were never born," "I hate you," "F off" and "Go F yourself." (Exhibit B, pp. 4, 5, 6; Exhibit D).
9. Father has had to try to keep mother contained in an area so she cannot get to the children. (Exhibit B, p. 4).
10. Mother has made threats to harm herself. (Exhibit D).
11. The parents' arguing was causing M a great deal of worry and emotional distress. When mother was angry, M barricaded herself in her room or locked herself in the bathroom to feel safe and do homework. She has walked out and gone to a friend's house for the night. She was usually afraid to leave because she did not want anything bad to happen to her brothers and she felt had to keep them safe. She worried her mother may physically harm them. (Exhibit B, p. 4).
12. At some point, M looked at mother's phone and discovered that she was having an affair with father's friend who lived down the street. (Exhibit B, pp. 4, 5).
13. At some point, M began to have body image issues. She began restricting her food intake and purging when she did eat. M was skipping breakfast and lunch. She was eating when she got home from school, but then purging. (Exhibit B, pp. 4, 5, 7).
14. M had typically been an A and B student, however, in late 2017, her grades began to decline. (Exhibit B, p. 4).
15. In approximately mid-2017, mother's therapist prescribed her Lithium as a mood stabilizer. Mother took her medication for about 4-6 months before she told her therapist that the medication made her "not feel right." Her mood was flat and it was making her "like a zombie." Her therapist increased her dose, but mother stopped taking it completely in December 2017, after she sustained a cervical spine injury at work. (Exhibit B, pp. 4, 5, 6, 7, 9).
16. Jm's kindergarten teacher had concerns about him. He had a "fowl" mouth when he was angry. He has called the teacher a "fn bitch" and he swore under his breath. He has called his stuffed animals "douches." He had been exposed to video games that

were not age appropriate. When he played with figures, he said some morbid things such as, "I'll chop your head off, murder you." There were times he had "meltdowns" and he would start throwing things. If he lost a game, he would have a meltdown and then go hide under a table. The teacher would have to "evacuate" the class for a while. This was happening on a daily basis. Sometimes when he was in pre-school, he had a meltdown coming into school and mother would just take him home so his attendance was poor. (Exhibit B, pp. 9, 10).

17. On or about January 3, 2018, M confronted mother about her affair with the neighbor. Mother initially lied about having an affair, but she finally admitted to it. (Exhibit B, pp. 4, 6, 7; Exhibit D).
18. Early in the morning on January 3, 2018, mother went to the hospital due to pain in her neck due to her recent injury. She was given medication and released at about 2:00pm. Mother was in a particularly bad/angry mood that day. (Exhibit B, pp. 6-7).
19. On January 3, 2018, mother and M engaged in a verbal argument about mother's affair. Mother was verbally abusive toward M and out of control. Mother told M she hated her and wished she would die. M called father at work and told him that mother was yelling and swearing at her and she did not know what to do. Father told her to stay in her room and stay away from mother. (Exhibit A, p. 7; Exhibit B, pp. 2, 3, 6; Exhibit D).
20. When father got home from work, mother was upstairs asleep. Father went outside for a little while and when he came back inside, mother was in the kitchen. She was angry at M and blamed her for knowing about the affair. Father tried to calm things down. Mother was verbally abusive toward M and father. (Exhibit B, pp. 2, 3, 5, 6, 7; Exhibit D).
21. Mother was "blind with anger" and out of control. She decided to leave. She grabbed her keys and said she was leaving. Father went outside to get his tools from the vehicle. He was behind the vehicle with the lift gate open when mother got into the vehicle and backed up quickly, hitting father and knocking him down. Mother drove off quickly causing more tools and other items to fall into the street. (Exhibit D).
22. M asked father to call the police so he did. The police responded to the home and spoke with father. He reported what occurred and provided some background information. He said this had been an on-going issue. He told police, mother goes into screaming fits and swore at M and her behavior toward M was unacceptable. He noted that he called police because M asked him to call. Police also spoke with M who appeared visibly upset and angry. Police left the home. An officer called mother's cell phone and left a message. Minutes later she returned home. Father called police and informed them mother was home. Police went to the home and spoke with mother. Mother told police that they had an argument and she left. Police informed mother she hit father with the car. She denied being aware she hit father and said she was unable to turn to look behind her because of her neck injury. Police

arrested mother and charged her with assault and battery on a household member and assault and battery with a dangerous weapon. (Exhibit D).

23. On January 3, 2018, the Department received a 51A report alleging neglect of the children by mother due to the above incident. The Department screener spoke with father. The Department screened-in the report for a non-emergency response. (Exhibit A).
24. On January 8, 2018, the response worker called mother and scheduled a home visit for January 16, 2018. (Exhibit B, p. 3).
25. Prior to January 16, 2018, mother talked to the children and told them that the Department was going to take them away. (Exhibit B, p. 4).
26. On January 16, 2018, M was brought to the school counselor with a friend to discuss reports she was restricting food and purging. After M's friend left, M and the counselor discussed M's home life. She reported the recent incident as well as background information regarding mother's behavior and its impact on her. Her disclosure was consistent with the above findings. She also reported that mother told her and her brothers that the Department was going to take them away and put them in foster care. (Exhibit B, pp. 4-5; Exhibit E).
27. On January 16, 2018, the Department response worker went to the family's home and spoke with the parents together and the children individually. The parents provided some background information consistent with the above findings. They acknowledged that they argue and that they had an argument on January 3rd, mother was verbally abuse and that she was angry and out of control. (Exhibit B, pp. 5-7).
28. The Department response worker spoke with M. M minimized mother's behavior and stated that she was the one who instigated the argument on January 3rd. She also minimized her parents fighting and the impact on her. (Exhibit B, p. 7).
29. The Department response worker spoke with Jc. He said his parents get along "good" and he denied his parents fight. (Exhibit B, p. 8).
30. The Department response worker spoke with Jm. He said his parents sometimes fight. When asked what he did when they fight, he said, "We mostly hide when mom and dad had a fight." (Exhibit B, p. 8).
31. The Department response worker spoke with the children's pediatrician who reported no concerns. (Exhibit B, p. 8).
32. The Department response worker spoke with mother's therapist. She provided some background information about mother's mental health. She said she was concerned about the amount of arguing and fighting that the children had to witness. She noted that M was really in tune to the marital issues. She said mother's judgment was poor and her moods were "off the charts." She said mother "goes running off" when she and father fought and that was not a good way to handle conflict. She was concerned

- the children felt abandoned when she ran off. She has suggested other medications to mother, but mother will not try them. (Exhibit B, p. 9).
33. The Department response worker spoke with a staff member at Jc and Jm's school. She noted a number of concerns about Jm consistent with the above finding. She also noted concerns about their absences/tardies. (Exhibit B, pp. 9-10).
 34. The Department response worker reviewed the police incident report related to the incident. (Exhibit B, pp. 10-11).
 35. On January 25, 2018, the Department made the decision that the allegation of neglect of the children by mother was supported. The Department determined that she exposed them to her erratic behavior, disparaging and hurtful remarks toward M and adult conflict and fighting in the home. The Department found that she failed to provide minimally adequate emotional stability and growth for the children. With regard to father, the Department found that there were substantiated concerns due to his failure to take any action to ensure that this does not continue. (Exhibit B, pp. 12-13; Testimony of the Department response worker).
 36. Mother and father testified at the hearing. They acknowledged having arguments and having an argument on January 3, 2018. They denied arguing more than any other couple. They said they try not to argue in front of the children and they separate from each other as a means to end arguments and that was what they were doing on the day of the reported incident. Father stated that he only called the police because he was concerned about mother leaving in the state (physically and emotionally) that she was in at the time. Mother stated that the criminal charge was dismissed. Mother claimed that she escalated that day because she was having a reaction to the prednisone she was given for her herniated discs and she was in pain. They implied that M's statement to the school counselor was untrue and an overreaction. They stated that M's eating issue was in response to being bullied about her weight on the school bus. They stated that Jm's tantrums were due to his frustration because of his speech impairment and being unable to communicate so that people can understand him. They also claim that the vulgar language he used was language he heard from his siblings and not them. They demonstrated their poor communication skills by interrupting and talking over each other and the Department staff throughout the hearing. (Testimony of mother; Testimony of father).
 37. To the extent that their testimony addressed the allegations and differed from the above findings, I do not credit mother and father's testimony.
 38. Considering all of the credible evidence, I find that mother failed to provide minimally adequate emotional stability and growth for the children and her actions posed a substantial risk to their 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 a 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 determined that mother neglected the children by exposing them to her erratic behavior, disparaging and hurtful remarks toward M and adult conflict and fighting in the home.

At the Hearing, mother and father did not specifically address what M and father described as on-going behavior by mother when she is angry including physical aggression, verbal abuse, yelling and swearing. They acknowledged arguing, but denied it was excessive. They contended that they try not to argue in front of the children and they usually separate when they argue which was what they did on January 3, 2018. Mother claimed that her mood that day was due to her reaction to prednisone implying this was an isolated incident. Father claimed he only called police because he was concerned about mother leaving in her physical and emotional state at that time. They denied that M's eating issue or Jm's behavior/language in school was related to mother's behavior in the home.

As noted above, I do not credit mother or father's testimony to the extent that it differs from the above findings.

The evidence showed that mother had a long history of mental health issues, particularly related to her unregulated mood. She was diagnosed with anxiety and depression and she had psychotic postpartum depression after M's birth. Mother has been in therapy for at least 10 years with the same therapist. Her therapist reported she had poor judgment and her moods were "off the charts."

Mother and father had a volatile relationship and they argued often. Mother's therapist noted that she was concerned about the amount of arguing and fighting the children had to witness. She also expressed concern that the children felt abandoned every time mother ran off.

The evidence showed that mother had angry outbursts when she lost control, yelled and swore and became physically aggressive toward father and verbally abusive toward father and M. She made comments to the effect that she wished they were dead. She also made statements about harming herself. Father has had to contain mother to keep the children safe.

I find that all of the children have been exposed to and impacted by mother's behavior. M locked herself in her room or bathroom to feel safe or she has left the home. She was usually afraid to leave out of fear that mother will harm her brothers and she felt she had to protect them. M begun to exhibit symptoms of an eating disorder. Her grades, which were usually very good, have declined.

Jm has exhibited out of control behavior at school which I do not find is solely attributable to his speech delays. In fact, the school did not mention his speech delay when discussing his behavior. The school also noted that he regularly used foul language. Jm's behavior was so out of control that his teacher had to "evacuate" the class. I find that his behavior and language are modeled after mother's behavior and language in the home.

On January 3, 2018, mother spent hours at the emergency room for her neck injury. She was in a particularly bad/angry mood. M confronted mother about her affair which angered mother and she began yelling and swearing at M. M called father for help.

Father told her to stay away from mother which she apparently did. When father returned home from work, the argument resumed. Mother became out of control, "blind with anger" and verbally abusive. When she said she was leaving, father went out to the vehicle to remove his tools. He was at the rear of the vehicle with the lift gate open getting his tools when mother came out and got into the car. She backed the car into father knocking him down with no regard for whether she would injure him or the children would witness the incident. She then drove off with the lift gate up and tools and other items falling into the street as she drove. Mother admitted to the response worker that she was out of control and angry during the reported incident. She also admitted, to some extent, being verbally abusive.

M asked father to call the police which he did. Father told police what happened. He reported this was an on-going issue. He described mother's erratic and abuse behavior and he said his treatment of M was unacceptable. Mother was ultimately arrested for assault and battery on a household member and assault and battery with a dangerous weapon.

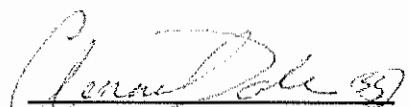
After mother learned of the Department's involvement and before the response worker had an opportunity to speak with the children, mother told the children that the Department was going to take them away. I find that this accounts for M's minimization of mother's behavior and saying that the incident was her fault as well as Jc's failure to acknowledge that the parents argue at all. Despite mother's threat, Jm did report that they hide when the parents fight.

Considering all of the evidence, I find that the children were exposed to mother's erratic behavior, hurtful comments and on-going conflict during which mother becomes physically and verbally abusive. I find that she failed to provide minimally adequate emotional stability and growth for the children and that her actions posed a substantial risk to the children's well-being and, therefore, she neglected the children under the Department's regulations.

Conclusion and Order


The Department's decision to support allegations of neglect of M, Jc and Jm 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, 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
Fair Hearing Supervisor