

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

Linda S. Spears  
Commissioner

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

IN THE MATTER OF

NP and KS #2018-0294

**FAIR HEARING DECISION**

NP and KS appeal 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 2, 2018, the Department received a 51A report alleging neglect of S and K by their mother, NP, and K's father, KS. The Department screened-in the report for a non-emergency response. On January 24, 2018, the Department made the decision that the allegation of neglect of S and K by NP and KS was supported. The Department notified NP and KS of its decision and their right to appeal.

NP and KS made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on April 25, 2018, at the DCF Arlington Area Office. NP<sup>1</sup>, the Department response worker, the Department response supervisor and the Department on-going social worker testified at the hearing.

The Department submitted the following exhibits.

Exhibit A: 51A report.

Exhibit B: 51B report.

Exhibit C: Safety Plan

The hearing was digitally recorded and transferred to compact disc.

---

<sup>1</sup> At the time of the hearing, NP testified that KS was incarcerated and therefore she will be appealing on behalf of KS in addition to herself. (Fair Hearing Record).

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. NP (hereinafter "mother") is the mother of S (d.o.b. [REDACTED]) and K (d.o.b. [REDACTED]). (Exhibit A, pp. 1-2).
2. Mother has been involved with the Department off and on since S's birth. In December 2012, the Department supported an allegation of neglect of S by mother after S's meconium tested positive for cocaine and heroin. Mother admitted using cocaine the day before S's birth. Mother was in treatment at the time and living with her parents (maternal grandparents). The Department remained involved with mother and S until March 2013. (Exhibit A, pp. 4, 5, 6; Exhibit B, pp. 1-2).
3. In April 2014, the Department supported an allegation of neglect of S by mother due to mother's substance abuse. Mother was under surveillance by the Middlesex Drug Task Force. She was observed going to various homes of known drug (heroin) dealers with S. The Department opened a case for mother and S. Mother entered treatment. Mother signed a Caregiver Authorization allowing maternal grandparents to co-parent S. The Department remained involved with mother and S until April 2015. (Exhibit A, pp. 4, 5, 6; Exhibit B, pp. 2, 4).
4. The Department's records are not clear about who S's father is, however, it is not the person mother identified on S's father on her birth certificate and the person she later identified was incarcerated at the time of the Department's 2014 investigation. (Exhibit A, pp. 1-2; Exhibit B, pp. 1-2).

5. At some point, mother became involved in a relationship with KS (hereinafter "father") who is K's father. Father moved into maternal grandparents' home with mother. Mother and father are engaged to be married. Mother and father plan to have father adopt S. (Exhibit A, pp. 1-2; Exhibit B, pp. 3, 4).
6. Mother and father are caregivers for S and K under Department regulations. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015 Rev. 2/28/16.
7. Father also has a substance abuse history. (Exhibit A, pp. 4, 5; Exhibit B, p. 3)
8. In October 2016, the Department received a 51A report alleging neglect of K by mother after K tested positive for Suboxone when he was born. The Department determined that mother was prescribed Suboxone and neither she nor K tested positive for any other substance. K was not exhibiting any withdrawal symptoms. K's father was also determined to be in compliance with his substance abuse treatment. The Department determined that the allegation was unsupported. (Exhibit A, pp. 4, 5).
9. On October 6, 2017, mother snorted Oxycodone. She overdosed and was taken to the emergency room where she was revived with Narcan. She was observed for a few hours and cleared for discharge. She was offered counseling and a Narcan kit which she refused. (Exhibit B, p. 9).
10. Mother was not forthcoming with her primary care physician about her overdose during an appointment on November 14, 2017. She reportedly told her physician that she was taking her Suboxone and not using other substances. (Exhibit B, p. 9).
11. The hearing record is not particularly clear regarding father's use of substances after K's birth, however, he has had periods of sobriety followed by relapses that have led to criminal charges. He was clean for over a year and then relapsed on Percocet for a few months leading to criminal charges. In August 2017, he was arrested for breaking and entering which was "drug motivated." He was placed on probation and referred for treatment through a drug court program. In October, he was placed on house arrest for violating his probation. He began seeing a therapist in November 2017. He was not honest with his prescribing physician about his addiction history to obtain certain medication. He began associating with a friend who was a "bad influence" and began abusing his prescription medication. His drug use was enough for him "to be in a fog." (Exhibit A, p. 3; Exhibit B, pp. 3, 6, 10).
12. Maternal grandparents noticed that father was "up and down" and stressed about money. In December 2017, they were concerned about him "hanging out with negative peers." They asked him to stop associating with those friends and they told him his friends were not allowed on their property. (Exhibit B, p. 4).
13. On January 2, 2018, father was arrested for breaking and entering during the nighttime, malicious destruction of property over \$250, larceny of a building, larceny of drugs, possession of a class E substance (66 pills of Clonazepam). (Exhibit A, pp. 3, 7; Exhibit B, p. 6).

14. On January 2, 2018, the Department received a 51A report alleging neglect of S and K by mother and father. The reporter stated that father was arrested for breaking and entering and other charges including possession of 66 pills of Clonazepam that were not prescribed to him. The reporter also stated that he has prior charges and mother had a recent overdose. The Department screened-in the report for a non-emergency response. (Exhibit A).
15. The Department response worker spoke with mother, maternal grandparents, S, father, mother's primary care physician and her medication prescriber and father's new therapist. She obtained information consistent with the above findings. The response worker read the 51A report to mother and asked if she had relapsed. Mother denied relapsing, but acknowledged that father has had a few "slip ups." Father admitted to relapsing and "over using" his prescribed medication. S reported feeling safe at home, but then said that mother and father yell all the time. She said she does not like it and sometimes she gets worried and afraid when they are yelling. (Exhibit B; Testimony of the Department response worker).
16. On January 24, 2018, the Department made the decision that the allegation of neglect of S and K by mother and father was supported. The Department determined that the parents' have placed the children at risk of harm due to their continued substance abuse. (Exhibit B, pp. 10-13; Testimony of the Department response supervisor; Testimony of the Department response worker).
17. Mother testified at the hearing. Mother acknowledged having a "slip" and overdosing. She stated that she was not home at the time and the children were not present. She immediately went back to meetings and treatment afterward. She also stated that the children were not present when father was arrested. (Testimony of mother).
18. Considering all of the evidence, I find that the parents' lack of stability in their recovery leading to relapses, mother's overdose and father's criminal behavior and association with other drug users placed the children at risk. I find that the parents failed to provide minimally adequate essential care for the children and that their actions posed a substantial risk to their safety and well-being and, therefore, they 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.

“Caregiver” is defined as:

- (1) A child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or
- (2) 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. 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

“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 and father neglected the children by failing to maintain their sobriety resulting in mother overdosing and father's arrests and incarceration and father's association with other drug users placing the children's safety at risk.

Mother acknowledges that they both had "slips". Mother argues that the children were not exposed to either her overdose or father's arrests. Mother also contends that she re-engaged in meetings and treatment after her overdose and father has engaged in treatment while incarcerated.

The evidence shows that mother and father have significant substance abuse histories. Mother has been involved with the Department off and on since S was born due to her substance abuse. As of the Department's most recent prior involvement (October 2016), both parents were engaged in treatment and reported to be doing well.

Since then father has had periods of sobriety followed by relapses. He relapsed on Percocet for a period of time resulting in charges. In August 2017, he was arrested for breaking and entering which was reportedly motivated by drugs. He was referred to treatment providers, but he was not honest about his history and he was given prescriptions which he over used. According to father, he used enough to be "in a fog." He began associating with other drug users and bringing them around the children. In January 2018, he was arrested again for breaking and entering and incurred multiple charges including possession of 66 prescription pills that were not prescribed to him.

In October 2016, mother overdosed on Oxycodone and had to be revived by Narcan. Although there is no evidence of any other recent substance abuse by mother, it is evident that mother is not forthcoming with such information. She failed to report her overdose to her primary care physician and she appears to have changed prescribers following the overdose and she did not inform her new provider of her overdose. She also denied using anything other than her prescribed medication when interviewed by the response worker.

The parents level of engagement in treatment during the time leading up to the report was insufficient to maintain their sobriety.

Evidence also showed that S described her parents yelling at each other all the time. She said she wished they would stop, she does not like it and it makes her feel worried and afraid at times.

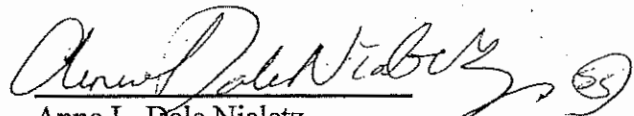
The fact that the children were not present when mother overdosed or when father was arrested is not a mitigating factor in this case. The children are young (ages 5 and 1), and as such, they are vulnerable and dependent upon their parents to meet their needs. Considering all of the evidence, I find that the parents' lack of stability in their recovery leading to relapses, mother's overdose and father's criminal behavior and association with other drug users placed the children at risk. I find that the parents failed to provide minimally adequate essential care for the children and that their actions posed a

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

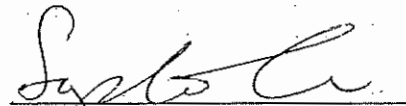
**Conclusion and Order**

The Department's decision to support allegations of neglect of S and K by mother and 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 Appellants 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 Nioletz,  
Administrative Hearing Officer

5/25/2018  
Date

  
Sophia Cho, LICSW  
Supervisor, Fair Hearing Unit