

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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LINDA S. SPEARS
Commissioner

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(IN THE MATTER OF)
(C.T.)
(FH #2018-0346)
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HEARING DECISION

Procedural History

The Appellant, C.T., appealed the decision of the Department of Children and Families [hereinafter “the Department” or “DCF”], to support for neglect of I, pursuant to M.G.L., c.119, §§51A & 51B.

The Department received five (5) 51A Reports from mandated reporters – two (2) on February 22, 2018 and three (3) on February 23, 2018 – alleging neglect of I predominately by T.T., the child’s mother, but also by the Appellant, the child’s maternal grandmother. All reported allegations were screened in for a 51B response and assigned to response social worker, K.T. On February 26, 2018, following the 51B response, the Department supported the allegations of neglect of I by the mother and the Appellant. The family’s case, i.e., mother and child, remained open for an assessment and is open to date.

The Department notified the Appellant of the decision and her right of appeal by letter dated February 26, 2018. The Appellant filed a timely request for Fair Hearing [“Hearing”] on March 15, 2018, pursuant to 110 CMR 10.06 & 10.08. The Appellant’s request for Hearing was granted and held on April 18, 2018 at the Department’s Hyde Park Area Office in Hyde Park, MA. Present were the DCF Response Supervisor, S.F.; the DCF Response Social Worker, K.T.; and, the Appellant. The response social worker and Appellant were sworn in under oath and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a compact disk [CD].

Admitted into evidence for the Department was the DCF 51A Report of February 23, 2018, 7:45 p.m. [Exhibit A-1], the DCF 51A Report of February 23, 2018, 9:07 p.m. [Exhibit A-2], the DCF 51A Report of February 23, 2018, 4:15 a.m. [Exhibit A-3], and the corresponding DCF 51B Response Supported and Approved on February 26, 2018 [Exhibit B]. The Appellant made no submissions. The Hearing record was closed on April 18, 2018.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

The issue presented in this Fair 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 51B response, the Department's decision or procedural actions, 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 issue is whether there was *reasonable cause to believe* that a child had been abused or neglected [110 CMR 10.05] 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 Revised 2/28/16]

Findings of Fact

1. T.T. is the mother of ten (10) year-old I and the Appellant is the child's maternal grandmother. The child lived with her mother in [REDACTED] [Exhibit A-1; Exhibit A-3; Exhibit B, pp.1 & 4]
2. Although there was a prior DCF history on mother, there was none of record concerning the Appellant. [Exhibit A-1; Exhibit A-2; Exhibit A-3; Exhibit B, p.1]
3. The Appellant had a diagnosis of schizophrenia, had a psychiatrist, and took her medications. [Testimony of the Appellant; Exhibit B, pp.2-3 & 5]
4. Ten (10) year-old I has a history of concerning behaviors and also prescribed medications, Celexa, Clonidine, and Topomax. [Exhibit B, pp.2 & 5]
5. The incident, as it pertained to the Appellant's neglect, occurred on February 22, 2018. [Testimony of the Response Social Worker]
6. On February 22, 2018, mother's friend dropped I off at the Appellant's door for the weekend. Although I used to go to the Appellant's house every weekend, this particular visit was not expected as the visits had stopped temporarily, because the Appellant had kicked the child

out of her home the time before due to her behaviors, which caused the child to walk to her aunt's. During the visit of February 22nd, I was touching things in the home and got upset at the Appellant and ran from the home. The child took the T from [REDACTED] to [REDACTED] to see her old school as she and mother used to live in [REDACTED] and she missed living there. The child took the Appellant's keys and laundry card, when she left. The child wandered the streets of [REDACTED] by herself. She eventually turned herself into the police. At 10:30 p.m., I presented at the hospital for evaluation. [Exhibit A-2; Exhibit B; Testimony of the Response Social Worker]

7. The Appellant called mother after the child left her home, time unknown, but mother was unable to answer so the Appellant did not speak with her. The Appellant left a message, which mother was unable to retrieve. Mother's phone was broken and she was having problems with her phone and not able to always make or receive calls. [Exhibit B, p.2; Testimony of the Appellant; Testimony of the Response Social Worker]
8. The child ran away. The Appellant was not watching her. The Appellant did not actually speak to I's mother, did not call the police, and made no attempt to find the child, and no one was looking for her. [Exhibit B, pp.2 & 5]
9. On February 22, 2018, I was left without a caregiver from 11:00 a.m. to 9:00 p.m. At 9:00 p.m., I walked into a police station. [Administrative Hearing Record]
10. The child was not taking her medications. Mother did not always give I medications on weekends and vacations. [Exhibit B, p.2; Testimony of the Appellant]
11. The Appellant acknowledged the February 22, 2018 incident; that she called I's mother; that the child took her key so she could not go anywhere; that the child was not on her medications; that she did not abuse I; that she would never hurt her; that she helped raise I; that she loved her and wanted the best for her; and, that she had mental health concerns as well. [Testimony of the Appellant]
12. On February 23, 2018, mother dropped I off at the Appellant's home again, also unexpected. Mother was aware that the Appellant had limited skills in managing the child. At 6:32 p.m., the Appellant called the police stating that I was at her home and out of control with behavioral issues, destroying the house. The police responded and restrained the child. EMS [emergency services] arrived and saw that the child was in restraints and screaming and crying. The child was taken to the hospital for a psychological evaluation. [Exhibit A1; Exhibit A-2; Testimony of the Response Social Worker; Testimony of the Appellant]
13. The Appellant did everything she could have done on February 23, 2018. [Testimony of the Response Social Worker]
14. On February 26, 2018, following the response, the Department found it had reasonable cause to believe that I was neglected by the Appellant and her mother. On February 22, 2018, while in the care of the Appellant, I got upset and ran away. The child was out alone at night from 11:00 a.m. to 9:00 p.m. and the Appellant did not take protective action to find her. Although

the Appellant called the child's mother, she did not actually speak with her because mother's phone was broken and mother was unable to retrieve the message. The Appellant did not call the police or make any other attempt to find her. The child had a previous incident where the Appellant kicked her out of her home and I had to walk to her aunt's home. The actions or inactions by the Appellant and mother placed I in danger and posed a safety risk. Neither ensured the child's safety and that proper supervision was in place.¹ [Exhibit B, pp.4-5; Testimony of the Response Social Worker]

15. At the time of the Hearing, I took her medications and had calmed down and presented much better. I went to the Appellant's house and stayed a couple of nights and her mother stayed with them. I did well and did not get into any of the Appellant's stuff. [Testimony of the Appellant]
16. The Hearing Officer finds that the Department had *reasonable cause to believe* that the Appellant was neglectful of I on February 22, 2018 in that she failed to provide I with minimally adequate supervision, pursuant to the 110 CMR 2.00. The Appellant's failure to exercise efforts to locate the child and ensure she had a caregiver, posed substantial risk to the child's safety and well-being, pursuant to the Department's Protective Intake Policy. The child was out alone for a substantial period, to include night time. See *Analysis*.

Analysis

A party contesting the Department's decision, to support the reported allegation for neglect, may obtain a Hearing to review the decision made by the Area Office. [110 CMR 10.06] The Appellant requested a Hearing, which was granted and held on April 18, 2018.

Regulations, policies, and case law applicable to this appeal include, but are not limited to the following:

After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are supported or unsupported. To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any findings with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker(s) did inflict abuse or neglect upon the child(ren) in question. Reasonable cause to believe is defined as 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. 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 and supervisor's clinical base of knowledge. [110 CMR 4.32]

¹ Mother is not an Appellant in this appeal; for more detail concerning mother's neglect, see the exhibits. [Administrative Hearing Record]

The 51A report under appeal is supported for neglect. 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. This definition is not dependent upon location, i.e., neglect can occur while the child is in out-of-home or in-home setting. [110 CMR 2.00]

The Court has also held that the Department's determination of neglect does not require evidence of actual injury to the child. Lindsay v. Department of Social Services, 439 Mass. 789 (2003).

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 children 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. One such example is neglect that has led to a serious physical or emotional injury. Protective Intake Policy #86-015 [2/28/16]

Substantial Risk of Injury: A situation arising either through intentional act or omission which, if left unchanged, might result in physical or emotional injury to a child or which might result in sexual abuse to a child. Protective Intake Policy #86-015 [2/28/16]

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 an 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 the age of 18. [Protective Intake Policy, #86-015, Revised 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

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter under appeal. See Findings #1 to #16 and the following discussion.

Based on the record as a whole, the Hearing Officer finds that the evidence in this case was sufficient to meet the Department's regulatory definition, which requires "reasonable cause to believe" that the Appellant, in failing to provide the child with minimally adequate supervision on February 22, 2018, was neglectful. Reasonable cause to believe carries a low threshold. See *Care and Protection of Robert*. Such evidence, that the Appellant's actions in this situation posed a substantial risk to the child's safety and well-being would be necessary to support the allegations, pursuant to the Department's Protective Intake Police. This proved out in the instant case.

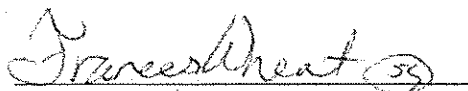
Please also note that the Court has held that the Department's determination of neglect does not require evidence of actual injury to the child. See Lindsay v. Department of Social Services.

The Hearing Officer has no reason to doubt the clinical experience and judgment of the Department in the instant matter. The Hearing Officer did not find any information offered by the Appellant to be substantial or compelling such that the Department acted unreasonably and/or abused its discretion in making a decision to support for neglect of I by the Appellant. Based upon a review of the evidence presented at the Hearing, including testimony from the parties and documents submitted, the Hearing Officer finds that the Department's decision, to support for neglect of I by the Appellant, was made in conformity with its regulations and policies and there was a reasonable basis for the decision. The Appellant did not meet her burden of proof in this appeal. [110 CMR 10.23]

Order

1. The Department's decision of September 26, 2018, to support and approved the reported allegation for neglect of I by the Appellant, her maternal grandmother, 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 for the county in which she lives within thirty (30) days of the receipt of this decision. [M.G.L. c.30A, §14]



Frances I. Wheat
Administrative Hearing Officer
Office of the General Counsel

Date: 4/30/2018



Sophia Cho, Supervisor
Fair Hearing Unit
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