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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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IN THE MATTER OF

JC #2018-0427

FAIR HEARING DECISION

JC 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 January 23, 2018, the Department received a 51A report alleging neglect of A by her parents, JC and MP, and her maternal grandfather, MC. The Department screened-in the report for a non-emergency response. On February 26, 2018, the Department made the decision that the allegation of neglect of A by her mother, JC, and maternal grandfather, MC, was supported. The Department notified JC and MC of its decision and their right to appeal.

JC made a timely request for a fair hearing to appeal the Department's decision to support allegations of neglect of A by her and her father. A hearing was held on May 8, 2018, at the DCF Lowell Area Office. JC, the Department response worker and the Department response supervisor testified at the hearing. MC did not appear.

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

Exhibit A: 51A report.

Exhibit B: 51B report.

Exhibit C: Police Incident report, dated August 23, 2017.

Exhibit D: Compact disc containing a recording of JC (mother), MC (maternal grandfather), LC (maternal uncle) and MP (father).

JC submitted the following exhibit which was entered into evidence at the hearing.

Exhibit 1: Copy of text messages

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. JC (hereinafter "mother") and MP (hereinafter "father") are the parents of A (d.o.b. [REDACTED]). (Exhibit A, pp. 1-2).
2. The parents and A became involved with the Department at the time of A's birth due to mother's substance abuse. A tested positive for marijuana at birth and she was experiencing neonatal withdrawal symptoms. The Department received and supported a 51A report and opened a case for the family. Both mother and father have substance abuse histories that include opiate abuse. There were also concerns about their mental health. The family also had an open case in New Hampshire at some point. Both parents engaged in treatment during the Department's involvement. The case closed in June 2017. (Exhibit A, pp. 4-6; Exhibit B, p. 1).
3. Mother and A live with mother's parents, MC and LC (hereinafter "maternal grandparents"). (Exhibit A, pp. 1-2).
4. Mother, father and maternal grandparents are caregivers for A under Department regulations. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015, rev. 2/28/16.

5. Mother's adult brother, LC (hereinafter "maternal uncle") lives in Florida in a home purchased with financial assistance from maternal grandparents. Maternal uncle has a strained relationship with mother and maternal grandparents. He is jealous that mother lives with maternal grandparents and they provide assistance to her instead of him. (Exhibit 1; Exhibit B, pp. 3-4).
6. Maternal uncle has made complaints to various government officials regarding maternal grandparents' properties as retaliation for their failure to comply with his various requests for financial and other assistance. (Exhibit 1; Exhibit B, pp. 3-4).
7. Maternal uncle has filed numerous 51A reports making allegations of neglect of A by mother and/or father. Two (2) reports were filed while mother was pregnant and those reports were screened-out. He filed six (6) reports between February 2017 and January 2018. All six (6) reports were screened-out. Department records note that he seemed to be under the influence of substances and using graphic and vulgar language during his interaction with Department staff. (Exhibit A, pp. 4-6; Exhibit B, pp. 1-2).
8. On August 23, 2017, mother was observed by police officers who were conducting surveillance in an area known to be a drug trafficking area. She met with another individual and appeared to be purchasing narcotics. She was stopped by police and found to have needles in her car. When asked if she had any narcotics, she pulled a bag with a white powdery substance suspected to be cocaine from her shorts and a small bag containing a powdery substance believed to be heroin from her bra. She was arrested and charged with possession of cocaine and heroin. (Exhibit B, p. 9; Exhibit C).
9. In November 2017, mother stopped going to her Suboxone clinic after she picked up her Suboxone prescription and she decreased her Suboxone dosage from 8mg a day to 2mg a day. (Exhibit B, pp. 4, 7).
10. Maternal uncle usually comes to Massachusetts to spend a week at Christmas with maternal grandparents. Typically, when he is there, there is a lot of yelling between family members. (Exhibit B, pp. 4, 6).
11. Maternal uncle arrived at maternal grandparents' home December 24, 2017, and he stayed until January 3, 2018. (Exhibit B, pp. 3, 6).
12. While he was there, he provoked an argument with mother and maternal grandfather which escalated to a hostile, out of control and loud argument between mother and maternal grandfather during which they were screaming and swearing at each other for at least 16 minutes. Mother was hysterical and she was holding A during the argument. Although he may have provoked the argument, maternal uncle was only marginally involved. While mother and maternal grandfather were arguing, father called maternal grandfather's phone and maternal uncle answered the call and went into the bathroom where he remained on the phone with father and he began recording the argument between mother and maternal grandfather with his phone.

Mother knew that father was on the phone with maternal uncle. She was further provoked by the fact that she was unable to call father to come get her because he was on the phone with maternal uncle. Periodically throughout the argument, mother was also screaming at father. (Exhibit B, pp. 3-4, 5-6; Exhibit D).

13. On January 23, 2018, the Department received a 51A report alleging neglect of A by mother and father and the reporter provided the Department with the recording of the argument between mother and maternal grandfather. The Department screened-in the report for a non-emergency investigation. (Exhibit A).
14. The Department response worker reviewed the Department's records related to the family and spoke with mother, father, maternal grandparents and an addiction counselor with whom both mother and father have worked. They provided information consistent with the above findings. They blamed maternal uncle for provoking arguments. The response worker also heard the audio recording of the argument between mother and maternal grandfather and received and reviewed the police incident report related to mother's arrest in August 2017. Mother completed a drug screen which was negative. At the time of the response, mother had still not re-engaged in treatment at a Suboxone clinic although she stated her intention to obtain a new treatment provider. (Exhibit B).
15. On February 26, 2018, the Department made the decision that the allegation of neglect of A by mother and maternal grandfather was supported. The Department determined that they failed to provide minimally adequate care for A by exposing her to the highly volatile loud argument involving screaming and swearing. The Department also noted concerns about mother's recent drug charges, discontinuing treatment at a Suboxone clinic and decreasing her Suboxone dosage. (Exhibit B, pp. 9-11).
16. Mother testified at the hearing. I find mother's testimony somewhat contradictory, vague and evasive. Regarding the argument between her and maternal grandfather, she stated that she accepts responsibility for her part in the argument, but she also maintained that her brother caused the argument and she minimized it to some extent. She denied that there is any yelling in the home when her brother is not there. Regarding the drug charges, she stated that the charges were dismissed, but she also said that she was placed on probation. When asked about her drug use at the time of her arrest, she was fairly vague and did not provide any meaningful answer. Regarding her substance abuse treatment, she stated that she stopped going to the clinic because they wanted her to use them as her primary care physician (PCP) and she did not want to discontinue seeing the PCP who she has been seeing for years. She stated that, currently, her PCP is prescribing her Suboxone and she is drug tested by him weekly. (Testimony of mother). I find mother's credibility questionable due to the various contradictions in her testimony.
17. Considering all of the credible evidence, I find that mother and maternal grandfather failed to provide minimally adequate emotional stability and growth and other essential care for A and that their actions posed a substantial risk to her 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 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 evidence shows that mother has a significant history of substance abuse including opiate abuse. The Department became involved with her at the time of A's birth due to A testing positive for marijuana and experiencing withdrawal symptoms. After the

Department closed mother's case, mother was arrested for drug possession after being observed by police purchasing drugs. She was charged with possession of cocaine and heroin. The status of the charges is not clear as mother said both that she is on probation and that the charges were dismissed.

A few months later, mother obtained a Suboxone prescription and then stopped attending the Suboxone clinic and decreased her dosage apparently without any medical supervision. She was not re-engaged with another provider at the time of the Department's response. Given her recent arrest, this raises concerns about her sobriety. Nevertheless, the Department has no evidence to indicate that mother used/abused any substances while caring for A.

It is undisputed that maternal uncle is a source of tension and division in the family. He lives in Florida and he is constantly making demands on maternal grandparents and he threatens and makes allegations if they do not comply with his requests. He has filed numerous reports with the Department in the past. He has presented audio recordings to the Department in the past, however, the content of those recordings is not described in the hearing record.

Maternal uncle arrived at the maternal grandparents at Christmas as he usually did and mother should have known there would be some form of conflict during his stay. Nevertheless, maternal uncle was able to provoke an extremely hostile argument between mother and grandfather. During the argument, mother and grandfather can be heard screaming and swearing at each other. Although maternal uncle was present, he was only marginally participating. Having heard the recording of the argument, I do not believe that the argument and mother and maternal grandfather's behavior can be blamed on maternal uncle or that this was an unusual or isolated incident. It was also clear that the argument lasted at least 16 minutes and that mother was holding A throughout the argument.

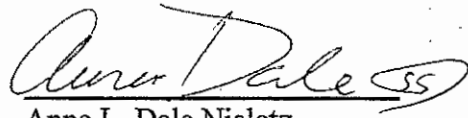
Considering all of the credible evidence, I find that mother and maternal grandfather failed to provide A with minimally adequate emotional stability and growth by exposing her to their hostile and lengthy argument and that their actions posed a substantial risk to A's safety and well-being and, therefore, they neglected her under Department regulations.

Conclusion and Order

The Department's decision to support allegations of neglect of A by mother and maternal grandfather was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

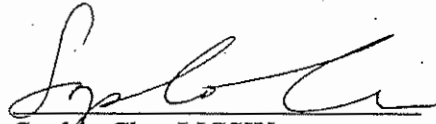
This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which she resides, within thirty (30) days of the receipt of this

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 Nioletz
Administrative Hearing Officer

6/22/2018
Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit