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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

JH

#2018-0444

FAIR HEARING DECISION

JH 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 February 22, 2018, the Department received a 51A report alleging neglect of D and M by their father, JH. On February 24, 2018, the Department received two additional 51A reports. The first report alleged neglect of D and M by JH. The second report alleged neglect of D and M by JH as well as physical abuse of D by JH. The third report alleged physical abuse of D by JH. The Department screened-in all three reports for a non-emergency response. On March 21, 2018, the Department made the decision that the allegations of neglect of D and M by JH were supported. The Department notified JH of its decision and his right to appeal.

JH made a timely request for a fair hearing to appeal the Department's decision. A hearing was held on June 14, 2018, in the DCF Framingham Area Office. JH, the Department response worker and the Department response supervisor testified at the hearing. JH was represented by an attorney.

The Department submitted the following exhibits.

Exhibit A: 51A report, filed February 22, 2018, 9:08am.

Exhibit B: 51A report, filed February 24, 2018, 1:04pm.

Exhibit C: 51A report, filed February 24, 2018, 6:00pm.

Exhibit D: 51B report.

JH submitted the following exhibits.

- Exhibit 1: Affidavit of MS, dated May 2, 2018.
- Exhibit 2: Affidavit of KL, dated May 6, 2018.
- Exhibit 3: Affidavit of DS, dated May 6, 2018.
- Exhibit 4: Affidavit of Su M, dated May 7, 2018.
- Exhibit 5: Affidavit of Si M, dated May 6, 2018.
- Exhibit 6: Affidavit of WH and KL, dated May 2, 2018.
- Exhibit 7: Police Incident report, October 22, 2017.
- Exhibit 8: E-mail from KH (JH's wife) to her pastor/therapist, dated April 3, 2010.
- Exhibit 9: Middlesex County Probate Court order, dated May 23, 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. JH (hereinafter "father") and KH (hereinafter "mother") are the parents of D (d.o.b. [REDACTED]) and M (d.o.b. [REDACTED]). (Exhibit A, pp. 1-2).
2. Father and mother are caregivers for D and M under Department regulations. 110 CMR 2.00(5); DCF Protective Intake Policy #86-015 Rev. 2/28/16.
3. Father and mother have been married since about 2004. (Exhibit D, pp. 2, 7).

4. Father and mother began having significant problems in their relationship shortly after D was born and their problems have continued to date. (Exhibit D, pp. 2, 3, 5, 7, 8, 10, 11, 12, 14; Exhibit 1; Exhibit 2; Exhibit 7; Exhibit 9).
5. There was a lot of conflict and arguing between the parents which led to a lot of anxiety and stress in the home. Mother and father had different parenting styles which caused arguments between them. Father was very rigid regarding parenting. Mother could be erratic emotionally. When D was born, father bought a book on parenting and he wanted mother to exactly follow the instructions from the book. Mother wanted to "go with the flow." (Exhibit D, pp. 2, 3, 7, 8, 13, 14; Exhibit 1; Exhibit 2).
6. Individually and together, they have seen several different counselors over the past 8 years. They spent 3-4 months in marital counseling together with a psychologist until the psychologist moved out of state. Mother contacted a long time friend of father's to complain about father's behavior which she described as abusive. Father's friend suggested they engage in counseling with their pastor. They initially consulted with their pastor in 2009. He helped them mediate disagreements and they talked about ways to cope and resolve conflict. Throughout that time, mother expressed her perspective in counseling that father is abusive in one way or another. When she expressed her views to their pastor, he became more supportive of her. Overall, their pastor felt that they both "had issues." (Exhibit D, pp. 7, 14; Exhibit 1; Exhibit 8).
7. There was an escalation of the parents' conflict in January 2013. On January 10, 2013, mother and father had an argument about mother's care of the children during which father was telling mother she was neglectful. During the incident, father came up behind mother to confront her and there was some physical contact. Mother claimed that he pushed her, but father described the contact as accidental. The next day, mother and father were arguing via text message. Mother told father she was going to take the boys out to dinner that night. Father did not want her to take the boys out. When he came home from work, mother was getting ready to leave with the children. When she was about to pull out of the garage, father approached the driver's door. She said she was going out and he told her she was not. He asked why she was taking the boys and told her it was kidnapping. He backed away from the driver's door and stood behind the vehicle. Mother started backing up and knocked him down. Mother called the police. Police responded and spoke with both of them. Father told police that mother knew he was behind the vehicle because he had tapped on the trunk, but she intentionally backed into him anyway. Mother claimed that it was an accident. Mother was arrested and charged with domestic assault and battery with a dangerous weapon. The charge against mother was ultimately dismissed. (Exhibit D, pp. 3, 8, 10).
8. On October 22, 2017, mother and father were cleaning out the garage. They began arguing about how to organize everything. The argument became escalated and they were yelling at each other. A neighbor heard them yelling at each other. The neighbor was so concerned that s/he called the police. Police responded to the home.

Mother and father acknowledged arguing. Mother denied that there was a physical confrontation or any threats made and mother denied she was in fear. (Exhibit 7).

9. In October 2017, mother told father she wanted a divorce and full custody of the children. Mother took no action toward filing for divorce at that time. (Exhibit D, p. 8).
10. D is currently in the third grade. He has some developmental and attention issues. His behavior can be challenging and difficult. He can be aggressive at times. He received speech therapy through Early Intervention when he was younger. Currently, he has an Individual Educational Plan (hereinafter "IEP") for speech and social/emotional issues (he does not always interact appropriately with peers). There has been some speculation at IEP meetings that D may have a low level of autism, but this has not been formerly evaluated or diagnosed. Despite his challenges, D is very verbal, engaging, able to communicate well and to accurately describe events and what he has experienced and observed. (Testimony of father; Testimony of the Department response worker; Exhibit D, pp. 7, 11, 13; Exhibit 2; Exhibit 4).
11. Father has become physical with the children and D in particular when he is upset about their behavior. He has hit/slapped, spanked and pinched the children. The children have reported this to school staff members in the past. (Exhibit D, pp. 2, 4, 12, 14).
12. In early 2017, father was called by the school principal three days in a row about D's behavior. Father asked D about school and D said it was fine. Father told him he was lying and he hit D all over his body while D was rolling around on the floor. Father kept asking D if he had enough yet. Mother was afraid and she took M and went upstairs. She thought about calling the police, but she was too afraid. (Exhibit D, pp. 2, 5, 12).
13. Father has been verbally abusive toward D. He has sworn and called him bad words. He has told D, if his mother was a better mother, then he would not be acting up. Father has told D, if he did not start behaving, he would be kicked out of the family. (Exhibit D, pp. 11, 12).
14. Father has yelled and sworn at mother and called mother names in front of D and M. He has told the children she is a bad person and/or bad girl. When father yells at mother, the children have seen mother get upset and cry. D has seen father put his hands on mother in an angry way. (Exhibit D, pp. 11, 12).
15. D feels safe with mother, but he does not feel safe with father. (Exhibit D, p. 12).
16. On or about February 5, 2018, mother and father had an argument about who would take time off from work to stay home with M who was not feeling well. Mother gave M some medicine and father accused her of drugging him and not caring about him. Mother tried to leave to take D to school. Father refused to let her leave. He told her that she is not going anywhere and she is the mother and it is her job to stay home with the children. He pulled her back inside and threw her phone and took her car

keys. D called mother a "fucking robot" which is something he has heard father call her. Mother stayed home and father went to work. Mother called the domestic violence hotline and her attorney that day. Father came home early from work. He interrogated her and took her phone. He saw that she called the domestic violence hotline and her attorney. (Exhibit D, pp. 2-3; 5, 7-8, 11, 12).

17. Mother left the home with the children shortly after the above incident. (Exhibit D, pp. 2, 7-8)
18. Mother filed for divorce on February 21, 2018. (Exhibit D, pp. 7, 8; Exhibit 9).
19. On February 22, 2018, the Department received a 51A report alleging neglect of D and M by father based upon information provided to the reporter by mother. According to the reporter, mother said she left home with the children due to father becoming violent toward her. She denied he was violent toward the children. She said there has been a lot of arguing in the house. The Department screened-in the report for a non-emergency response. (Exhibit A).
20. On February 24, 2018, mother went to the police station with the children. She reported that father has been mentally abusing her and the children for the past 8 years. She also reported that, a year ago, father struck D and yelled at him while D was on the ground. (Exhibit D, p. 5).
21. Mother secured temporary restraining order on February 24, 2018. (Exhibit D, pp. 7, 11; Exhibit 9).
22. On February 24, 2018, the Department received two 51A reports. One alleged neglect of M and D by father as well as physical abuse of D by father. The other alleged physical abuse of D by father. Both reports were based upon information provided by mother. The Department screened-in the reports and consolidated them with the earlier report. (Exhibit B; Exhibit C).
23. A court hearing was held on February 26, 2018, with both parties present. The court extended the restraining order for a year at that time. (Exhibit D, pp. 4, 7, 11; Exhibit 9).
24. The Department response worker reviewed the 51A reports and spoke with mother, father, D, M, the parents' pastor, staff from the children's school and former nursery school, at least one of the reporters and a family friend. She also reviewed the 2013, police incident report. The information gathered is consistent with the above findings. Both parents clearly expressed that there have been on-going problems in their relationship and they described the events noted above, to some extent, from their own perspective. Father denied being physical with the children or mother. He maintained that mother exaggerates and lies. He expressed his concern that mother was neglectful when the children were younger. Mother maintained that father has been verbally abusive and physically aggressive at times with her and D. D was the most vocal of the children. He clearly stated that he has been exposed to physical discipline by father, verbally abuse by father toward him and mother and physical

aggression by father toward mother. He said he felt safe with his mother, but not with father. School staff confirmed that the children have reported being hit and pinched by father. The parents' pastor/counselor confirmed that their disputes centered around their different parenting styles and that father tended to be rigid. (Exhibit D).

25. On March 21, 2018, the Department made the decision that the allegations of neglect of D and M by father was supported due to father's physical discipline and verbal abuse of D and mother. The Department determined that father failed to provide minimally adequate emotional stability and growth for the children. (Exhibit D, pp. 15-16; Testimony of the Department response worker).
26. Father submitted 6 affidavits from people who have known him and mother for a number of years and presumably know them well purporting to show that there were no problems in the relationship. This is problematic since both mother and father clearly indicated that they have had significant problems. Nevertheless, four of the six were completely unaware that mother and father had any marital problems at all which raises doubts about how well they actually know the parents and whether they have any actual knowledge of the home environment. One of the other two statements from a long time friend of father's noted that mother had told her she was unhappy and father was not a good husband and abusive. She further stated that mother called her later and told her that what she had said was false and counseling had resolved their differences. She provided no indication of when her contacts with mother occurred and, obviously, they had not resolved their differences. The final statement is from the children's former daycare provider who had no personal knowledge of the home environment, however, she stated that her husband, who did some electrical work for mother and father, was uncomfortable in their home because of their continued arguing. Clearly, neither mother nor father have been open and honest about their relationship with any of the affiants and I find their statements of little or no value in deciding this case. (Exhibits 1 through 6).
27. Father submitted what appears to be an e-mail from mother to their pastor from April 2010. In the e-mail, mother references some issues that she would like to work on in counseling and she acknowledges some personal shortcomings and her difficulty in openly and honestly sharing information about herself. Given that the e-mail was written 8 years ago, the lack of context and the fact it was likely written with the expectation it would remain confidential, any conclusions drawn from it about this case would be speculative and, therefore, I find that it has no probative value in this case. (Exhibit 8).
28. Considering all of the evidence, I find that father failed to provide minimally adequate emotional stability and growth for D and M by exposing them to on-going significant conflict between him and mother, verbal abuse, excessive physical discipline and some level of physical aggression toward mother. I find that father's actions contributed to a hostile home environment and that his actions posed a substantial risk to D and M's 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 he challenged decision is a supported report of abuse or neglect, ha he Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected and he actions or inaction by he parent(s)/caregiver(s) placed he child(ren) in danger or posed a substantial risk to the child(ren)’s safety or well-being: or he person was responsible for he 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 found that father failed to provide minimally adequate emotional stability and growth for D and M due to his use of physical discipline and verbal abuse.

Father essentially argues that mother is lying and that D is unable to accurately report events due to his developmental disability. As noted above, I do not credit father's factual argument. Father's contention about D's competence is also contradicted by his own testimony.

Father and mother have both acknowledged that they had a turbulent and conflicted relationship since D was born and that the children were not only exposed to their conflict, but they were also the primary precipitant of their disputes.

The evidence shows that the problems in mother and father's relationship began after D was born due to their very different parenting styles. There was a lot of conflict and arguing between the parents on an on-going basis and there was a lot of anxiety and stress in the home. They attempted to work on their relationship in counseling, however, they were not successful.

Shortly after M was born, there was an escalation of the conflict. There was an incident in January 2013, when father accused mother of neglecting the children and there was some level of physical contact which mother felt was intentional, which father claimed was accidental. The following day, the parents argued via text. Mother told father she was taking the boys out to dinner. When father came home, he insisted she was not leaving and he accused her of kidnapping the children. He apparently stood behind the car to prevent her from leaving and she backed into him knocking him down. Mother was arrested, but the charges were later dismissed.

As D got older, his developmental and behavioral issues became a source of tension and disagreement. The evidence shows that father would lose patience with D's behavior and use physical means to punish him which was upsetting to D and mother. There were occasions when father would hit/slap, spank and pinch the boys when they misbehaved. Both children reported to school staff that father hits and pinches them.

There was an incident in early 2017, when father had been called 3 days in a row about D's behavior. Father asked D about school and D said everything was fine. Father said he was lying and he hit him all over his body while D was rolling around on the floor. Mother was upset and removed M from the area. She thought about calling police, but she was afraid.

In October 2017, father and mother had a loud heated argument when they were cleaning out the garage. The argument escalated to the extent that a neighbor called police. Around that time, mother told father she wanted a divorce, but she took no action at that time.

Both mother and D reported verbal abuse by father. They reported that he swears and calls them bad words. Father has told the children that mother is a bad person and a bad mother. Father blamed mother for D's behavior. Father threatened to kick D out of the family if he does not behave. D was clear in his statement to the response worker that he did not feel safe with father.

On February 5, 2018, the parents argued about who was going to stay home with M. Father insisted that mother stay home and, when she tried to leave to take D to school, father grabbed her and pulled her back into the house. He said it was her job to stay home and he threw her phone and took her car keys.

Shortly after that incident, mother left the home with the children. She filed for divorce and obtained a restraining order. The order was extended for one year after a hearing with both parties present.

D was also clear that he has seen father put his hands on mother in an angry way and that father yells at mother and she gets upset and cries.

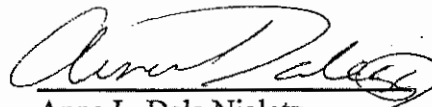
I find that the Department had sufficient evidence to have reasonable cause to believe that the children have been exposed to a highly hostile home environment for essentially all of their lives. D, in particular, has been negatively impacted. M did not verbalize the same experiences as D, however, I find it unlikely that he was oblivious to what was going on around him and it is reasonable to conclude that he was subjected to the same behavior that D was exposed to and therefore, his emotional well-being was also placed at risk.

Considering all of the evidence, I find that father failed to provide minimally adequate emotional stability and growth and other essential care for D and M and that his actions posed a substantial risk to their well-being and, therefore, he neglected them under Department regulations.

Conclusion and Order

The Department's decision to support allegations of neglect of D and M by 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 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 Nialetz,
Administrative Hearing Officer



Sophia Cho, LICSW
Fair Hearing Supervisor

6/29/2018
Date