

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

CG #2018-0520

**FAIR HEARING DECISION**

CG 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 March 22, 2018, the Department received a 51A report alleging neglect of R by her maternal grandmother/legal guardian, CG. The Department screened-in the report for a non-emergency response. On April 2, 2018, the Department made the decision that the allegation of neglect of R by CG was supported. The Department notified CG of its decision and her right to appeal.

CG made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on June 7, 2018, at the DCF Hyde Park Area Office. CG, the Department response worker, the Department response supervisor and the on-going social work supervisor testified at the hearing. CG was represented by an attorney.

The Department submitted the following exhibits.

Exhibit A: 51A report.

Exhibit B: 51B report.

CG submitted the following exhibits.

Exhibit 1: Drug screen results, February 11, 2018.

Exhibit 2: Drug screen results, March 5, 2018.

Exhibit 3: Drug screen results, March 18, 2018.

Exhibit 4: Drug screen results, April 9, 2018.

Exhibit 5: Drug screen results, April 17, 2018.

Exhibit 6: Drug screen results, April 22, 2017.  
Exhibit 7: Letter from CG's therapist, dated May 1, 2018.  
Exhibit 8: Photographs.

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. CG (hereinafter "maternal grandmother") is the maternal grandmother and legal guardian of R (d.o.b. March 3, 2014). (Exhibit A, pp. 1, 2).
2. Maternal grandmother has a history of substance abuse involving drugs and alcohol. (Exhibit B, pp. 4-5).
3. Maternal grandmother has been involved with the Department off and on since 1984, due to concerns of abuse and/or neglect of her own children. She was named as the alleged perpetrator in eighteen (18) 51A reports during that time. The allegations were found to be supported in eight (8) of those cases. The concerns involved substance abuse, medical neglect and difficulties CG was having with her children. (Exhibit A, pp. 4-7; Exhibit B, pp. 1-2).

4. Maternal grandmother has five (5) adult children. Her children have extensive substance abuse and criminal histories including using and selling drugs. (Exhibit A, p. 6).
5. Maternal grandmother's daughter, E, has a history of significant mental health issues. (Exhibit A, p. 2).
6. E gave birth to R on [REDACTED] (Exhibit A, p. 1; Testimony of maternal grandmother).
7. E and R lived with maternal grandmother after R was born. Nine months later, E moved out. She initially took R with her, but brought her back to maternal grandmother a few weeks later and R remained with maternal grandmother. (Testimony of maternal grandmother).
8. In December 2015, the Department received a 51A report alleging neglect of an unknown child by maternal grandmother. The reporter stated that maternal grandmother is a heroin addict and alcoholic. She attends outpatient substance abuse treatment and a recent urine screen tested positive for alcohol and she was intoxicated. The Department "screened-out" the report because the Department's records showed that all of maternal grandmother's children were over 18 years old. Apparently, the Department was unaware that R was living with her. (Exhibit A, pp. 6-7).
9. Maternal grandmother has been seeing a therapist at Mattapan Community Health Center since May 17, 2016, however, she was not engaging and attending consistently. (Exhibit 7).
10. Maternal grandmother has had restraining orders against her sons. Despite the restraining orders, the Department has received reports that she has been allowing her sons into her home and that she has overdosed on heroin. (Exhibit A, p. 6).
11. In March 2017, there was a drug raid conducted at maternal grandmother's home. Maternal grandmother's sons were arrested for selling drugs in the home. (Exhibit A, p. 6; Exhibit B, p. 1).
12. In October 2017, maternal grandmother began engaging with her therapist and consistently attending weekly appointments. (Exhibit 7).
13. In November 2017, maternal grandmother went to court and obtained legal guardianship of R. (Exhibit B, p. 1; Testimony of maternal grandmother).
14. In January 2018, the Department received two (2) 51A reports alleging neglect and physical abuse of R by maternal grandmother due to the drug raid, concerns about her adult children being in the home and selling drugs, substance abuse (heroin, marijuana and alcohol) by maternal grandmother, concerns that she was hitting R and using inappropriate language with R and lack of supervision. The Department

determined that there were substantiated concerns and open a case for maternal grandmother and R. (Exhibit A, pp. 4, 6; Exhibit B, p. 1).

15. Maternal grandmother was drug tested on March 1, 2018. The results came back on March 5, 2018, and showed that maternal grandmother tested positive for alcohol, heroin, opiates and Fentanyl. (Exhibit 2).
16. Maternal grandmother provided another urine sample on March 15, 2018. On March 18, 2018, the results showed that she tested positive for Norfentanyl. (Exhibit 3).
17. On or about March 22, 2018, maternal grandmother was at a doctor's appointment with another one of her grandchildren. She fell asleep standing up leaning on an exam table. The medical staff had difficulty arousing her. The Department received a 51A report alleging neglect of her other grandchild due to her presentation and concerns she was under the influence. (Exhibit A, p. 2).
18. On March 22, 2018, the Department received a 51A report alleging neglect of R by maternal grandmother due to her presentation at the doctor's appointment and concerns about her substance abuse. (Exhibit A, pp. 1-2).
19. The Department screened-in the report for a non-emergency response. (Exhibit A, pp. 7-8).
20. The Department response worker reviewed maternal grandmother's history with the Department and concerns that led to the current open case. (Exhibit B, pp. 1-2).
21. The Department response worker made an unannounced visit to maternal grandmother's home along with the Department on-going social worker. Maternal grandmother acknowledged that she fell asleep at the doctor's appointment. She explained that she had been very busy and she was tired. She denied being under the influence and stated that she has been in treatment and sober for 2 and a half years. She then admitted to alcohol use during the holidays 2017. She then stated that she only smoked marijuana. She was reluctant to discuss her substance abuse history. She ultimately did acknowledge prior alcohol, marijuana and cocaine use. Maternal grandmother did not appear to be under the influence, but the response worker noted an odor of alcohol. Maternal grandmother signed releases and agreed to have a drug screen done the following day. (Exhibit B, pp. 4-5).
22. The Department response worker spoke with R and her cousin who was with maternal grandmother at the doctor's appointment when she fell asleep. Maternal grandmother would not allow them to be interviewed privately. They denied substance abuse by maternal grandmother. R denied physical abuse by maternal grandmother and they reported feeling safe in the home. (Exhibit B, p. 5).
23. The Department response worker obtained maternal grandmother's recent urine screen results and learned of the positive tests for alcohol, heroin, opiates and Fentanyl earlier in the month. (Exhibit B, pp. 5-6).

24. Maternal grandmother did not have a drug screen as agreed during her interview with the response worker. (Exhibit B, p. 7).
25. On March 28, 2018, the Department made the decision to take emergency custody of R and file a care and protection petition. The Department response worker and on-going social worker went to her daycare to pick her up that day. Maternal grandmother and her husband were already there to get R. Maternal grandmother's husband smelled of alcohol and appeared to be under the influence. His eyes were bloodshot, but he was not stumbling. Maternal grandmother also appeared to be under the influence and smelled of alcohol. (Exhibit B, pp. 6-7).
26. While the response worker was driving R back to the Department area office, R reported that maternal grandmother drinks and she does not like who she becomes when she drinks because she hits her. R reported being hit with a belt. (Exhibit B, p. 7).
27. The Department filed a care and protection petition on March 29, 2018. The court gave the Department temporary custody of R. (Exhibit B, p. 7).
28. On April 2, 2018, the Department made the decision that the allegation of neglect of R by maternal grandmother was supported. The Department determined that maternal grandmother failed to provide minimally adequate care for R and placed her at risk due to her substance abuse. (Exhibit B, pp. 8-9).
29. Following the Department's decision, the Department arranged for maternal grandmother to have a supervised visit with R at the Department area office. Maternal grandmother arrived for the visit. She smelled of alcohol and appeared to be intoxicated. Several Department staff members and maternal grandmother's adult daughter agreed that maternal grandmother was impaired and she was asked to leave which she did. (Testimony of Department on-going supervisor).
30. Maternal grandmother and her husband attended the 72 hour hearing and another hearing after the 72 hour hearing. On both occasions, they both appeared to be under the influence. (Testimony of the Department on-going supervisor).
31. During the on-going case, the Department obtained information that maternal grandmother had additional positive drugs screens dating back into 2017. (Testimony of the Department on-going supervisor).
32. Maternal grandmother testified at the hearing. She acknowledged that she had gone out with friends and drank and smoked before she had the positive drug screens in March. She stated that the first March 2018 test was her first and only positive drug screen. She denied taking Fentanyl or opiates. She denied she was caring for R when she was under the influence. She stated that R was staying with her aunt and by the time R returned home, she was sober. (Testimony of maternal grandmother).
33. I find maternal grandmother's credibility highly questionable and I do not credit maternal grandmother's testimony that she only drank and smoked prior to the first

March 2018, positive drug screen. This is inconsistent with her presentation during a doctor's appointment on or about March 22nd, her interview with the Department response worker, at R's daycare center, at two (2) court appearances and at a supervised visit. It also conflicts with the results on two (2) occasions in March 2018, and previous drug screens dating back into 2017. In addition, it was obvious to R that maternal grandmother drank and she became a different person when she did and she would hit her.

34. Considering all of the evidence, I find that maternal grandmother had been abusing substances (legal and illegal) for months while she was a caregiver for R and that she was impaired while in a caregiver role. I find that she failed to provide minimally adequate supervision and care for R and that their actions placed R in danger and posed a substantial risk to her safety and 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 of 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 o he 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” 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 maternal grandmother failed to provide minimally adequate care for R and placed her at risk due to her substance abuse.

Maternal grandmother does not dispute using alcohol and marijuana on one occasion while she was not caring for R. Maternal grandmother denies any other substance abuse.

As noted above, I do not credit maternal grandmother's claim that this was an isolated incident of substance use.

Maternal grandmother essentially argues that there is no evidence that she neglected any aspect of essential care for R. She contends that she has always had R in her care and she was thriving. R's daycare had no concerns. She was up to date medically. Maternal grandmother is in treatment. She has been cooperative with the Department. There were no safety issues observed in the home. In addition, she objects to the hearing officer considering the testimony of the Department supervisor since it relates to events following the Department's decision and, therefore not relevant to the Department's decision and because there is no proof (i.e., drug and alcohol screens) that maternal grandmother was under the influence at the supervised visit or court appearances.

First, with regard to the Department supervisor's testimony regarding subsequent events, the Department's regulations clearly allow the hearing officer to consider not only information available during the investigation, but also new information subsequently discovered or provided that would either support or detract from the Department's decision. 110 CMR 10.21(6).

Absent some reason to question the judgment of Department staff member(s), I find it reasonable for the Department to form an opinion about someone's sobriety (or lack thereof) based upon Department staff observations of an individual's presentation and appearance without the aid of laboratory testing.

The evidence shows that maternal grandmother has a long history of substance abuse. Although she has been in treatment since at least 2015, she was not consistently engaging in treatment until October 2017, shortly before she sought legal guardianship of R. There was also a drug raid in her home in 2017, and her sons were arrested for selling drugs.

The evidence shows that she has had positive drugs screens back into 2017 and up until recently. The recent screens showed positive results for alcohol, heroin, opiates and Fentanyl.

Maternal grandmother's presentation and appearance on numerous occasions including while caring for R, indicated that she was under the influence and impaired. She fell asleep standing up during a doctor's visit with R's cousin and she was difficult to arouse. She and her husband appeared under the influence and smelled of alcohol at the response worker's visit. She and her husband appeared under the influence and smelled of alcohol when they were at the daycare to pick up R. She arrived at a supervised visit appearing under the influence. She appeared twice in court appearing under the influence. R also reported that maternal grandmother drinks and she does not like who she becomes when she drinks because she hits her.

I find that maternal grandmother has abused substances and been impaired by substances while in a caregiver role for R. Considering all of the evidence, I find that there is reasonable cause to believe that maternal grandmother failed to provide minimally adequate supervision and other essential care for R due to her substance abuse and, therefore, she neglected her under Department regulations. I also find that her actions placed R in danger and posed a substantial risk to R's safety and well-being, particularly given her young age and complete dependence upon maternal grandmother to meet her needs.

### Conclusion and Order

The Department's decision to support allegations of neglect of R by maternal grandmother 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 her 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

Date

6/22/2018