

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
BOSTON, MASSACHUSETTS 02111**

LINDA S. SPEARS
COMMISSIONER

VOICE: (617) 748-2030
FAX: (617) 748-2062

IN THE MATTER OF)

MD)

FH # 2019-0579)

FAIR HEARING DECISION

The Appellant in this Fair Hearing was MD (hereinafter “MD” or “Appellant”). The Appellant appealed the Department of Children and Families’ (hereinafter “DCF” or “the Department”) decision to support the allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On February 24, 2019, the Department received a 51A report alleging physical abuse of E (hereinafter “E” or “the child”) by the Appellant who is her biological mother. On March 5, 2019, the Department received a second 51A report alleging physical abuse of E by the Appellant. On March 7, 2019, the Department received a third 51A report alleging neglect of E by her biological father, MT (hereinafter “MT”).

The Department conducted a non-emergency response and, on March 13, 2019, made the decision to support the allegation of neglect by the Appellant, while the allegation of physical abuse was unsupported. The allegation of neglect by MT was also unsupported. The Department notified the Appellant of its decision and her right to appeal.

The Appellant(s) made a timely request for a Fair Hearing under 110 CMR 10.06. With the Appellant’s agreement, on October 16, 2019 a paper review Order was issued by the Department in regards to the submission of documentation by both the Appellant and the North Central Area Office. The record closed on November 13, 2019.

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

The following documentary evidence was entered into the record:

For the Department:

- Exhibit A: 51A Intake Report, dated 02/24/2019
- Exhibit B: 51A Intake Report, dated 03/05/2019
- Exhibit C: 51A Intake Report, dated 03/07/2019
- Exhibit D: Child Abuse/Neglect Non-Emergency Response

For the Appellant:

None

The Hearing Officer need not strictly follow the rules of evidence....Only evidence which is relevant and material may be admitted and form the basis of the decision. 110 CMR 10.21

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. 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 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 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The child of this Fair Hearing was E; at the time of the 51A reports E was nine (9) years old. (Exhibit A, p.1, 3; Exhibit B, p.1, 3; Exhibit C, p.1, 3)
2. The Appellant is the child's biological mother; when the 51A report was filed E was living with her father, MT, who had custody of the child since August 2018, while the Appellant had scheduled parenting time with E (Exhibit D, p.1). The Appellant is deemed a caregiver pursuant to regulations and policy. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16).
3. The Appellant has two other children, D and El, with whom she had parenting time every

other Friday from 7:30 pm until Sunday at 7:30 pm and every other Tuesday from 3:30 pm until Thursday at 3:30 pm. (Exhibit D, p.11)

4. On February 24, 2019, the Department received a report from a mandated reporter, pursuant to M.G. L. c. 119, §51A, alleging physical abuse of E by her mother, MD. According to the report during her scheduled visit at the Appellant's house, E got into an argument with her younger brother. Her mother blamed E for the argument and struck her on the arm, leaving a red mark. (Exhibit A, p.3)
5. On March 5, 2019, the Department received a second report from a mandated reporter, pursuant to M.G. L. c. 119, §51A, alleging neglect of E by her mother, MD. According to the report, during her scheduled visit at the Appellant's house on February 24, 2019, MD hit E with an open palm on her upper arm, leaving a mark. E stated that she was afraid to stay in her mother's house for the rest of the weekend visit. (Exhibit B, p.3)
6. On March 7, 2019, the Department received a third report from a mandated reporter, pursuant to M.G. L. c. 119, §51A, alleging neglect of E by her father, MT. According to the report, on February 24, 2019, while exchanging the child, the father hit MD with the car's door, while screaming and yelling at the mother. According to the report, the child witnessed the incident. (Exhibit C, p.3)
7. During the weekend between February 22, 2019 and February 24, 2019, during a visit at the Appellant's house, E and her younger brother hit each other during an argument. The Appellant became upset with E and hit her once with the hand on her left arm. E took photos of the red mark on her arm. (Exhibit D, p.4, 8, 11)
8. At the custody exchange meeting in the parking lot of the police station, E showed the pictures of the red mark on her arm to her father who confronted the Appellant regarding the incident. According to MT, the Appellant told MT that E hit her first. (Exhibit D, p.4, 8)
9. Following the incident, E told the police officers about the incident and showed them the red mark on her upper left arm. (Exhibit D, p.8)
10. E stated that her mother hit her every time during her scheduled visits, which sometimes caused bruises, and that she had been pulled by her hair and pushed into walls. (Exhibit D, p.4)
11. E stated that while sitting in the police lobby she was fighting her sister about doing math and admitted to slamming the chair. She also stated that during another visit at her mother's house she threw pillows at her mother because she was upset. (Exhibit D, p.4)
12. D stated that E was mean to him during the visits at his mother's house and hit him on his belly. (Exhibit D, p.11)
13. The Appellant denied ever hitting E and stated that E was aggressive and physically abusive with her and her siblings. During the interview with the Department investigator, the

Appellant was not able to identify any methods to successfully manage her daughter's behaviors. (Exhibit D, p.6, 7)

14. The Appellant worked with a parent aid in the past and agreed to accept new parenting support and education for better addressing E's behaviors. (Exhibit D, p.2, 10)
15. E was medically up to date and the medical provider had no concerns. (Exhibit D, p.9)
16. The Appellant's therapist had no concerns. (Exhibit D, p.10)
17. At the conclusion of its non-emergency response, on March 13, 2019, the Department unsupported the allegation of neglect by MT and physical abuse by MD while supporting the allegation of neglect by MD due to the Appellant's inability to provide adequate supervision and discipline. (Exhibit D, p.14)
18. After review and consideration of all of the evidence, I find that the Department did not have sufficient evidence to have reasonable cause to believe that the Appellant neglected E or that the Appellant's actions placed E in danger or posed substantial risk to E's safety or well-being for the following reasons:
 - a. According to E's siblings, while at the Appellant's house, E was usually having arguments with the Appellant and the siblings for different reasons.
 - b. The Appellant worked with a parent aide in the past, but she appeared incapable of managing E's behavior. In fact, all three kids described the constant arguments among them while spending time at the Appellant's house.
 - c. The Appellant made sure that her children's basic needs of shelter, food and medical care were met.
 - d. Actions or inactions by the Appellant did not place E in danger or pose substantial risk to E's safety or well-being;
 - e. While the Appellant disciplined her children inappropriately, per DCF Protective Intake Policy #86-015, rev. 2/28/16, her action constituted substantiated concern for neglect.
19. The Department's decision to support the allegation of neglect of E by the Appellant was not made in conformity with its policies and procedures. (110 CMR 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16)

Applicable Standards

"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

"[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

"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 CMR 4.32(2) 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's and supervisor's clinical base of knowledge. 110 CMR 4.32(2)

"Substantial Risk of Injury" is defined as: "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." DCF Protective Intake Policy #86-015, rev. 2/28/16

"Neglect" is the 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

A finding of support requires that there be: 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. 2/28/2016)

"Danger" is defined as a condition in which a caregiver's actions or behaviors have resulted in harm to a child or may result in harm to a child in the immediate future. DCF Protective Intake Policy #86-015, rev. 2/28/16

"Risk" is defined as the potential for future harm to a child. DCF Protective Intake Police, (rev. 2/28/2016)

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

Analysis

It is undisputed that the Appellant is a caregiver for E. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

Although the Appellant denied hitting E on her arm, the evidence presented (statements from E, D, El, MT and the police report) showed that E, while she was in her mother's house with her siblings, was hit by the Appellant, leaving a red mark on her left arm.

The factual situation as presented in the 51B report showed the Appellant struggling with E's behavior. According to her siblings, while at her mother's house, E was usually having arguments with the Appellant and the siblings for different reasons. E described her conflicts with her little brother, throwing pillows and yelling at her mother, as well as fighting her sister and slamming chairs inside the police station. Although the Appellant had worked with a parent aide in the past, she appeared incapable of managing E's behavior. In fact, all three kids described the constant arguments among them while spending time at their mother's house. At the same time, the Appellant made sure that her children's basic needs of shelter, food and medical care were met.

After review and consideration of all of the evidence, I find that the Department did not have sufficient evidence to have reasonable cause to believe that the Appellant neglected E. In this case, E has a history of struggling behaviorally at the Appellant's home. The Appellant also struggled to manage E's behaviors and had tried multiple methods in managing E without success. While the Appellant hit E's arm and left a red mark, the Department did not collect facts to demonstrate how this impacted E such that she was in danger or that there was a substantial risk to her safety or well-being. Therefore, the Department's decision to support the allegation of neglect of E by the Appellant was not made in conformity with its policies and procedures.

Conclusion and Order

The Department's decision to support the allegation of neglect of E by MD was not made in conformity with Department regulations and/or policies; therefore, the Department's decision is **REVERSED**.

Date

8/25/20
Date

Date

Sophia Cho/smc
Sophia Cho, LICSW
Fair Hearing Supervisor

Cristina Tedstone/smc
Cristina Tedstone, Esq
Director, Fair Hearing Unit

Linda S. Spears
Commissioner