

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 5th Floor
BOSTON, MASSACHUSETTS 02111**

LINDA S. SPEARS
Commissioner

Voice: 617-748-2030
FAX: 617-261-2062

()
(IN THE MATTER OF)
(C.B.)
(FH #2019-0583)
()

HEARING DECISION

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

Procedural History

On March 14, 2019, the Department received a 51A Report from a reporter alleging neglect of the child by her mother and the Appellant, the mother’s boyfriend at the relevant time. The reported allegations concerned a verbal argument between the two, which resulted in the Appellant striking mother in the head with a phone, which resulted in injury and first responders to the home. The child was in the home at the time. The report was screened in as an emergency response and assigned to response social worker L.G. On March 21, 2019, following the 51B response, the Department supported the allegations against the Appellant and unsupported on mother. The case was incorporated into the family’s on-going involvement with the Department.

The Department notified the Appellant of the decision and his appeal rights by letter dated March 25, 2019. The Appellant filed a request for Fair Hearing [“Hearing”] on April 25, 2019, pursuant to 110 CMR 10.06. The Appellant’s request for Hearing was granted and held on August 6, 2019 at the Department’s South Central Area Office in Whitinsville, MA. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a CD. The Hearing record was closed on September 13, 2019 without submission by the Appellant.¹

The following persons appeared, were sworn in under oath, and testified at the Hearing:²

E.K.	DCF Response Supervisor
L.G.	DCF Response Social Worker
C.B.	Appellant
M.B.	Appellant’s Witness/Mother of Child.

¹ The Appellant was provided with an opportunity to send the results of his criminal bench trial of August 8, 2019; however, he did not. [Administrative Hearing Record]

² Mother provided minimal testimony. [Administrative Hearing Record]

The following documentary evidence was entered into the record:

For the Department:

Exhibit A: DCF 51A Report of March 14, 2019.
Exhibit B: DCF 51B Response Supported on March 21, 2019.
Exhibit C: Police Department Call Log, Arrest Report, and Narrative

For the Appellant:

None.

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.

Issues 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 [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. W.H. [hereinafter mother] and M.C. [hereinafter father] are the mother and father, respectively, of a two-year-old son named C. The child lives with mother and has visitation with his father. [Exhibit A; Exhibit B, pp.1 & 3; Testimony of the Appellant]
2. At the relevant time, the Appellant was twenty and mother was twenty-one. [Exhibit A; Exhibit B, p.1]

3. The Appellant has a childhood history with the Department, but no adult history prior to the matter under review. [Exhibit A; Testimony of the Appellant]
4. Mother and the Appellant, and their respective families have known each other for years. The Appellant dated mother in middle school, then again when the child was eight months-old, and for about a month or so leading up to the incident of March 14, 2019, which is under review. At the relevant time, the Appellant was living with his own mother, but would sleep over the home of the child's mother here and there, had keys to her apartment, and was present in the home when the incident occurred on March 14, 2019. Since the incident occurred, mother resumed her relationship with her former fiancé, C; blocked the Appellant on her social media and phone; and, obtained a restraining order in effect until March 27, 2019. Exhibit B, pp.4-5; Exhibit C, p.4; Testimony of the Appellant; Testimony of the Response Social Worker]
5. Although the Appellant argued he was not the caregiver of the child, he also testified that he would get the child his bottle of milk and his toys, but not change his diaper, pick him up, and discipline him. [Testimony of the Appellant]
6. Pursuant to the Department's Protective Intake Policy and 110 CMR 2.00 and contrary to the Appellant's argument, the Hearing Officer finds that the Appellant was a caregiver/caretaker of the child, as those terms are defined within the Department's policy and regulation.
7. Mother lied to the child's father and to EMS personnel, the latter of whom responded to her residence on March 14, 2019 for a head laceration. She told them she hit her head after falling and lied because she was afraid the child would be taken away from her and did not want to deal with it as the child was in the home. [Exhibit C, p.1; Exhibit B, pp. 3 & 5] However, mother related the incident differently when on March 14, 2019 she used face time with the reporter, who filed the 51A Report of March 14, 2019; went to the police station to report the incident; and, then spoke with the response social worker. [Exhibit A, p.3; Exhibit C; Exhibit B, pp.4-5]
8. Mother credibly reported that she and the Appellant argued, because she was supposed to refill a prescription for an antibiotic for her strep throat but failed to do so. The Appellant was upset about this and started calling her names. Mother told the Appellant that she "didn't want to do this" and that she "didn't want to argue," and asked him to leave so it would not escalate. When he did not, mother told him she was going to call his mother, as in the past his own mother would often calm him down, when he was upset or argued with anyone. When she got her phone out and went to make the call, the Appellant took the phone out of her hands and either stepped backward or returned to the room and then threw the phone toward her from about five to six feet away, towards the couch area, and hit her on the head. Mother was sitting on the floor against the couch when hit with the phone. As soon as she was hit, mother noticed blood coming from her head. The Appellant immediately called 911. After he left the home that morning, he called and apologized to her over and over saying that he did not mean to hurt her. [Exhibit A, p.3; Exhibit B, pp.4-5; Exhibit C]

9. Mother bled quite a lot, as observed by the reporter and the response social worker:
 - (a) Via face time, the reporter of the 51A Report of March 14, 2019, observed mother holding a bloody face cloth to her face; saw blood on her face, shirt, and shorts; and, saw a pile of paper towels on the counter saturated with blood, which mother showed her. [Exhibit A, p.3]
 - (b) The response social worker visited mother's home on March 14, 2019 and saw the bloody paper towels and a scab on mother's head where she was hit. [Exhibit B, pp.4-5 Testimony of the Response Social Worker]
10. The Appellant did not dispute that the incident of March 14, 2019 occurred as explained by mother to the reporter, to the police at the station, and to the response social worker. He said he did not intend to hit mother in the head with the phone. He meant to throw it at the couch mother was sitting against. He over-reacted. He is a cancer survivor so anything concerning medical care for people he loves hits him hard and he was sensitive to the fact that mother had strep and for two days had not filled her prescription and, in addition, the child was beginning to look ill. [Testimony of the Appellant]
11. The Appellant was arrested on a charge of assault and battery and at the time of his Hearing of August 6, 2019 was facing a bench trial scheduled for August 8, 2019. [Testimony of the Response Social Worker; Testimony of the Appellant] Mother of the child did not want to press charges against the Appellant; the police did. [Testimony of the Supervisor] The Hearing record remained open to afford the Appellant an opportunity to submit the court docket of the outcome of his trial; however, he did not. [Administrative Hearing Record]
12. Although mother told the police that she and the Appellant had only argued and never had physical altercations in the past [Exhibit C], the reporter said this was not the first time mother had told her the Appellant assaulted her, but this is the first time she saw proof it happened. [Exhibit A]
13. The incident occurred on March 14, 2019 at mother's home in the living room, while the child was in mother's bedroom and did not witness it. However, the child was present when the police responded to the home. [Exhibit B; Exhibit C; Testimony of the Response Social Worker]
14. The Appellant did not dispute that the child was in the home when the incident occurred. He agreed that the child was in mother's bedroom when it happened. [Testimony of the Response Social Worker; Testimony of the Appellant]
15. The child had minimal language skills so the response social could only view him. [Testimony of the Response Social Worker]
16. Mother reported that recently, the child has been coming back from his father saying, "chad bad, not chad", i.e., the Appellant. [Exhibit B, p.5]

17. On March 21, 2019, following the 51B response, the Department supported for neglect of the two year-old child by the Appellant, mother's then boyfriend, as on March 14, 2019 mother and the Appellant argued, which resulted in the Appellant throwing a phone in her direction and striking her on the head causing a laceration that needed medical attention. Although the child did not witness the altercation, he was in the home when it happened, present when the first responders arrived at the home, and returned from visiting his father saying that the Appellant was bad. The Department remained involved as the case was already open. Exhibit B; Testimony of the Response Social Worker]
18. The Hearing Officer finds the evidence in the record sufficiently reliable to demonstrate that the Appellant and mother argued, which resulted in the Appellant throwing a phone in mother's direction with enough force to lacerate her head and cause profuse bleeding. The child was in the bedroom when this occurred, but present when the first responders arrived at the home. Subsequently the child returned from visits with his father indicating that the Appellant was bad. The Department, in supporting for neglect of the two year-old child by the Appellant, mother's boyfriend on March 14, 2019 and pursuant to 110 CMR 2.00 & 4.32, had *reasonable cause to believe* that the Appellant failed to provide the child with minimally adequate emotional stability and growth and other essential care such as a safe, stable home environment, and therefore his actions constituted neglect. See Care and Protection of Robert (1990) as it applies to the reasonable cause standard.

Applicable Standards

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]

"[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

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 Supreme Judicial Court concluded that the Department's determination of neglect does not require evidence of actual injury to the child. A caretaker's actions that fail adequately to protect a child's well-being can constitute neglect. Lindsay v. Department of Social Services, 439 Mass. 789 (2003).

Our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well being of children and constitutes a “distinctly grievous kind of harm.” Custody of Vaughn, 422 Mass. 590,599, 664 N.E. 2nd 434 (1996), cited in John D. v. Department of Social Services, 51Mass. App. 125 ((2001), Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a child has been injured, either physically or emotionally by the domestic violence, the state need not wait until a child has actually been injured before it intervenes to protect a child. Custody of a Minor, 377 Mass. 879, 389 N.E.2d 68, 73 (1979).

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, Revised 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, Revised 2/28/16]

Safety: A condition in which caregiver actions or behavior protect a child from harm. [Protective Intake Policy: #86-015, Revised 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. [110 CMR 10.23]

Analysis

Pursuant to 110 CMR 10.06, a party contesting the Department’s decision, to support a 51A Report for neglect, may obtain a Hearing to review the decision made by the Area Office. The Appellant requested a Hearing, which was granted and held on August 6, 2019.

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Department in the matter under review. See Findings #1 to #18 and the following discussion.

There is no dispute that a verbal and physical altercation occurred between the Appellant and mother at mother’s home on March 14, 2019, which involved the police, resulted in a charge of assault and battery brought against the Appellant, and caused mother to obtain a restraining order against the Appellant in effect at least until March 27, 2019. Although the Appellant may not have intended to hit mother, he did hit her and used sufficient force in throwing the phone in her direction such that she received a laceration to her head, which bled profusely and required medical attention.

There is no dispute that the two-year-old child, C, did not witness the incident as he was in mother’s bedroom when it occurred. However, a reasonable person could conclude that the child heard the argument, the commotion following his mother’s injury. The child was present when the first responders arrived at mother’s home on March 14, 2019 and subsequently returned to mother care from visitation with father saying that the Appellant is bad. Even if there was no indication or evidence that a child was injured, either physically or emotionally by the ... violence, the state need not wait until a child has actually been injured before it intervenes to protect a child.

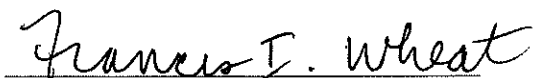
See Custody of a Minor (1979). In addition, a caretaker's actions that fail adequately to protect a child's well-being can constitute neglect. See Lindsay v. Department of Social Services (2003).

The Hearing Officer has no reason to doubt the clinical experience and judgment of the Department as it concerns the neglect of two-year-old child, C, by the Appellant, his mother's boyfriend during the incident. The Appellant, to his credit, did not dispute [Finding # 10] that the incident occurred as reported by mother in Finding #8. Nor did he dispute that the child was in the home. See Finding #14. The Hearing Officer did not find any information offered by the Appellant to be substantial or compelling to such an extent that the Department acted unreasonably and/or abused its discretion in making a decision to support for neglect of the child by the Appellant. Although the Appellant argued that he was not a caregiver of the child, the Hearing Officer was not persuaded – See Findings #5 & #6. Based on a review of the evidence presented at the Hearing, including testimony from the parties and documents submitted, and when weighing the Appellant's evidence against the Department's, the Hearing Officer finds that the Department's decision, to support for neglect of the child by the Appellant complied with its regulations and policies, was supported by sound clinical judgment, and there was a reasonable basis for the decision. Pursuant to 10.23, the Appellant did not meet his burden of proof in this appeal.

Conclusion and Order

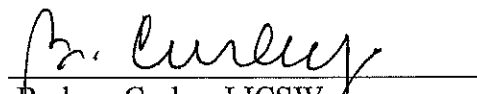
The Department's decision of March 21, 2019, to support the 51A Report for neglect of child C by the Appellant, his mother's boyfriend, was made in conformity with the Department's regulations and policies and therefore **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal his decision, he may do so by filing a complaint in the Superior Court for the county in which he lives within thirty (30) days of the receipt of this decision. [(M.G.L. c. 30A, §14)] In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Frances I. Wheat *bc*
Administrative Hearing Officer

July 21, 2020



Barbara Curley, LICSW
Supervisor, Fair Hearing Unit