

**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) 748-2062

IN THE MATTER OF)
)
MB)
)
FH #2019-0610)

FAIR HEARING DECISION

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

Procedural History

On March 18, 2019, the Department received a 51A report from a reporter alleging neglect of I (hereinafter “I” of the “child”) by the Appellant. The Department screened-in the report for a non-emergency response. On September 20, 2019, the Department received a second 51A report from a reporter alleging neglect of I by the Appellant and the paternal grandparents (hereinafter “KB” and “JB”). On April 8, 2019, the Department made the decision to support the allegation of neglect on I by the Appellant and KB and JB.

The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on August 1, 2019, at the Department of Children and Families’ South Central Area Office. All witnesses were sworn in to testify under oath.

The record remained open to afford the Appellant and the Department the opportunity to submit additional information for consideration in the decision making by the Hearing Officer. The record was closed on August 15, 2019.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
MB	Appellant
JR	Department Response Social Worker
MI	Department Supervisor

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

The following evidence was entered into the record:

For the Department:

Exhibit A: 51A Report of March 18, 2019

Exhibit B: 51A Report of March 20, 2019

Exhibit C: 51B Report Completed on April 8, 2019 by Response Worker

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 I. I was fifteen (15) years old. (Exhibit A, p. 1; Exhibit B, p. 1; Exhibit C, p. 1; Testimony of Appellant).
- 2) The Appellant is MB. MB was I's biological father. Therefore, the Appellant is deemed a caregiver pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16. (Exhibit A, p. 3; Exhibit B, p. 3; Exhibit C, p. 2; Testimony of Appellant).
- 3) On March 18, 2020, the Department received a report, pursuant to M.G.L. c. §51A, from a reporter alleging neglect of I by the Appellant. The Reporter checked in with I. I reported that the Appellant had multiple DUI's and was incarcerated due to his driving under the influence. The Appellant had full custody of I. I would spend time with her grandparents KB and JB who only speak Polish. KB had blamed I for the stress in the Appellant's life. I had

not seen her biological mother (hereinafter "MiB") for a while. I wanted to be with MiB. (Exhibit A, p. 3; Testimony of Department).

- 4) On March 20, 2019, the Department received a second report, pursuant to M.G.L. c. §51A, from a reporter alleging neglect of I by the Appellant and KB and JB. Although the Appellant had custody of I, the Appellant would allow I to stay at MiB's home with MiB's fiancé, DR (hereinafter "DR"). I also reported that when I was at her grandparent's home, JB was intoxicated and KB talked about wanting to kill herself. I did not feel safe at KB and JB's home. (Exhibit B, p. 3; Testimony of Department).
- 5) The two (2) reports were screened-in for a non-emergency response and assigned to a Response Worker (hereinafter "RW"). (Exhibit A, p. 6; Exhibit B, p. 7).
- 6) On March 20, 2019, RW spoke with the Appellant. The Appellant had full custody of I and felt that MiB was trying to get back at him. (Exhibit C, p. 2; Testimony of Appellant).
- 7) On March 20, 2019, RW made a phone call to the MiB. MiB had been in the hospital for a couple weeks recovering from a liver transplant surgery. I had been staying with DR throughout the time MiB had been at the hospital. (Exhibit C, p. 3).
- 8) On March 22, 2019, RW met with I at school. I reported that it had been five (5) to six (6) weeks since she saw the Appellant. When I was last with the Appellant, she spent most of her time with KB and JB. KB blamed I for all the family turmoil. KB felt depressed about the family issues and started that she wanted to kill herself. JB had been an alcoholic for years. When JB would get drunk he would be angry. I would spend time at KB and JB's house because the Appellant was busy at work or school. JB and KB made I feel uncomfortable. (Exhibit C, pp. 3-4; Testimony of Department).
- 9) On March 22, 2019, RW met with the reporter. I was very open with him regarding her concerns for the Appellant and KB and JB. I was referred to speak with someone else about her issues at home. (Exhibit C, p. 4; Testimony of Department).
- 10) On April 4, 2019, RW met with MiB and DR. The Appellant had gone to jail on March 10, 2017 for his fourth DUI. I had been living with the Appellant for a year. MiB always let I make up her own mind on who she wanted to live with. The Appellant got out of jail in April 2018, and then MiB was diagnosed with cirrhosis of the liver in November 2018. I decided that she wanted to live with the Appellant. I had been staying with KB and JB originally when MiB was in the Hospital because of the Court Order. For a while, I was not making complaints about the Appellant or JB and KB's home. I eventually started talking about JB's drinking and KB making suicidal statements. (Exhibit C, p. 5; Testimony of Appellant).
- 11) On April 8, 2019, RW met with the Appellant at his home. When I was first born, MiB and the Appellant dropped I off at KB and JB's home when I was six (6) months old. KB and JB have taken care of I all of her life. I would spend almost all her time at the Appellant's house. The Appellant never spoke about MiB in front of I. (Exhibit C, pp. 6-7; Testimony of Appellant).

- 12) On April 8, 2019, RW received a fax from I's Pediatrician. I was last seen for her physical and was up to date on all her immunizations. (Exhibit C, p. 8).
- 13) On April 11, 2019, RW called and spoke with KB through a Polish interpreter. A home visit was scheduled for April 12, 2019. RW received a call from the Interpreter Services. They did not have any Polish interpreters that could meet with the RW and KB and JB the following day. (Exhibit C, pp. 10-11; Testimony of Department).
- 14) On April 16, 2019, RW spoke with a Police Dispatcher. The Police responded to KB and JB's home on March 18, 2019, after I told a Police Officer that KB said she was going to kill herself. The Police went to the home and made contact, finding no concerns. (Exhibit C, p. 12).
- 15) On April 8, 2019, the Department supported the allegation of neglect on behalf of I by the Appellant on the following:
 - a) I had been left with KB and JB while the Appellant went to school and worked. I reported that while she was under the care of JB and KB, JB was always drunk and KB had made suicidal statements;
 - b) Alcoholism ran in the family, and the Appellant had been arrested for multiple OUI's; and
 - c) I did not feel safe at KB and JB's home because it was a toxic environment.
- 16) In light of the totality of the evidence in this case, I find that the Department did not have reasonable cause to believe that the Appellant's behavior constituted a failure to provide I with minimally adequate emotional stability and growth. There were insufficient facts collected to conclude that that the Appellant's actions placed the child in danger or posed significant risk to her safety or well-being. (110 CMR 2.00; 4.23; DCF Protective Intake Policy #86-015, rev. 2/28/16).

Applicable Standards

"[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)

“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. 110 CMR 2.00; DCF “Domestic Violence” is a pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts. DCF Protective Intake Policy #86-015, rev. 2/28/2016.

Protective Intake Policy #86-015, rev. 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 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; 110 CMR 2.00

“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. 2/28/2016

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Policy z386-015, rev. 2/28/2016

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

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 was a caregiver to I. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Department determined the Appellant neglected I, basing its decision on information obtained during the response. The Department determined that the Appellant's actions posed substantial risk to I's emotional stability and growth and warranted additional assessment. The Department did not have sufficient evidence in this instance to support its decision.

The report in question was concerning and warranted the Department's intervention. It was undisputed that the Appellant had an issue with alcohol in his past and had a past criminal record due to his drinking. Findings during the Response were not of neglect, as it appeared that the Appellant no longer drank and I had not seen the Appellant drink in over a year.

This Hearing Officer obliged to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that the Appellant neglected the children. 110 CMR 10.23; M.G.L. c. 30A § 1(6)

The Hearing Officer does not question the Department's clinical expertise or set aside the Department's concern that I's emotional well-being could have been affected while she was at KB and JB's home. Throughout the investigation, the RW could not make contact with KB and JB. The RW did get in touch with the Police and they arrived at KB and JB's home regarding KB's statements. Once the Police arrived at the home, they did not have any concerns regarding KB's suicidal statement. The question before this Hearing Officer is whether there was evidence neglect had occurred as a result of the reports.

Despite the Department's concern for I's safety and emotional well-being, no evidence was presented to suggest that the Appellant failed to provide minimally adequate care for I; nor was any evidence presented to suggest that I was in any danger as a result of the reported incident or was at risk as a result of the Appellant's actions.

Considering the totality of the evidence, this Hearing Officer has determined the Department's decision that the Appellant neglected M was not based on reasonable cause or supported by substantial evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App. Ct. 739, 843 N.E.2d 691 (2006). Additionally, there was no evidence that the Appellant's actions or inactions placed I in danger or posed a substantial risk to I's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

The Department's decision to support allegation of neglect of I by the Appellant was made without a reasonable basis and therefore, the Department's decision is **REVERSED.**

Nicholas Holahan /smc
Nicholas Holahan
Administrative Hearing Officer

8/24/20
Date

Sophia Cho /smc
Sophia Cho
Fair Hearing Supervisor

Date

Linda Spears
Commissioner