

**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)
(R.B. & N.B.)
(FH #2019-0790)
()

HEARING DECISION

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

Procedural History

On May 19, 2019, the Department received a 51A Report through the hotline from a reporter alleging neglect of C by the Appellants, his parents. C was involved in a very bad dirt bike race accident this day resulting in injury and the Appellants delayed his treatment when deciding to drive four and ½ hours from the site of the accident to a hospital closer to their home, after going home. The report was screened in as an emergency 51B response and assigned to emergency response social workers M.I. and P.G. On May 20, 2019, following a 51B response and clinical case conferencing, the Department supported for medical neglect of the youth by the Appellants. This decision was approved by management on May 26 2019 and May 28, 2019. The Department remained involved with the family to conduct an assessment [FAAP], after which a decision was made to close the family’s DCF case.

The Department notified the Appellants of the decision and their appeal rights by letter dated June 3, 2019. The Appellants filed a timely request for Fair Hearing [“Hearing”] by way of their attorney’s fax dated June 14, 2019, pursuant to 110 CMR 10.0 & 10.08. The Appellants’ request for Hearing was granted and held on October 15, 2019 at the Department’s South Central Area Office in Whitinsville, MA.¹ The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a CD. The Hearing record was closed on October 15, 2019, at adjournment.

¹ A Hearing was originally scheduled for August 27, 2019, but continued at the request of the Appellants’ attorney. [Administrative Hearing Record]

The following persons appeared at the Hearing:²

J.R.	DCF Response Supervisor
V.L.	DCF Intake Supervisor
M.I.	DCF Emergency Response Social Worker
P.G.	DCF Emergency Response Social Worker
J. I.	Appellants' Attorney
R.B.	Appellant/Father
N.B.	Appellant/Mother
C.	Appellants' Witness/Reported Child
E.	Appellants' Witness/Non-Reported Child ³

The following documentary evidence was entered into the record:

For the Department:

Exhibit A:	DCF 51A Report of May 19, 2019.
Exhibit B:	DCF 51B Response Supported on May 20, 2019.
Exhibit C:	Emergency Squad Pre-Hospital Report of May 19, 2019 with FAX Cover Sheet.

For the Appellants:

Exhibit 1:	Photographs of C with Sister E at Dirt Bike Race and C's Helmet.
Exhibit 2 a-x:	Appellants' Character Reference Letters [21] and Emails [2]. ⁴
Exhibit 3:	C and E's Health Records. ⁵
Exhibit 4:	C and E's Report Cards ⁶
Exhibit 5:	DCF Case Dictation Report Contacts of June 7 and 11, 2019.
Exhibit 6:	Letter of A.A. dated September 17, 2019.
Exhibit 7:	Trees.

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.

² All were sworn in and testified, except the DCF Response Supervisor and the DCF Intake Supervisor. Following the direct testimony of emergency response social worker MI, the Appellants testified with no objections from the Department. [Administrative Hearing Record]

³ E read her statement off her cell phone at the Appellants' Hearing. [Administrative Hearing Record]

⁴ Four documents contain witness accounts to varying degrees.

⁵ The Hearing Officer finds no relevance as it pertains to C's sister, E.

⁶ The Hearing Officer finds no relevance to the matter under review; notably C's sister, E.

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 Appellants. 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 Appellants. [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. Appellants R.B. and his wife, N.B, are the father and mother, respectively, of sixteen year-old C, who is the reported child of the 51A Report of May 19, 2019, and fifteen year-old E, who is the non-reported child. They live in a single family home. [Exhibit A; Exhibit B, p.1; Exhibit 2; Testimony of the Appellants]
2. The Appellants are *caregivers* of the children, as that term is defined within the Department's Protective Intake Policy.
3. The Appellants have no documented DCF history, other than the matter under review. [Exhibit A, p.4; Exhibit B, p.1; Testimony of Emergency Response Social Worker P.G.]
4. The Appellants have been members of a dirt bike club since 1993. The whole family goes to the club's monthly meetings, scheduled trail clearings, and club race events. The whole family has spent various weekends camping with other like families at race events. Both C and E, participated in races against other racers in an event in Galway, New York on May 19, 2019. On this particular occasion, C participated in an event where the dirt bike racing is through the woods. C's race started at 1:30 p.m. Two minutes into the race, the throttle of the C's dirt bike was stuck open and he lost control and hit a tree and was injured. At the relevant time, C was in the 250A competitive race class, a top rider, and a six time champion in New England, and at the present time is trying to go professional. [Exhibit 1; Exhibit 2; Exhibit 6; Exhibit 7; Exhibit B, p.2; Exhibit C; Testimony of Appellants; Testimony of Reported Youth]
5. The dirt bikes are maintained by the C's father and a mechanic. However, the children have to do some basic maintenance. [Testimony of Mother]

6. C started racing when about five; E when she was seven; [Testimony of Mother] and the children's father for the last thirty one years and to date. [Testimony of Father]
7. Dirt bike racing is a sport that comes with some risks. [Testimony of Mother]
8. There is always an ambulance at the races; the races can not start until an ambulance was there. [Testimony of Mother]
9. C suffered an injury from racing for his club before May 19, 2019. He was seen at his pediatric office in October 2016 [when 12/13 of age] for a foot injury/bruise due to sliding into a tree with his dirt bike. Mother initially took him to an emergency room for a fractured foot where he was put in a boot. However, follow up with UMass Boston and his doctor proved it was a growth plate, not a fracture, and only a severe bruise. [Exhibit B, p.7; Testimony of Mother].
10. C has also suffered multi bruises from other races. [Testimony of the Reported Youth]
11. Likewise, Appellant R.B., C's father, was injured in 2002 while dirt bike racing. [Exhibit B, p.2; Testimony of Father]
12. On May 20, 2019, following the filing of the 51A Report of May 19, 2019, the 51B emergency response, and clinical case conferencing, the Department supported for medical neglect of C by the Appellants, his parents. C was in a dirt bike race accident in New York on May 19, 2019 and hit a tree and sustained visible injuries, such as a fractured arm and a bruise on his face. C was seen by EMS on scene for evaluation, but the Appellants declined to have the youth brought to a hospital in New York and got in their camper and drove to their home in MA by-passing an urgent care facility in NY and two hospitals in MA – all on their route home. They then dropped off their daughter, E, with a neighbor, switched vehicles as they were driving a camper, and then took C to M hospital (hereinafter "M hospital"), a hospital close to their home in MA, where he was transferred by ambulance to a bigger hospital U (hereinafter "U" hospital) in MA. It took the Appellants four and ½ hours for C to receive treatment at a hospital. Although the Appellants were not aware of the extent of C's internal injuries, as in a lacerated spleen and multiple fractures to his face, arm and spine, C did have visible injuries and complained of pain on scene. In addition, C was having trouble taking deep breaths on the ride home; yet, the Appellants did not pull over or go to the nearest hospital but went home first. According to the hospital attending doctor, it was possible that C could have died on route as fluid was found in the youth's belly. The Appellants should have sought immediate medical attention for C. They put him at severe risk and possible death by waiting 4 1/2 hours before ensuring treatment at a hospital. The Department continued its involvement with the family for further assessment [FAAP]. [Exhibit A; Exhibit B; Exhibit C; Testimony of Emergency Response Social Workers] The family's case was assessed and their case closed on September 13, 2019. [Testimony of Mother; Testimony of the Emergency Response Social Worker P.G.]
13. The following facts in this case are not under dispute by the Appellants:

- (a) On May 19, 2019, C participated in a dirt bike race through the woods in Galway, NY. [Exhibit B, p.2; Testimony of Mother]
 - (b) During the early part of the afternoon,⁷ C had an accident during the race and ran his bike into a tree. [Exhibit B, p.2; Exhibit C, p.4] He yelled to the Appellants during the race that he thought his throttle was stuck. [Testimony of Mother]
 - (c) Arrangements had already been made to have emergency medical services at the track. [Exhibit B, p.4; Testimony of Mother]
 - (d) C was evaluated by EMS on scene at the track. C remained conscious and alert, had worn his helmet during the race, and walked to the emergency station with assistance. [Exhibit B, pp. 2 & 6; Exhibit C]
 - (e) The EMS told the Appellants that C should be seen by a doctor at a hospital. [Exhibit B, pp.2 & 5-6; Exhibit C]
 - (f) C had blood over his eye from the laceration, his nose and eye were a little bit swollen, and there was an issue with his arm. [Testimony of Mother]
 - (g) The Appellants declined to have C receive treatment at a hospital in NY and made a decision to take him home to MA for hospital treatment. [Exhibit B, p.2; Exhibit C]
 - (h) During the drive home, about one hour before getting home, C complained of pain/discomfort when taking deep breaths. The Appellants continued to ask C how he was doing to keep him alert as they were concerned for a concussion, but also to monitor his condition. [Exhibit B, p.2; Testimony of Mother]
 - (i) The Appellants arrived home, dropped off mother's father, who had joined the family at the race; called a neighbor and made arrangements for their daughter to stay with the neighbor as she had school on Monday; and, changed from their camper to another vehicle. At home, C exhibited increased pain and discomfort. [Exhibit B, p.2; Testimony of Mother]
 - (j) At about 7:00 p.m., the Appellants arrived at M hospital with C, who was then assessed and transferred to U hospital. [Exhibit B, p.2; Testimony of Mother; Testimony of Emergency Response Social Worker P.G.]
14. At 8:44 p.m., on May 19, 2019, C was transported by ambulance to U hospital where he was seen with bruising on his face and a fracture of his right forearm. C was still in the hospital as of May 22, 2019, three days later, as his labs had not been stable and continued monitoring was needed. [Exhibit B, pp.2-3 & 6; Testimony of Emergency Response Social Workers]

⁷ The Appellants reported during the 51B response that the accident occurred between 2:00 to 2:30 p.m. [Exhibit B, p.2; Testimony of Emergency Response Social Worker M.I.]; the EMS documented 1:30 p.m. [Exhibit C, p.4], and Mother testified at Hearing that the race started at 1:30 p.m. [Testimony of Mother]

15. While at U hospital, C was diagnosed with a right orbital wall fracture [bone surrounding the eye], nasal fracture, right forearm fracture, an L2 or L3 spinal fracture, and a level 2 out of 5 spleen laceration. CT scans for a concussion were negative. Surgery was no longer planned. [Exhibit B, pp.5 & 3]
16. The emergency response social workers arrived at the U hospital on May 19, 2019 at 10:45 p.m., spoke with the family including C, and then with the attending physician, Doctor W, who talked about C's aforementioned fractures and was also concerned about C's pancreas, which may have been affected. The doctor said that C was moved to the pediatric ICU that night and monitored. The doctor opined that C should have stayed in NY and received treatment there and, if the spleen damage had been worse, he could have bled out in the Appellants' vehicle and died. Dr. W reported that the family drove by three hospitals on the way home, including M Hospital, before having C checked out. [Exhibit B, pp.2-3; Testimony of Emergency Response Social Worker M.I.]
17. The attending physician, Dr. W, spoke with the Appellants at U hospital. According to mother, the doctor had an attitude when talking with them. [Testimony of Mother]
18. The response social worker also spoke with C's ICU pediatric care unit nurse on May 20, 2019, who reported that hospital staff spoke to the Appellants this morning about their decision to drive 4 ½ hours, instead of having C seen right away; the latter of which they should have done. [Exhibit B, p. 5; Testimony of Emergency Response Social Worker M.I.,]
19. From the racing site in N.Y. to their home in MA, the Appellants drove by an urgent care facility in NY and two hospitals in MA. On the route home, U Hospital and M Hospital on their way to their home. [Testimony of Emergency Response Social Workers]
20. It is approximately 200 miles from the site of the accident in NY to the Appellants' home in MA., and then the Appellants drove backwards from home to M Hospital for the C's treatment. C was transferred to U Hospital because that hospital could deal better with C's injuries. [Testimony of Response Social Worker M.I.]
21. Although the Appellants subsequently recognized the danger that C's injuries presented and said they would identify appropriate medical institutions prior to future racing events, the Appellants presented the following arguments on their behalf: [Exhibit B, pp. 2 & 4]
 - (a) The Appellants denied there was any indication of internal injuries, breathing difficulty, or abdominal pain, when C was assessed by EMS on scene, and no imminent risk to C. [Exhibit B, p.2] C reportedly did not complain of any pain nor did the EMT inform them of any internal injuries. [Testimony of the Mother]
 - (b) Appellant R.B., father of C, had a traumatic history of being injured while dirt bike racing in August 2002 and had received poor care at a hospital in New Bedford, where he was sent by ambulance. This ultimately resulted in amputation of some of his toes at U hospital. From that time on, C's father was skittish about going to a bad hospital. Nor did he want the youth going to a bad hospital and wanted to make sure

he got proper care for the type of injuries he sustained on May 19, 2019. So, as C was not showing signs of imminent risk, they drove home. Had the EMTs indicated that the youth suffered from internal injuries, he would have been sent by ambulance to a hospital at the race track. [Exhibit B, pp.2 & 4; Testimony of Father]

- (c) Although there have been times when races have been stopped so that an ambulance at the track was able to take an injured racer to a hospital, this did not happen on May 19, 2019. The EMS ambulance could not leave the race site because the races had not been stopped. Thus, the Appellants had to wait for another ambulance to arrive, which would take 45 minutes once called, which it had not been. So, the Appellants decided to take C home to a hospital. [Testimony of Mother]
- (d) Although C needed hospital care, the EMT [reportedly] could not decide where to send him. Saratoga [NY] was forty five minutes away from the race site and the EMT was [reportedly] uncertain when an ambulance would arrive to take C to a hospital there. [Exhibit B, p.2]
- (e) The EMT told the Appellants there was an urgent care facility on the Northway [Interstate 87], their route home, but did not provide the name or reportedly the location. [Testimony of Mother]
- (f) The Appellants had no cell phone service, were unprepared for such an event to take place, and eager to return to MA where they knew C would be properly assessed and treated.

This Hearing Officer finds the Appellants' arguments to be persuasive.

22. Although there is some variation between the witness statements and that of the contents of the EMS report and Mother's account at Hearing, the reliable evidence demonstrates that the Appellants raced over to C's accident after it happened and the Appellants hollered for assistance from EMS. A witness, M.A., ran over with another woman to the EMS tent and told them about the accident and that help was needed. A.A., chairman of the organization that organized the race, was first on scene followed by the Appellants. The chairman and/or C's father held C's head to keep it stable, until the EMTs arrived. The EMTs arrived with their bag; there were four of them. Depending on source citation, C's helmet was either removed by the chairman, the EMT, or C's father. C stated he did not want a collar or backboard or transport and the Appellants said they would take him. The EMT told them C still had to be assessed by EMS. C stood up with assistance and walked to the picnic table and then to the EMS station where the ambulance was located. [Exhibit C, p.2; Exhibit B, p.6; Exhibit 2; Exhibit 6; Testimony of Mother; Testimony of Reported Youth]
23. The Appellants always have a first aide kit in their camper, including on May 19, 2019. They typically do first aide for their children. In the dirt bike sport, the Appellants asked for an EMT, if it is something more than their first aide can address.⁸ They have never had to use EMS, before the accident of May 19, 2019. [Testimony of Mother]

⁸ Mother brought a first aide kit to the Appellants' Hearing and described its contents. [Testimony of Mother]

24. When dirt bike racing, C wears tons of protective gear – special boots, elbow and knee pads, helmet, special spandex to reduce shafting, kidney belt, and chest protector. [Testimony of Mother; Testimony of C]
25. All of C's riding gear and helmet was inspected and appeared intact on this day [Exhibit C, p.3], which the Hearing Officer reasonably concludes protected C from more extensive injuries than he had already received.
26. The Hearing Officer reasonably concludes, based on reliable oral and documentary evidence, that D.M., the EMT, who assessed C at the race site, a field test, found C conscious; his vital signs and pupil reactions normal/stable; and, that he had a laceration above his right eye, a nose bleed, right wrist pain, a left side road rash above the right eye, and abrasions to his leg. C complained of pain in his genitalia/testicular area and in his right wrist/arm, but at this particular time, did not complain of shortness of breath or pain when breathing. According to C, the EMT thought he had a broken arm, but C thought it was only a bruise and there was a lump there. A splint was applied to C's right wrist and arm, the abrasions above his eye and on his leg cleaned with sterile water, and an ice pack applied to his face. Head injury, spinal injury, and fracture were all possible presenting problems on scene. This finding rests on a culmination of the Department's contact with the EMT on May 20, 2019, documentation of this contact in the 51B response, submission of the EMS pre-hospital report, and testimony from the emergency response social workers at the Appellants' Hearing of October 15, 2019. [Exhibit B, pp.5-6; Exhibit C; Testimony of Emergency Response Social Workers; Testimony of C]
27. Witness L.H. reported that C, while at the EMS tent, was lucid and coherent; answered questions and tasks asked of him; had a small laceration above his eye; and pointed out a couple of areas that bothered him – his right arm, right eye, and groin. C insisted he was okay. [Exhibit 2e]
28. C's mother said there was blood over C's eyes, a road rash on his side and C said his groin area hurt a bit. They pressed his stomach and this was fine. C kept saying he was fine and in no pain [Testimony of Mother]; yet the EMS pre-hospital report indicates he was experiencing pain [Exhibit C], mother heard him say his groin hurt. [Testimony of Mother], and witness L.H. observed C point out areas of his body that bothered him; right arm, right eye, and groin. [Exhibit 2e]
29. The EMT could not rule out internal injuries. [Testimony of Emergency Response Social Worker P.B.]
30. Mother was concerned that C had sustained a concussion. [Testimony of Emergency Response Social Worker P.G.]
31. C said he was not in pain and felt fine. [Testimony of C] C is part of a dirt bike community including his father and sister; is engaged in a sport that comes with risks, has been bruised while racing before May 19, 2019, and is a top contender planning to go professional next year [2020].

32. Mother denied being told by EMS that it was an urgent situation [Testimony of Mother] The EMT confirmed, during her conversation with the emergency response social worker on May 20, 2019, that the ambulance was thirty five to forty minutes away at that time. The Appellants told the EMT that they would be taking the "Northway" [Interstate 87] home and were informed there was an urgent care facility in Malta [N.Y., which was on the way]. [Exhibit B, pp.5-6; Exhibit C; Testimony of Emergency Response Social Workers]⁹
33. M.S., who witnessed part of the accident and ran to get help from EMS, spoke to the Appellants on scene, who told her that they needed to bring C to the hospital, and observed them packing up their camper quickly and leaving, as did father and C. [Exhibit 2-1; Testimony of Father; Testimony of C]
34. In summary, the Hearing Officer finds that the Appellants were present just after C's accident and during his EMS assessment. The Appellants knew what happened, observed C's injuries on scene, and heard what the EMT said to them and her recommendation that C be seen by a doctor at a hospital. At that point in time, the Appellants were concerned that C may have had a concussion. The Appellants were sufficiently concerned such that they quickly packed up their camper and left the race site to go home. On the ride home to MA, one hour from home, the youth experienced breathing difficulties and was monitored by the Appellants.
35. Following discharge from the hospital, C had follow-up care with four doctors - plastics for the face as he had a fracture behind his eye; orthopedics for his arm; a back doctor because he had a fracture in his spine, and a head doctor for his spleen. He also saw his pediatrician. [Testimony of C; Exhibit 3, p.5]
36. Seven weeks after his initial injury on May 19, 2019, specifically on July 11 2019, C was seen by an orthopedic surgery physician at U hospital for follow-up of the ulna shaft fracture of his right arm. At this visit, an examination was conducted and x-rays taken of his right forearm. X-rays revealed that the fracture had united with bridging callus and consolidation of the fracture on two sides. Examination showed no pain upon elbow flexion extension as well as improved supination and wrist motion consistent with his uninjured left side; no tenderness upon palpation; and, the youth's skin was intact. C was medically cleared to return to full activities to include racing, with no restrictions. [Exhibit 3, p.5]
37. Following discharge from U hospital, C was out of school for a week; all physical activity restricted for two weeks including gym; and, restricted from dirt bike riding for two months. [Testimony of C]

⁹ Contrary to the objection of Appellants' counsel concerning the DCF submission of Exhibit C, the Hearing Officer finds that counsel had an advance copy of the EMS Pre-Hospital Report [Exhibit C], an opportunity to subpoena the EMT who authored the report but did not do so, and an opportunity to question the emergency response social workers about this document and their contact with the EMT during the 51B response. Counsel's objection was overruled. [Administrative Hearing Record]

38. C did not suffer life-long consequences from the injuries he sustained from his dirt bike accident of May 19, 2019 despite the delay in medical care, the Hearing Officer finds the evidence in the record insufficient to demonstrate that the Department, in supporting for neglect of sixteen year-old C by the Appellants, his parents and pursuant to 110 CMR 2.00 & 4.32, had *reasonable cause to believe* that the Appellants failed to provide C with minimally adequate medical care; supervision; and other essential care. As C verbalized, he was ok and was not rushed to the hospital from the accident site, there was no way for the Appellants to know the extent of his internal injuries.

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).

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]

Danger: 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. Protective Intake Policy #86-015 [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 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

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 Appellants requested a Hearing, which was granted and held on October 15, 2019.

After review and consideration of the evidence presented by the parties, the Hearing Officer finds for the Appellants in the matter under review. See Findings #1 to #38 and the following discussion.

On May 20, 2019, following a 51B response and clinical conferencing, the Department supported for neglect of C by the Appellants, his parents. On May 19, 2019, C participated in a dirt bike event in N.Y. During this race, C lost control of his bike while racing through the woods, hit a tree, and was found lying on the ground by the chairman of the organization that organized the race, the Appellants who raced to the site, and by the EMTs upon learning of the accident. During the EMTs assessment at the race site, C was seen with a laceration above his eye, a nose bleed, right wrist pain, and a left side road rash; possible head injury, possible spinal injury and possible fracture; and, complained of pain in his genitalia/testicular/groin area and his right arm/wrist. C's mother was concerned that C might have a concussion. The EMT could not rule out internal injuries. Because the ambulance could not leave the race site, as the races had not been stopped, another ambulance had to be called to the site to transport C to a hospital; the round trip likely taking between 80 and 90 minutes. Therefore, the Appellants elected to take C home for hospital treatment and refused the second ambulance. The EMT provided the Appellants with the location of an urgent care facility in NY, which was on their way home. However, the Appellants elected to by-pass the urgent care facility because of their concern that he would not receive proper treatment there. C's father suffered injury in 2002 from a dirt bike race and received poor care at a local hospital near the race and subsequently was diagnosed with gangrene at U hospital where some of his toes were amputated. The Appellants drove 200 miles, about four and ½ hours, from the race in N.Y. to their home in MA by-passing two hospitals in MA – U hospital, which C's father opined was one of the good hospitals, and then M Hospital.

During the ride, the Appellants kept C alert and awake due to mother's concern he may have had a concussion. One hour from home, C began having trouble breathing, when he pushed his seat back, which resolved when he returned it to an upright position. Once at home, C experienced increased pain and discomfort. The Appellants drove C back to M Hospital arriving there and the was transported to U hospital for specialized treatment.

Once at U hospital, C was diagnosed with a right orbital wall [bone surrounding the eye] fracture, a nasal fracture, a right forearm fracture, a L.2 or L.3 spinal fracture, and a level 2 out

of 3 spleen laceration. The attending physician was concerned about C's pancreas at this time. There was no evidence of a concussion. C was transferred to the ICU pediatric ward that night and remained at the hospital for at least three days with follow up care upon discharge with four separate specialists and his pediatrician. C stayed home from school for one week, was restricted from all physical activities for two weeks, and restricted from dirt bike racing for two months.

The Appellants argue that C was not at imminent risk, when assessed by the EMT at the racing track in N.Y. on May 19, 2019. The Hearing Officer reviewed the EMS pre-hospital report; testimony concerning the Department's 51B response contact with the EMT, who authored the report; witness accounts about C's injuries, complaints of pain, and treatment while at the EMS tent; and, evidence that the Appellants were concerned C had a concussion. This Hearing Officer found this argument persuasive. The Appellants could not have known the extent of the injuries suffered by C as he continuously stated to EMT that he was okay.

C did not suffer life-long consequences from the injuries he sustained from his dirt bike accident of May 19, 2019 despite the delay in medical care, the Hearing Officer finds the evidence in the record insufficient to demonstrate that the Department, in supporting for neglect of C by the Appellants, his parents and pursuant to 110 CMR 2.00 & 4.32, had *reasonable cause to believe* that the Appellants failed to provide C with minimally adequate medical care; supervision; and other essential care. As C verbalized multiple times, he was ok and was not rushed to the hospital from the accident site by the EMT, there was no way for the Appellants to know the extent of his internal injuries.

Conclusion and Order

The Department's decision of May 20, 2019, to support the 51A Report for neglect of C by the Appellants, his father and mother, was not made in conformity with the Department's regulations and policies and therefore **REVERSED**.

Frances I. Wheat
Frances I. Wheat
Administrative Hearing Officer

Date: 8/26/20

Sophia Cho /smc
Sophia Cho, LICSW
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner