

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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Commissioner

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IN THE MATTER OF

KL #2019-0823

FAIR HEARING DECISION

KL appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On April 22, 2019, the Department received a 51A report from a non-mandated reporter alleging neglect of A and N by their mother, KL. The Department screened-in the report for a non-emergency response. On May 14, 2019, the Department made the decision that the allegation of neglect of A and N by mother was supported. The Department notified KL of its decision and her right to appeal. KL made a timely request for a Fair Hearing to appeal the Department's decision. In her request, she waived her right to a hearing and requested that a decision be made based upon the parties' submission of documents pursuant to 110 CMR 10.18.

An order was issued on July 11, 2019, outlining the time frames within which the parties were to submit documents. In accordance with the order, the hearing record closed on August 8, 2019.

The Department submitted the following exhibits:

- Exhibit A: 51A Intake Report
- Exhibit B: 51B Child Abuse/Neglect Non-Emergency Response

KL submitted no evidence. KL was represented by an attorney who submitted a written argument.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter. 110 CMR 10.03

Issue to be Decided

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, and on the information available at the time of and subsequent to the response, the Department's decision or procedural action, in supporting the 51A report, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant. If there is no applicable statute, policy, regulation or procedure, the issue is whether the Department failed to act with a reasonable basis or in a reasonable manner, which resulted in substantial prejudice to the Appellant. 110 CMR 10.05

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 10.05

Findings of Fact

1. KL (hereinafter "mother") is the mother of the reported children, N and A, ages 17 and 8 respectively, at the time in question. (Exhibit A, pp. 1-2)
2. Mother also has an adult daughter, V, who lives out of the home with her fiancé and their two children. (Exhibit B, p. 12)
3. Mother is no longer involved in a relationship with any of the children's fathers. (Exhibit B, pp. 2, 4, 5, 7)
4. The family had some prior involvement with the Department, however, there had been no "supported" 51A reports naming mother as the person responsible for abuse or neglect of the children. There was a history of violence by mother's former spouses. N's father and mother separated while the Department was involved with the family between 2008 and 2010. A's father left mother when she was pregnant with A and he has never been involved. (Exhibit A, pp. 5-8; Exhibit B, p. 4)
5. As of the time in question (April 2019), mother lived with N and A and a male roommate, JS, who recently moved into mother's home and rented a room from her. Mother was also involved in a relationship with a man, SS, who visited the home often. (Exhibit A, pp. 1-2; Exhibit B, pp. 3, 7, 9)
6. Mother has a history of PTSD, anxiety and panic attacks. She is prescribed medication for anxiety as needed. (Exhibit B, pp. 6, 10)
7. Mother has a history of alcohol use. When she was married to N's father, he would find bottles hidden in the home. Mother's adult daughter, V, was aware of her drinking, but she was never aware it was an issue while she was growing up. (Exhibit B, pp. 11, 12, 14)

8. In 2017, mother began to have problems with N's behavior. He was smoking "weed" with his friends and drinking. He had anger issues and did not want to follow mother's rules. He was constantly yelling at mother. At some point, he began threatening to move out of the home. In the 2018-2019 school year, he had excessive absences from school. (Exhibit B, pp. 3, 7, 8)
9. Prior to 2018, mother drank alcohol socially and she drank a glass or two of wine at night. If she was feeling stressed, she would drink more. Her drinking increased in 2018 and she was drinking every night. (Exhibit B, pp. 3, 5, 8, 10)
10. At some point prior to April 2019, N began complaining about mother to his father. N told him he was sick of living with mother and he did not like the way she was acting. He did not complain to him that mother was drinking or that she was drinking excessively. (Exhibit B, p. 11)
11. Prior to April 8, 2019, N began complaining to his older sister, V, and his maternal grandmother about mother's drinking. Neither of them thought mother's drinking was a problem until N complained about it. (Exhibit B, pp. 12, 14)
12. One night in early April 2019, mother left A and N with V and went out to a friend's house and she drank too much. Later that night, mother had her roommate drive her to V's house to pick up A and N. V observed her to appear intoxicated. She was slurring her words and unable to stand. V refused to allow her to take A. Mother was upset, but she went home without him. (Exhibit A, p. 3; Exhibit B, p. 8)
13. The day after the above incident, V told mother that she would call the Department and file a 51A report if she did not go into treatment. (Exhibit A, p. 3; Exhibit B, pp. 8, 11, 12)
14. On April 8, 2019, mother voluntarily entered a detox program because she felt she had no choice and she did not want V to file a 51A report. Mother had to pay "out of pocket" for the program which cost \$1,000 a day. Mother's adult daughters including V and maternal grandmother brought her to the program. The reason for admission was noted to be "alcohol use disorder, severe." It was not clear whether the admission reason was based upon information provided by mother or mother's relatives. Mother was monitored 24 hours a day for 4 days to ensure a safe withdrawal. She then stayed one day in the program's step-down program. She was offered group therapy, but she declined. She was medically cleared for discharge on April 12, 2019. The program wanted her to stay for an additional 28 day program. Mother declined to participate in the 28 day program because she was unable to afford it and she wanted to be home for A. She was provided referrals for aftercare/outpatient services upon her discharge and she said that she would arrange for outpatient services herself. (Exhibit B, pp. 5, 8, 10)
15. N and A stayed with V while mother was in detox. On the day she was discharged from the program, mother picked A up at school and brought him home. N continued to stay at V's home. (Exhibit B, pp. 8, 5)

16. On the day mother was discharged, V called the police and requested a check on mother. V told police that mother was intoxicated. Police went to the home and met with her roommate. Her roommate told police that mother was sleeping and she was fine. (Exhibit B, p. 3)
17. After mother returned home, she began attending counseling with an outpatient therapist, she attended 2-3 AA meetings weekly and obtained a sponsor. (Exhibit B, pp. 7, 8)
18. On Easter Sunday (April 21, 2019), mother had several people at her home to celebrate the holiday with her and A. They included mother's roommate, her roommate's mother, two friends and her sponsor. No one was drinking alcohol that day. (Exhibit B, pp. 5, 7, 8)
19. N unexpectedly arrived at mother's home on Easter. Mother assumed he was there to get some of his things. She tried to talk to him about whether he was moving out and what his plans were. N became angry at mother because he thought she was drinking and because she had "a bunch of random people over for Easter". He started yelling and swearing at mother, calling her names and throwing things around. Then N left and went back to V's home. (Exhibit B, pp. 4, 5, 8, 9)
20. On April 22, 2019, the Department received a 51A report alleging neglect of A and N by mother. The reporter stated the following: Mother has a history of alcohol abuse and it was increasing. She is always drunk and there are always different men with criminal records in the house. The reporter also said that mother drinks and drives with A and the reporter mentioned the night mother came to get A after she had been drinking. The reporter stated that mother was drinking again on Easter. She was drunk and yelling at everyone. In addition, the reporter stated that A does not have clothes that fit him and N has missed 30 days of school. The Department screened-in the report for a non-emergency response. (Exhibit A)
21. The Department response worker met with N at school. He reported that mother was drinking nightly before she went to detox. He said that she was drinking on Easter with A present and there were a bunch of random people there. He said that mother was being mean to him and she was yelling at him and asking when he was moving out. He also said that mother calls him names like "useless" and "fat." (Exhibit B, pp. 3-4)
22. The Department response worker met with A at school. He confirmed that mother was drinking before his sisters brought her some place to get help. He did not report any action or inaction by mother that placed him at risk when she was drinking. He denied that she had been drinking since she came home. He denied that she was drinking on Easter. He denied that mother's roommate or her friend, SS, drink. Regarding Easter, he said that N came over and no one was expecting him. He was mad at mother and yelling at her. Mother tried to calm him down, but he wouldn't stop yelling. Mother asked N if he was moving out and then N started to swear and call her names. (Exhibit B, pp. 4-5)
23. The Department response worker spoke with mother. She acknowledged that she usually would have a glass or two of wine at night and she would drink more if she was stressed. She said that V filed a report on her because V was angry that mother would not give her

money from an inheritance. She acknowledged that she went to V's house to pick up A after she had been drinking, but she was not driving. V threatened to call the Department if she did not go for treatment. She went because she felt she had no choice and V called the Department anyway. She denied drinking after she left the program or on Easter. She confirmed that she has engaged in outpatient therapy, attends AA meetings and has a sponsor. (Exhibit B, pp. 7-8)

24. The Department response worker spoke with the people who were visiting with mother and A on Easter. They all denied that anyone was drinking that day. They confirmed that N showed up unexpectedly on Easter and he was yelling and swearing at mother and mother was embarrassed. (Exhibit B, p. 9)
25. The Department response worker reviewed mother's discharge paperwork from the detox program. It showed that the program staff were aware that mother had two children living at home. It did not indicate that the program had concerns about mother's care of the children or that they felt the children would be at risk with mother if she were discharged home. (Exhibit B, p. 10)
26. The Department response worker spoke with N's father, maternal grandmother and V. None of them reported any action or inaction by mother that placed the children in danger or at risk. They confirmed that, although they knew mother drank alcohol, they were not aware that it was a problem until N reported that it was. (Exhibit B, pp. 10, 11, 12, 14)
27. The Department response worker spoke with mother's therapist. She confirmed that she was seeing mother weekly. She reported that mother was engaged and willing to work with the Department. (Exhibit B, p. 13)
28. On May 14, 2019 the Department made the decision that the allegation of neglect of N and A by mother was supported. The Department's "Disposition Comment" consists of a recitation of the information gathered during the response. It does not cite any action or inaction by mother that placed N or A in danger or posed a substantial risk to their safety or well-being. The "Supervisor comment" states that the allegation was supported due to mother's alcohol use and because she recently entered detox for severe alcohol use and did not complete the 28 day program. (Exhibit B, pp. 15-17)
29. Considering all of the evidence, I find that there was no reasonable cause to believe that mother failed to provide N or A with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth or other essential care or that her actions or inaction placed them in danger or posed a substantial risk to their safety or well-being.

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015, rev. 2/28/16

“Reasonable cause to believe” means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected. 110 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)

“[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of §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 §51B. Id. at 64; M.G.L. c. 119, §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

“Neglect” is defined as failure by a caregiver, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; malnutrition; or failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

A “caregiver” means a child’s (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child’s health or welfare; and (e) 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. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 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

The Department determined that mother neglected N and A based upon the family members' statements that she drank alcohol and her failure to complete a 28 day program.

Mother argued that the Department had no evidence that she had a drinking problem. Mother contends that N and V were motivated to make false allegations against mother and the Department had not identified any specific concerns in the home. I find the Appellant's argument to be persuasive.

The evidence shows that the Department has had involvement with the family over the years, however, mother has never been found to be responsible for abuse or neglect of any of her children due to her drinking or anything else and there was no evidence that her drinking was ever raised as a concern in the past.

Although N, V, N's father and maternal grandmother reported that mother drinks alcohol, they did not provide any specific information to indicate that mother drank excessively while caring for the children or she had ever failed to provide minimally adequate essential care of any kind for the children as a result.

The evidence shows that N had a motivation to make false allegations against mother. In the year or so prior to N making allegations, he was having behavior problems including smoking marijuana, drinking, not following mother's rules, being excessively absent from school and getting angry and yelling at mother. He complained about mother to his father and indicated that he no longer wanted to live with her.

V, N's father and maternal grandmother indicated that they did not realize mother's drinking was excessive until N told them that it was.


A did not mention any concerns at all about mother's care related to her drinking or otherwise.

Regarding Easter, none of the witnesses present that day corroborated N's account of mother drinking and yelling.

Although mother's discharge paperwork from the program states that the reason for admission was "alcohol use disorder, severe" it was not clear whether mother reported that or whether her family members who brought her reported her drinking was severe. In any case, the program was aware that she had children at home and the program did not file a 51A report which the staff would have been mandated to do had they felt that mother's drinking was impacting her parenting and the children.

Conclusion and Order

The Department's decision to support the allegations of neglect of N and A by mother was made without a reasonable basis and, therefore, the Department's decision is REVERSED.

Nicholas Holahan 
Nicholas Holahan
Administrative Hearing Officer

6/4/2020
Date

Darlene M. Tonucci
Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner