

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6th FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda S. Spears
Commissioner**

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IN THE MATTER OF:

RE

#2019-1073

Fair Hearing Decision

The Appellant in this Fair Hearing was RE ("RE"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect of her children, S and B, pursuant to M.G.L., c. 119, §§ 51A and B.

Procedural History

On June 14, 2019, the Department received a 51A report alleging the neglect of S and B by the Appellant, who is their mother. The report was filed by a mandated reporter and screened in for a non-emergency response by the Department. On June 17, 2019, the Department supported the allegation of neglect and informed the Appellant of her right to an appeal. The Appellant, made a timely request for a Fair Hearing under 110 CMR 10.06

The Fair Hearing was held on October 22, 2019, at the Department of Children and Families' Harbor Area Office in Chelsea, MA. All witnesses were sworn in to testify under oath. The record closed on that date.

The following persons appeared at the Fair Hearing:

Carmen Colón	Fair Hearing Officer
RE	Appellant
ML-J	Interpreter
CS	Witness
JC	DCF Response Worker

EM

DCF Response Supervisor

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

The Fair Hearing was recorded pursuant to Department regulations 110 CMR 10.26.

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit A 51A Intake Report of June 14, 2019

Exhibit B Child Abuse / Neglect Non-Emergency Response of June, 2019

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)

Statement of the Issues

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

Findings of Fact

Upon review of the totality of the evidence I make the following findings:

1. The reported children in this matter are, S and B. S was six (6) years old and B was eleven (11) years old at the time of the subject DCF response. (Exhibit A, B, p. 1) The Appellant, RE, is S and B's mother. S and B's father is CS.
2. As S and B's mother, RE, is deemed a caregiver, pursuant to Department policy and regulations. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16)
3. RE and her family have previous history and involvement with the Department of Children and

Families. In May 2009, the Appellant, then a single parent, was briefly hospitalized for mental health treatment resulting in B's temporary placement in Department foster care as no other caregiver was available to him at the time. In September 2017, the children witnessed the Appellant being abused by her partner at the time, which led to supported allegations of neglect and the Department opening a clinical case. The Appellant's clinical case closed on December 5, 2018. (Exhibit A, pp. 5-6; Exhibit B, pp.1-2)

4. The children were visible in the community and attended school. There were no concerns for their care outside of the reported incident. (Exhibit A)
5. On June 14, 2019, a report was filed with the Department alleging the neglect of S and B by the Appellant. The Appellant was at B's school for his fifth-grade graduation when she received a text message that her brother had passed away. The Appellant left the ceremony after receiving the message and was found by the reporter hysterically crying outside the school. The reporter stated that the Appellant was shaking so much that she couldn't even dial on her phone. It was noted that this was the Appellant's second brother that had passed away in fifteen (15) days and as soon as it appeared that the Appellant began to calm down, she then ran out into the street towards and took off her shirt as she was running. The reporter observed the Appellant then laid down in the middle of the road and was hitting herself in the face, stomach and wailing "two in fifteen days." With the assistance of a passerby, the reporter moved the Appellant to the side of the road. The police and EMTs arrived on scene and the Appellant was transferred to a local to be evaluated. The reporter then contacted the children's father, CF who responded to the school and dismissed the children. (Exhibit A, p.3)
6. On June 25, 2019, the Department Response Worker ("RW") met with the Appellant at the family's home for a scheduled home visit. The Appellant acknowledged that she was upset and left the school building when she received news that her brother had died. The Appellant acknowledged that when school staff tried to intervene to help, she didn't listen because she was distraught and wanted to go home and didn't want anyone to help or be near her at that time, and that she "took off down the street and took her shirt off" because she was hot and very upset. She denied jumping in front of the SUV and lying on the ground. (Exhibit A, pp.3-4, Testimony of the Appellant)
7. The Appellant received help from the children's father, who sent his oldest son, N, to visit because the family wanted an extra person in the home to make sure S, B and the Appellant were okay. The children's father watched the children when the Appellant could not. The Appellant, who was employed full-time, denied any mental health issues and acknowledged continued difficulty with affordable housing. (Exhibit B, p.4)
8. The Department RW interviewed S, who denied any concern for her safety. S corroborated that when her mother worked, she was at school or the after-school program and her mother picked her up every day. S also corroborated that her father visited the home regularly. S denied police had come to her house, that she was afraid of anything, and noted the Appellant "always cooks dinner" and denied physical discipline or abuse. (Exhibit B, p.4)
9. The RW interviewed B. B denied any concerns for his safety. He corroborated S's statements regarding lack of physical discipline and regular visits with his father and older brother. B denied the

Appellant acting strangely [prior to the subject incident] and reported the police had only come to his home the day of his graduation to make sure everyone was okay and then they left. (Exhibit B, p.4)

10. On June 26, 2019, the RW spoke with the children's father. CF corroborated that the Appellant was upset due to the loss of a second brother in a short period of time. CF asserted he went to the hospital and then to the home with the children and the Appellant ended up "being fine". (Exhibit B, p.4)
11. There was no evidence presented to suggest either S or B witnessed the Appellant's behavior outside of the school or to suggest they experienced any distress as a result of what occurred. (Exhibit A)
12. On July 8, 2019, the Department supported allegations of neglect of S and B by the Appellant, basing its decision on information obtained during the response. The Department determined the Appellant had become hysterical and her actions could have resulted in a fatal accident, leaving S and B without a caregiver. The Department determined the Appellant's actions posed substantial risk to S and B's safety and well-being. (Exhibit B, p. 8)
13. In light of the totality of the evidence and for the following reasons, I find that the Department did not have sufficient evidence to support its decision (See Analysis):
 - a) The Department did not have sufficient evidence that the Appellant failed to provide minimally adequate care for S and B (110 CMR 2.00 and 4.32), and;
 - b) The Department did not have sufficient evidence that the Appellant's actions placed S and B in danger or posed a substantial risk to S and B's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)
 - c) The Department's decision was not made in compliance with its regulations and policy.

Applicable Standards

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caregiver occurred *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 2.00 and 4.32; 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." Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caregiver; 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

"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

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

Risk is "The potential for future harm to a child." 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) 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. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

The Appellant was S and B's caregiver. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Department supported allegations of neglect of S and B by the Appellant, basing its decision on information obtained during the response. The Department determined the Appellant became hysterical after receiving a text message that she had lost her second brother within fifteen (15) days and that the outcome could have been fatal and left S and B without a caretaker. The Department determined the Appellant's actions posed substantial risk to S and B's safety and well-being.


The Department asserted the Appellant had a history of untreated mental health issues; however, no evidence was presented to suggest that after a brief psychiatric hospitalization in 2009, the Appellant experienced a similar event. In the instant case, the evidence suggested that while attending her son's graduation, the Appellant received a call that her second brother in fifteen (15) days had died unexpectedly. The Appellant left the building so her son would not see her be upset and a well-intended school staff tried to assist her. In an acute state of distress, the Appellant ran off and into the street, placing her own safety at risk. A passerby stopped to help and together with the reporter, took the Appellant out of harm's way and called 911 for assistance. There was no evidence to suggest that S and B were aware of what had happened or of the Appellant's actions outside of the building.

The children's father responded to the school to dismiss the children after their mother was taken to the hospital and quickly mobilized his older son/children's godfather to provide additional support for the Appellant following the reported incident. The totality of the evidence suggested the children had a safe

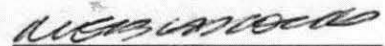
and stable home, that they were visible in the community and the Appellant had met their needs. While the reported incident was concerning and warranted the Department's intervention, the Department did not have sufficient evidence in the instant matter that the Appellant failed to provide minimally adequate care for S and B or to suggest the Appellant's actions placed S and B in danger or posed substantial risk to their safety and well-being as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support allegations of neglect of S and B by the Appellant was not in conformity with Department policy and/or regulations or made with a reasonable basis; therefore, the Department's decision is REVERSED.


Carmen P. Colón
Fair Hearing Officer

Date: 25 AUG 20


Maura E. Bradford
Supervisor, Fair Hearing Unit

Linda S. Spears
Commissioner