

having no direct or indirect interest, personal involvement, or bias in this case.

The Fair Hearing was recorded pursuant to DCF 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, dated 01/17/2019
- Exhibit B: Child Abuse/Neglect Non-Emergency Response
- Exhibit C: Letter CE

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 children of this Fair Hearing were C and T; at the time of the 51A reports C was ten (10) years old and T was eight (8) years old. (Exhibit A, p.1, 3)
2. On January 17, 2019 the Department received a 51A report alleging physical abuse of C and T by their legal guardian/paternal grandmother, MS. According to the report, on January 17, 2019, C stole \$400.00 from her grandmother in order to purchase books from the book fair. The classroom teacher observed C purchasing multiple books for herself and for many of her friends which made the teacher speculate that the money did not belong to the child. The

classroom teacher asked another teacher to call the grandmother who instructed the classroom teacher to return the books as the money did not belong to the child. The teacher did multiple transactions to get the money back. After the children returned to class C started to cry for about 15 minutes with head down on her desk. She then wrote a suicide note to her father who was deceased, detailing the plan to kill herself in the bathroom. Her teacher saw the note and brought the child to the nurse. The nurse asked the child if she wanted to kill herself and the child replied "yes" and began to cry uncontrollably. C that she would rather die than return to her grandmother's care, describing specific incidents of physical abuse of both her and her brother. C reported being hit with a belt multiple times and her finger being bent back to the point that it was throbbing and swelling. C reported that her grandmother blamed her for her father's death who had been murdered over a year ago. C said that her grandmother told her "multiple times" that if she disclosed the physical abuse, she "would be taken away and placed in foster care." C expressed fear of returning home, as she revealed that she would rather die than face the repercussion at home. The nurse examined C and observed a purple-ish color bruise on the upper left side of the leg. C reported getting hit with "the wood" referring to the broomstick a week ago. The child said that her grandmother told her that she is too old to get hit with "the hand." The staff also interviewed T who reported getting hit with an open hand a long time ago. Td appeared nervous, guarded and upset like he was coached. T also reported getting hit with "the wood." (Exhibit A, p.3)

3. The children's mother lived out of state and paternal grandmother had custody. (Exhibit A, p.3)
4. The children are originally from Guyana. (Exhibit B p.2; Testimony Appellant) The children's father came to the United States and was murdered in 2016. The children were brought to the United States by their biological mother in order to attend their father's funeral. (Exhibit B, p.2; Testimony Appellant)
5. The children's biological mother abandoned them after the funeral and the Appellant, who was a registered nurse, became their legal guardian through Probate Court procedure. (Exhibit B, p.2; Appellant's Testimony)
6. On January 17, 2019, C stole money from her grandmother and used them to buy books for herself and other children. When she was discovered, she wrote a note addressed to her deceased father, stating that she wanted to kill herself in the bathroom at school so that she could not get hurt again. (Exhibit B, p.1; Exhibit C)
7. In front of the response worker C stated that she was beat by her grandmother with the belt and "the wood". She also mentioned that the Appellant had two brooms in her room. However, she was not able to recall when was she beaten or spanked the last time. She stated that she and her brother were beaten if they did not do their homework. (Exhibit B, p.2)
8. The response worker noticed a faint mark on C's leg; however, due to the child's complexion, it was difficult to see the mark and C was not able to recall when she got it. (Exhibit B, p.1)
9. T, who had no marks or bruises on his body, stated that he was beaten when he did not do his

homework; however, he could not provide a timeline. He mentioned that his sister's statement about being hit with a broomstick was true; however, he did not want to discuss it. He also did not want to discuss about her sister's statement that he was beaten every night with a wood. T denied being afraid, worried or scared to go home. He stated that he felt safe and wanted to go home with his grandmother. (Exhibit B, p.2)

10. C expressed fear and did not wish to return to the Appellant's house; therefore, the Appellant signed a safety plan and gave permission to C to stay at her uncle's house where she spent four days before returning to her grandmother's house. (Exhibit B, p.2; Testimony Appellant)
11. The Appellant denied that she used physical discipline and stated that she had learned from the children that, while living in Guyana, they were verbally and physically abused by the family. She stated that, as soon as they came to the United States, she enrolled the children into school and therapy. MS stated that she had no idea what C meant when she mentioned that she was beaten with "wood" as she did not have brooms in the house, only a broom made by thin branches. The Appellant also stated that C was clumsy and always got bruises. MS's opinion was that C was scared because she was caught with the stolen money and decided to make the allegations against her. The Appellant also mentioned that C wrote something similar in a note that was on refrigerator, saying that she would find the person who killed her father. The Appellant showed the note to the investigator. (Exhibit B, p.2; Testimony Appellant)
12. At the conclusion of its emergency response, on January 20, 2019, the Department made the decision to support the allegation of physical abuse by MS. In support of its decision, the Department mentioned that both children reported that their grandmother hit them with the broom, "the wood", and a belt. C expressed fear of returning home to grandmother's home which lead to concerns of suicidal ideation. (Exhibit B, p.4)
13. After review and consideration of all of the evidence, I find that the Department did not have reasonable cause to believe that the children were physically abused by the Appellant. Therefore, the Department's decision to support the allegation of physical abuse of the children by the Appellant was not made in conformity with its policies and procedures. (110 CMR 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16)

Applicable Standards

"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

“[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)

“Substantial Risk of Injury” is defined as: “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.” DCF Protective Intake Policy #86-015, rev. 2/28/16

“Neglect” is the 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

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)

“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. 2/28/16

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Police, (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 at the time of the incident, the Appellant was a caregiver for the children. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16)

The Appellant disputed the Department's decision to support the allegations of physical abuse of the children. Although the children mentioned being "beaten" by the Appellant, there was no timeline provided and the children did not offer any further details. The mark noticed on C's leg by the response worker was difficult to see and C was not able to recall when and how she got it. T, who had no bruises on his body, stated that he was not in fear of the Appellant and felt safe to return to her house.

Although it is uncontested that C wrote a suicidal note and stated that she was fearful to return to her grandmother's house, preferring to stay with her uncle, it appears that C's fear came from the fact that she had stolen money from her grandmother and was afraid of the consequences. In fact, C returned to her grandmother's house after four days and the Appellant's case with the Department was closed after a few months.

The Appellant has no previous involvement with the Department and there is no evidence that the children had been previously subject to the physical abuse by their grandmother. The Appellant denied that she has ever hit the children and mentioned that C was clumsy and frequently got bruises. She also mentioned that C had previously written another note of revenge towards the person who killed her father.

Based on the evidence presented, this hearing officer finds that the Department did not have sufficient evidence to have reasonable cause to believe that the children were physically abused by the Appellant, or that the Appellant's actions created the potential for abuse or that there was an immediate risk to the children's safety or well-being.

Conclusion and Order

The Department's decision to support the allegation of physical abuse of CE and TE by MS was not made in conformity with Department regulations and/or policies; therefore, the Department's decision is **REVERSED**.

Frances I. Wheat/smc

Frances I. Wheat
Administrative Hearing Officer
Office of the General Counsel

Date: 8/20/20

Sophia Cho/smc

Sophia Cho, LICSW
Supervisor, Fair Hearing Unit
Office of the General Counsel

Date

Linda S. Spears
Commissioner