

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

Linda S. Spears
Commissioner

Voice: (617) 748-2030
FAX: (617) 748-2062

IN THE MATTER OF)
)
 MB) **FAIR HEARING DECISION**
)
 FH # 20191377)
)

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

Procedural History

On August 27, 2019, the Department of Children and Families received a 51A report, from a mandated reporter, alleging the neglect of A by her father, MB, and her mother, BG. A response was conducted and on September 18, 2019, the Department made the decision to not support the allegation of neglect of A by BG. The Department did support the allegation that MB neglected A. 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 January 23, 2020, at the DCF Fall River Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
MB	Appellant
KF	Department Supervisor
CA	Department Response Social Worker

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 110 CMR 10.26.

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

For the Department:

Exhibit A: Intake report dated 8/27/19

Exhibit B: Child Abuse/Neglect Non-Emergency Response completed 9/18/19

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. At the time of the filing of the subject 51A report, A was three (3) years old. She resided with her mother, and had regular parenting time with her father, MB, as parents shared legal and physical custody. (Exhibit A)
2. The Appellant is the father of A; therefore, he is a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. On August 27, 2019, the Department of Children and Families received a report pursuant to M.G.L. c. 119, §51A, from a mandated reporter, alleging the neglect of A by her father, MB, and her mother, BG. According to the reporter, a verbal altercation occurred at father's home when mother showed up there during her lunch break while A was on parenting time with father. Mother admitted to taking \$166 from father's wallet without his permission. Father responded by grabbing mother by the neck, holding her to the floor and choking her causing scratch marks. Father denied this and said mother was lying. Father also had marks on his neck and his shirt was

ripped. Father was arrested for Domestic Assault and Battery and mother was to be summonsed for domestic assault and battery, destruction of property, and stealing money from father. A was present for the entire event. This report was screened in for an investigatory response. (Exhibit A)

4. Pursuant to M.G.L. c. 119, §51B at the conclusion of its investigation, the Department supported the aforementioned report for the neglect of A by MB. The allegation of neglect pertaining to BG was not supported. MB did not meet with the Department; therefore, the decision was made based on the police report and BG's account. BG alleged MB threw her around the room and attempted to choke her after she took money from his wallet. MB was arrested based on BG's statements and the marks to her neck. A reported she was scared when her father put his hands around her mommy's neck. (Exhibit B, p.7)
5. BG went to MB's home during his parenting time with A. A verbal argument ensued, and MB threatened to leave the home with A. BG took his money and keys and said he wasn't going to get far without his stuff. MB became angry with BG and knocked her cell phone out of her hand. A physical altercation then ensued. (Exhibit B, p.3)
6. During the subject altercation, BG's phone recorded some of the events. A could be heard crying in the background, BG was heard telling MB to get off of her, and MB was heard telling BG to give him back his money. (Exhibit B, p.3)
7. A told the Department she was scared and crying when, "Daddy punched mommy in the throat and mommy was crying and had boo-boos." (Exhibit B, p.4)
8. The Department learned the District Attorney's Office did not prosecute the charges against BG. MB's case was prosecuted and scheduled for pre-trial. (Exhibit B, p.5)
9. MB acknowledged a struggle occurred in his home which A was exposed to. He reported BG took his car keys and money and he attempted to restrain her, not choke her. (Testimony of MB)
10. A might have thought he was choking her mom but he was only trying to get his phone back. (Testimony of MB)
11. MB called the police because BG would not leave his home. MB would not testify against BG therefore her case was dismissed at court. (Testimony of MB)
12. In light of the totality of the evidence in this case, I find the Department did have reasonable cause to support the allegation of neglect.
 - a. "If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing a physical or emotional injury." Lindsay v. Department of Social Servs., 439 Mass. 789, 795 (2003).
 - b. The Appellant failed to provide A with minimally adequate emotional stability and growth, and other essential care. (See, definition of neglect below)
 - c. The Department had sufficient evidence to support a finding that the Appellant neglected A under Department policies and regulations. A was present for a verbal and

physical altercation in the home. The Appellant was criminally charged for domestic assault and battery as marks were observed on BG's neck.

13. Therefore, the Department's decision to support the allegations of neglect of A by the Appellant was made in compliance with its regulations and policy. (110 CMR 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16)

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 caretaker 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. 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

"Danger" is 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 Policy #86-015, rev. 2/28/16

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;. . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

"Caregiver" means (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

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 Appellant was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant contested the Department's decision to support an allegation that he neglected A. He did not deny that a verbal altercation turned physical in A's presence, rather he denied his acts were neglectful. The Appellant maintained he tried to walk away from BG after the verbal argument, but she prevented him from doing so by taking his keys and money. He contacted the police because she would not stop arguing and would not leave. The Appellant acknowledged A was present and upset by what occurred, and that she might have perceived that he was choking her mother when he was merely trying to get his phone. I find the Appellant's argument to be unpersuasive. A physical or verbal altercation between caretakers, witnessed by children, constitutes neglect; it demonstrates a failure to provide a child with minimally adequate emotional stability and growth. John D. v. Dep't of Soc. Servs., 51 Mass. App. Ct. 125, 129

(2001).

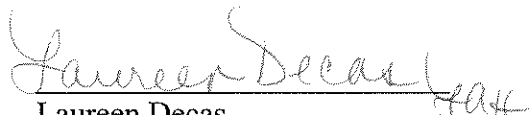
Our courts have repeatedly recognized that witnessing domestic violence has a profound impact on the development and well-being of children and constitutes a “distinctly grievous kind of harm.” Custody of Vaughn, 422 Mass., 590, 595 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that the child has been injured, either physically or emotionally by the domestic violence, the State need not wait until a child has actually been injured before it intervenes to protect a child. ” Custody of a Minor, 377 Mass. 876, 882-883 (1979). In the instant case, A was scared and crying during the verbal and physical fighting in the home, which gave the Department sufficient evidence that during that altercation she was being emotionally injured, and the Department intervened appropriately. The record reflects the Appellant is a loving and involved father who does not have a history of exposing A to violence.

Considering the entirety of the record in this case, there was no evidence that the Department acted unreasonably when supporting this report, the Appellant was not substantially prejudiced by the Department’s decision, and the Appellant has not shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegation of neglect.


Conclusion

The Department’s decision to support the allegation of **neglect** of A by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county in which he lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Lauren Decas
Administrative Hearing Officer

7/30/2020
Date


Linda A. Horvath, Esq.
Supervisor, Fair Hearing Unit