

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 5TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda Spears
Commissioner**

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IN THE MATTER OF: MB & EB

FH # 2019-1560

FAIR HEARING DECISION

The Appellants, MB and EB, (hereinafter “the Appellants” or “MB” or “EB”) appeal the Department of Children and Families (hereinafter “DCF” or “the Department”) decision to support an allegation of neglect of C pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On November 7, 2019, the Department received a report which alleged the neglect of C by the Appellants. The basis of the reporter’s concern was C’s disclosure she was afraid to go home due to the fighting between her parents. The Department conducted an emergency response and on November 15, 2019, made the decision to support an allegation of neglect of C by the Appellants. The Department provided the Appellants with written notification of the decision and their right to appeal.

The Appellants made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at DCF Worcester West Area Office on March 3, 2020. At the conclusion of the hearing the record was held open for the submission of additional documents. These documents were received and reviewed.

In attendance at the fair hearing were:

Kathleen Sims	Administrative Hearing Officer
MB	Appellant
EB	Appellant
JM	Department Supervisor ¹

In accordance with 110 CMR 10.03, the Administrative Hearing Officer attests to

¹ The Department Response Worker was unable to attend due to emergency at the area office.

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

The Fair Hearing was digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

- Exhibit A: 51A Report of November 17, 2019
- Exhibit B: 51B Report completed on November 15, 2019 by HD

For the Appellant(s):

- Exhibit 1: Release of Information
- Exhibit 2: Discharge Summary and Plan dated February 25, 2020 (2 pages)
- Exhibit 3: Letter dated February 10, 2020
- Exhibit 4: Progress Notes dated July 11, 2018
- Exhibit 5: After care plan dated March 2, 2020
- Exhibit 6: Notes dated July 18, 2018
- Exhibit 7: Acute Safety Plan dated November 19, 2019
- Exhibit 8: Progress Notes dated November 26, 2019
- Exhibit 9: Letter dated November 21, 2019
- Exhibit 10: Email dated March 7, 2020
- Exhibit 11: Email dated March 7, 2020
- Exhibit 12: Text message dated January 24, 2020
- Exhibit 13: Text message dated February 13, 2020

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) 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

1. The Appellant, MB, is the biological father, and Appellant EB is the biological mother of C, who was 13 years old at the time of the subject report. The Appellants were married and living together with C. (Exhibit A)
2. As C's biological parents, the Appellants were C's caregivers under Department policy and regulations. (DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00)
3. The Appellants had no previous involvement with the Department. (Exhibit A)
4. In 2015, C was diagnosed with osteosarcoma (bone cancer). C received extensive treatment, including a large bone graft and uses a crutch to assist with walking. C missed one (1) year of school due to her cancer treatment. At the time of the subject report, C was cancer free. (Exhibit B, p. 6; Testimony of the Appellants) At the time of the subject report, only MB was working in order for EB to care for C. (Exhibit B)
5. Prior to the subject report, C was diagnosed with Generalized Anxiety Disorder, depression and had been diagnosed with autism when she was a toddler. Between September 20, 2019 and October 2, 2019, C was hospitalized for treatment of depression and suicidal ideation related in part to illness and its attendant emotional impact. For the past four years, C was in therapy and seeing a psychiatrist. (Exhibit 2, 4-8; Exhibit B, p.3; Testimony of EB)
6. Although C missed school related her cancer treatment, the evidence suggested she had developed an aversion to school. There was disagreement between the Appellants, where EB would allow C to stay home at times when MB felt there was not a legitimate reason. C had been bullied at school and despite a move to a new district, had begun to cite bullying in her new school as a reason for not wanting to attend. (Exhibit B, pp. 6-9)
7. On November 5, 2019, C was released early from school, after claiming she was feeling sick. The same day, the Appellants received a computer-generated letter regarding C's chronic absenteeism and that it required a report to the state. When MB arrived home, he MB confronted C about her absenteeism, and that she needed to go to school. C defiantly told her parents that she was not going to school. (Exhibit A; Exhibit B, pp. 6, 7)
8. In addition to C's attendance, MB had found concerning text messages between C and another teenager, "J", and believed J was influencing new behavior they had noticed with J, including C cutting herself and sexually suggestive content. The discovery of the messages upset MB in particular (Exhibits 10, 11). The Appellants

took away C's electronics, an act that C had identified as her number one (1) trigger. (Exhibit 7, p. 1)

9. The Appellants had a "heated" verbal argument between themselves, which C recorded without the Appellants' knowledge. The Appellants were in the living room of the home. C was in her bedroom. (Exhibit A; Exhibit B, p.6-7; Testimony of the Appellants)
10. On November 6, 2019, C met with her school adjustment counselor and the mandated reporter and disclosed she did not feel safe at home because there was "a lot of fighting at home". C played a tape recording of the argument between her parents for her counselor and the reporter. The reporter followed up with the Appellants, noting MB was upset to learn that C had shared the recording and he was unaware of it. (Exhibit A, p. 3)
11. The recording that was played for the reporter was an intense verbal argument with a "lot of f-bombs." MB sounded angry and made reference to being the one who put a roof over their heads. C's attendance was part of the argument and there was a lot of swearing. C could be heard crying in the background. (Exhibit B, p. 2, p. 13)
12. On November 7, 2019, C went to school and told the counselor her phone was taken away and claimed her father had told her not to talk to her school counselor or the mandated reporter. C stated she was afraid to go home, that the arguments had been going on "for years" and threatened to run away if forced to go home. The reporter was very concerned about C due to her history of self-harm. The subject 51A report, alleging neglect of C by the Appellants, was filed the same day and screened in for an emergency response. (Exhibit A)
13. On November 7, 2019, the Department response worker interviewed C at school. C corroborated that there was a "big blowout" between her parents and claimed they had been "fighting her entire life" and she was "sick of it." She also corroborated playing the recording for her counselor, which had made MB more upset because her parents hadn't known about it. C noted that EB did not yell at C but put pressure on her about school. (Exhibit B, pp.4-5)
14. The Appellants met with C to discuss how each one was feeling. C agreed to go home with the Appellants. (Exhibit B, p.9) The Department did not document a home visit to the family in the response. (Testimony of the Supervisor)
15. C has anxiety over many stressors. C has a lot of fears. C reported being scared of the guidance counselor, scared of the bus, and does not want to attend school. (Exhibit B, p. 8; Exhibit 3)
16. KP, a therapist, met with C three (3) times. KP had no concerns about EB and had not met MB. C did not mention any concerns about the Appellants. SC was the prior therapist for C for a few years. C never expressed any concerns about the Appellants

or feeling unsafe with the Appellants to SC. MB was notably stricter than the EB. C could be verbally abusive to EB; C would swear at her mother and was at times physically aggressive when she did not get something she wanted. (Exhibit B, p.10)

17. SS was a family therapist who met with the family on November 9, 2019. C had a lot of anger towards the Appellants, whom she felt were "not hearing her." Although C wanted to spend time with her friend J, the Appellant expressed their concerns and reservations. (Exhibit B, p.11)
18. On November 10, 2019, C met with mobile crisis after she threatened to harm herself. C stayed at home until a hospital placement was available for her. On November 12, 2019, C was hospitalized for psychiatric treatment. The hospital planned on helping the Appellants with a Department of Mental Health (DMH) referral for C. (Exhibit B, pp. 11-12)
19. A review of the evidence revealed the Appellants ensured C had all necessary care, treatment and appropriate follow-up care. Following the reported incident, C's mental health issues resulted in a recommendation for transfer to a therapeutic school environment, where C benefitted from specialized staff and accommodation. (Exhibits 3, 9) No further concern was identified for C (Exhibits 12, 13)
20. On November 15, 2019, the Department supported an allegation of neglect of C by the Appellant. As a basis for its decision, the Department cited increased arguments in the home and affect upon C. The Department determined the Appellants had failed to provide C with minimally adequate emotional stability and their actions posed substantial risk to C's safety and well-being. (Exhibit B, pp.14-15)
21. At the hearing the Department Supervisor testified the Department support decision for neglect was based on the concern about C's presentation in the reporter's office on the day of the incident and her statement she was afraid to go home. The Department did consider C's preexisting mental health issues and lack of protective concern prior to the report in question. (Testimony of the Department Supervisor)
22. I found the Appellants' testimony at the Fair Hearing to be sincere and forthright. Considering their demeanor, the content of their testimony given under oath and its consistency with their statements to DCF, and considering the totality of the evidence, I find the Appellants credible with respect to the issues in this case.
23. After a review of all the evidence and for the following reasons, I find the Department did not have reasonable cause to support an allegation of neglect of C by the Appellants:
 - a) The Department did not have sufficient evidence that the Appellants failed to provide minimally adequate care for C, including minimally adequate emotional stability and growth (110 CMR 2.00 and 4.32), and;
 - b) The Department did not have sufficient evidence that the Appellants' actions

placed C in danger or posed a substantial risk of harm to C's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

24. In reaching the instant decision, the Hearing Officer gave due weight to the clinical decision made by the Department. 110 CMR 4.32; 110 CMR 10.29(2)

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 Appellants were caregivers for C under Department policy and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department supported an allegation of neglect of C by the Appellant. As a basis for its decision, the Department cited increased arguments in the home and affect upon C. The Department determined the Appellants had failed to provide C with minimally adequate emotional stability and their actions posed substantial risk to C's safety and well-being. The Department did not have sufficient evidence to support its decision in this instance.

It was undisputed the Appellants had a heated verbal argument over issues that had been building in the months prior to the reported incident. The evidence suggested this was a family who in the years prior to the reported incident had no history with the Department and during a period in which C was diagnosed with an aggressive cancer and required extensive treatment. Already experiencing anxiety around her diagnosis and the possibility of recurrence, C was engaged in psychiatric treatment and received counseling in the four years prior to the subject report, all coordinated by her parents.

The evidence suggested an array of factors led to a heated argument between the Appellants, including C's school attendance. C's father found concerning text messages from a youth who had befriended C; the messages alarming enough that he confronted C and took away her electronics, which triggered C's emotional response and disclosure to the reporter. It was undisputed the Appellants engaged in a loud verbal argument in the home relating to these issues and C's current behavior; and, unbeknownst to them, C had recorded the argument and played it for the reporter. It was understandable in the context of C's history and mental health that an argument, particularly one in which her behavior was the subject, would be upsetting and that she would have a reaction which was disproportionate.

An argument in and of itself does not constitute neglect under Department regulations. The Appellants had been working with multiple providers to assist with C's mental health, which had been a long-standing issue. Prior to the subject incident no protective concern was reported by the myriad collaterals working with C and her parents. At the Fair Hearing, the Department acknowledged the decision was made without regard for the Appellants' history of protective acts or regard for the lack of reported concern prior to the reported incident. While the reported incident merited the Department's attention

and the Appellants' actions were justifiably scrutinized, the Department did not have evidence that C was placed in danger or to suggest the Appellants' actions posed substantial risk to C's safety or well-being.

For these reasons and those set forth in the above Findings of Fact, this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by substantial evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App.Ct. 739, 843 N.E.2d 691 (2006). Additionally, there was no evidence that the Appellants' actions or inactions placed C in danger or posed a substantial risk to C's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

Conclusion and Order

The Appellants have shown by a preponderance of the evidence that the Department's decision to support an allegation of neglect on behalf of C was not in conformity with Department policy and/or regulations or without a reasonable basis, therefore the Department's decision is **REVERSED**.

26 JUN 20
Date

KATHLEEN SIMS ^{MSB}
Kathleen Sims
Administrative Hearing Officer

MEMORANDUM
Maura E. Bradford
Supervisor Fair Hearing Unit

Linda Spears
Commissioner