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)
)
C. K.) **HEARING DECISION**
)
FH # 2017 0728)

Procedural Information

The Appellant in this Fair Hearing is Ms. C.K. (hereinafter "the Appellant") The Appellant appeals the Department of Children and Families' ("the Department" or "DCF") decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On May 5, 2017, the Department received a 51A report filed by a mandated reporter, alleging neglect of C, ("C" or "the child") by the Appellant; the allegations were subsequently supported. The Department informed the Appellant of its decision and of her right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06.

The Fair Hearing was held on October 3, 2017, at the Department of Children and Families' Greenfield Area Office. All witnesses were sworn in to testify under oath. The record closed at the end of the Hearing.

The following persons appeared at the Fair Hearing:

Anastasia King	Administrative Hearing Officer
Ms. C.K.	Appellant
Ms. K.B.	DCF Supervisor
Ms. N.M.	DCF Response Worker

In accordance with 110 CMR 10.03, the Administrative Hearing Officer attests to impartiality in this case, having had 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 1: 51A Report
Exhibit 2: 51B Response

For the Appellant:
Exhibit A: Daily Schedule
Exhibit B: Individualized Education Plan

Pursuant to 110 CMR 10.21, 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.

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 subject child of this Fair Hearing is C ("C" or "the child"); a male child who was 10 years old at the time the 51A report was filed. (Exhibit 1, p.1)

2. On May 5, 2017, a 51A report was filed by a mandated reporter alleging neglect of C by the Appellant. According to the report, the child, who was in the Appellant's custody, had missed 25 days of school. Two letters, the last being a registered letter, had been sent to the home. It was also reported that the child was selectively mute and had never spoken in school. The school had been trying to get the Appellant to get the child into therapy, but it had not happened. (Exhibit 1, p.2; Testimony of Supervisor)

3. The 51A report was screened in as a Non-Emergency Response and assigned to DCF Response Worker, Ms. N.M., ("Response Worker" or "RW") to complete a 51B Response. (Exhibit 2, p.1)

4. The Appellant is the child's paternal grandmother and was his legal guardian. At the time of the 51A response, the child resided with the Appellant in her home. (Testimony of Appellant) The Appellant was a "caregiver" as defined by Departmental regulation 110 CMR 2.00.

5. The child is the biological son of Mr. W.K., ("the father" or "the parents") and Ms. E.K. ("the mother" or "the parents") The parents have a significant history with the Department. The parents were supported for neglect of the child in 2006, and the mother was supported again in 2007, for neglect of the child due to her use of inappropriate discipline; the mother did not understand the child's developmental disabilities. In May of 2013, the father was arrested for the sexual assault of an 11 year old girl who disclosed that she was sexually abused by the father, and that the subject child was present during the incidences of abuse. The father admitted to sexually abusing the 11 year old child, and in September of 2014, the father was sentenced to six years in state prison. Because C was selectively mute, it was unknown if he had also been sexually abused by the father. (Exhibit 1, p.4; Exhibit 1, p.6)

6. The Appellant obtained guardianship of C in Probate Court on August 12, 2013. (Exhibit 1, p.5; Testimony of Appellant)

7. The Appellant has extensive DCF history involving the child, with similar concerns as currently reported. The following is a summary of the Appellant's DCF history that involved the subject child:
   - In December of 2013, after two referrals were made for the Appellant with the Department's housing specialist to assist the Appellant in obtaining appropriate housing for herself and the child, the referral was closed due to the Appellant's failure to respond to the numerous attempts made to engage the family in services. (Exhibit 1, p.5)
   - Despite a warning in April of 2014, that the child was in danger of losing his school choice slot due to his poor attendance, his lack of attendance continued, and the Appellant was notified in August of 2014 that the child would be unable to attend his present school as a school choice for the following year. (Exhibit 1, p.6)
   - The Appellant was in attendance for a family team meeting that was conducted on November 4, 2014. It was reported that the child had missed 18 days of school and the Appellant had not followed through with Intensive Care Coordination services that had been put into place. It was further reported that the child was no longer taking his prescription medication. The Appellant stated that the child refused to take the medication and the Appellant stopped offering them to him. The Appellant had also received a written warning from the housing program due to the Appellant's failure to attend house meetings and change her utilities over to her name. (Exhibit 1, p.6)
   - On November 10, 2014, the Department received a 51A report alleging educational neglect of the child by the Appellant. The report stated that the child did not attend school for 25 out of 51 days of school. Several letters and telephone calls to the Appellant had been made by the school, and despite the school's attempt to assist the family, no improvements had been made. Following a 51B response, the allegations were subsequently supported. (Exhibit 1, p.6)

- On November 17, 2014, the DCF Social Worker arrived at the home. The child was home from school due to stomach issues. The Appellant had not contacted the child's physician, and the family had not engaged in any therapeutic services in the home. The Appellant was made aware that she was to contact the school, Crisis Services, and her parent aide each day that the child refused to attend school. The Appellant agreed to the plan. (Exhibit 1, p.6)
- On November 19, 2014, the DCF Social Worker contacted the child's school and was informed that the child was not present, and the Appellant had not contacted the school. (Exhibit 1, p.6)
- On November 24, 2014, a preliminary hearing was scheduled at Juvenile Court. The hearing was continued until December 19, 2014, with an agreement that the child would attend school daily, and the Appellant would fully cooperate with in-home therapeutic services. The Appellant was to also notify the Department, the child's school, and her parent aide each day the child was not going to attend school. (Exhibit 1, p.6)
- On November 25, 2014, the family's in-home therapist went to the Appellant's home and the Appellant initially refused to meet with the therapist. The therapist was able to view the child through the shades of the home. The Appellant informed the therapist that the child did not attend school due to a bloody nose. The Appellant had not informed the child's school, the Department, or the child's physician that the child had a bloody nose and would be absent from school that day. (Exhibit 1, p.7)
- During the month of December in 2014, there appeared to be an improvement in the child's attendance and the Appellant's engagement in services. However, in January of 2015, the child's unexcused absences from school increased and there were new concerns that the Appellant was leaving the child home alone, despite repeated warnings made by the Department and the therapist to the Appellant that this was an unsafe practice. The Appellant was also refusing the help of the in-home therapy team to get the child to school. (Exhibit 1, p.7)
- In February, 2015, the Department filed a Care and Protection petition and obtained custody of the child and the child was placed in foster care. Improvements were made, and the Appellant completed tasks established in her DCF Service Plan. As a result, the child was returned to the Appellant's care on August 28, 2015. (Exhibit 1, p.8)

8. On May 16, 2017, the RW met with the child's school guidance counselor, Ms. H., ("guidance counselor") who had concerns regarding the Appellant's ability to care for the child. Concerns included the child's lack of proper hygiene, poor attendance at school, and there had been no therapeutic services put into place for the child. The guidance counselor believed the child was in need of services through the Department of Mental Health ("DMH"), although that would not occur without a diagnosis on the child. (Exhibit 2, p.3)

9. The guidance counselor had completed a counseling referral for the child, and the child was scheduled to begin counseling in May of 2017. (Exhibit 2, p.4; Testimony of Appellant)

10. When the child refused to go to school, the Appellant would at times call the school and the Guidance Counselor along with the school nurse would often drive to the Appellant's home and bring the child to school. Despite the assistance from the school, as of May 16, 2017, the child had 27.5 absences, 35 tardies, and 5 dismissals from school. (Exhibit 2, p.3; Testimony of Appellant)

11. Although the child had an Individualized Education Plan, ("IEP") he had no academic needs and was one of the top readers in his class. Testing on the child concluded that he was cognitively above average. (Exhibit 2, p.2)

12. The child is selectively mute and had never spoken a word to anyone at the school. However, the child did speak to the Appellant, and his parents. (Exhibit 2, p.3; Testimony of Appellant)

13. On May 16, 2017, the child's teacher reported to the RW that she was concerned about possible anger issues with the child in the future. She reported that the child was highly intelligent, but did not respond to people and as a result, people would end up talking slower and louder to the child and treat him as if he were dumb. The teacher was concerned that this would trigger anger in the child as he got older. The child's teacher also had concerns about the child's lack of proper hygiene and reported that the child does not complete his homework. The Appellant had been made aware of this. (Exhibit 2, p.4)

14. On May 16, 2017, with the guidance counselor's assistance, the RW met with the child. The child, communicating using hand gestures, head movements, and writing down answers, reported the following:
    - It was hard for him to get to school, but liked school once he got there. (Exhibit 2, p.3)
    - The child had friends that he liked to hang around with at school. (Exhibit 2, p.3)
    - When asked why he stayed home from school, the child did not respond, but when asked if he was worried about the Appellant, the child responded that he was. (Exhibit 2, p.3)
    - When the child stayed home from school he would read books and play video games. (Exhibit 2, p.3)
    - The child denied that anything in the home or at school made him scared or worried. (Exhibit 2, p.3)

15. The RW made an unannounced home visit to the Appellant's home on May 16, 2017. When the RW introduced herself to the Appellant, the Appellant rolled her eyes and invited the RW into the home. (Exhibit 2, p.4)

16. The Appellant acknowledged to the RW that the child had missed an excessive amount of school and that the school had made her aware that the child's attendance was a concern. When asked about the child's ability to communicate with her in the home, the Appellant stated that she "can't shut him up at home". (Exhibit 2, p.4; Testimony of Supervisor)

17. The Appellant reported that the child had been having a hard time due to the mother's move to [redacted] in March of 2017, and the father was sentenced to prison[1] around the same time the child's grandfather passed away. The Appellant stated that the child experienced a lot of loss in his life and he was "scared to death" that the Appellant would leave him as well, or would die, leaving the child alone. (Exhibit 2, p.4; Testimony of Appellant)

18. Although the Appellant provided a number of explanations as to why the child was not attending school, and acknowledged the excessive loss in the child's life, the Appellant provided no evidence that she made any reasonable efforts to address the child's issues. The Appellant did not make any reasonable attempts to seek assistance or take advantage of the school's attempts to assist her in meeting the child's needs. (Fair Hearing Record)

19. On June 1, 2017, the RW was notified by the office of the child's physician that during a recent office visit, it was recommended that the child complete a behavioral health consult. However, there was no indication that the Appellant followed through with this recommendation. (Exhibit 2, p.7)

20. The Appellant reported to the RW that "things were getting better" when the Department was involved. However, when the Department closed its case, the child "was back to missing school". (Exhibit 2, p.5; Testimony of Appellant)

21. On May 25, 2017, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the child by the Appellant. The Department based its determination on information obtained during the 51B response. (Exhibit 2, p.7; Testimony of Supervisor)

22. Based upon a review of the evidence presented in its entirety, and after consideration of all the facts and circumstances, this Hearing Officer finds that the Appellant did not take those actions necessary to provide the child with minimally adequate care. (See, definition of "neglect" below) This Hearing Officer further finds that the Appellant's actions or inactions placed the child in danger, posing a substantial risk to his safety or well-being as required by the Department's intake policy when supporting for neglect. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16).

23. Therefore, I find that the Department's decision to support the 51A report for neglect was made in compliance with its regulations. (See, "reasonable cause" below)

Analysis

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** that 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

[1] According to DCF documents, the father was sentenced to prison on September 3, 2014. (Exhibit 1, p.6)

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 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

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. (110 CMR 2.00)

"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)
To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in

an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

The Appellant contested the Department's finding of neglect, and in support of this argument, the Appellant submitted documentary evidence and testimony at the Fair Hearing. After review of all of the evidence provided, this Hearing Officer found no evidence to detract from the Department's finding. Although the Appellant disagreed with the Department's determination that the child was neglected as a result of her actions, this Hearing Officer did not find that the Appellant presented persuasive evidence in this matter to allow for a reversal of the Department's support decision.

The school reported that the child was highly intelligent and cognitively above average. However, the child was selectively mute, and though the Appellant acknowledged that the tremendous loss the child suffered in his life had negatively affected him, the Appellant failed to make any reasonable attempts to seek out the appropriate services to assist the child. Instead, it appeared that the Appellant's expectation was that others, including the school, and the Department would make the necessary referrals for services. However, the Appellant was the child's guardian, and as such, it was her responsibility to ensure that services for the child were implemented and followed through with. If the Appellant was in need of assistance to implement services, she was fully aware that she could reach out to the child's school for assistance.

In addition, the Appellant, who had an extensive history with the Department regarding very similar issues, believed that the child was "scared to death" that the Appellant would leave him or would die, leaving the child alone. However, despite having that insight, as well as having had the experience of the child being removed from her care for very similar issues, the Appellant failed to make any reasonable efforts to ensure that the child's mental health and educational needs were appropriately addressed. The Appellant's lengthy history with the Department indicated that despite numerous attempts to assist the family and provide the child with much needed services, the Appellant historically failed to follow through to ensure the child's needs were met. The Court has determined that the Department's determination of neglect does not require evidence of actual injury. (Lindsay v. Department of Social Services, 439 Mass. 789 (2003))

Even with no indication or evidence that a child has been injured, either physically or emotionally, 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. 879, 389 N.E.2d 68, 73 (1979)) Based on the information obtained during the 51B response, it was sufficient for the Department to find reasonable cause that neglect of the child occurred, and that the Appellant's actions, as defined by the Department's regulations, constituted neglect as she failed to provide the child with minimally adequate care.

Therefore, based on the totality of the evidence, for reasons cited above, and in the detailed Findings of Fact, the Department had "reasonable cause to believe" that neglect did occur in this instance. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 51B response, serves as a threshold function in determining whether there is a need for further assessment and/or intervention. (Care and Protection of Robert, 408 Mass. 52, 63-64 (1990)) Additionally, there was evidence that the actions or inactions by the Appellant placed the child in danger or posed substantial risk to his safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16) (Fair Hearing Record) As such, there was sufficient evidence to support a finding of neglect.

Conclusion

The Department's decision to support the allegations of **neglect** of the child 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, she may do so by filing a complaint in the Superior Court for the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

Anastasia King (CMS)
Anastasia King
Administrative Hearing Officer

Date: 1-8-18

Nancy S. Brody
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