

**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) 748-2000
FAX: (617) 261-7428

IN THE MATTER OF)
)
 AF) **FAIR HEARING DECISION**
)
 FH # 2017-0182)
)

The Appellant in this Fair Hearing was AF. The Appellants appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of neglect pursuant to MGL c. 119, §§51A and B.

Procedural History

On January 6, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of A by her mother, AF. A non-emergency response was conducted and on January 30, 2017 the Department made the decision to support the allegation that the subject child was neglected by AF. The Department notified AF (AF or "Appellant") of the decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR §10.06. The hearing was held on April 13, 2017 at the South Central DCF Area Office in Whitinsville, MA. The record remained open until April 28, 2017 to allow the Appellant to submit additional documentary evidence.

The following persons appeared at the Fair Hearing:

Jorge F. Ferreira	Fair Hearing Officer
EK	DCF Supervisor
AF	Appellant

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 Child Abuse/Neglect Report dated 01/06/17

Exhibit B Child Abuse/Neglect Non-Emergency Response completed 01/30/17

For the Appellant:

Exhibit 1 Probate & Family Court Agreement/Stipulation

Exhibit 2 Police Report dated 01/06/17

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

On the basis of the evidence, I make the following factual findings:

1. At the time of the filing of the subject 51A report, A was 1 year old. She resided with her mother, AF, and father, ML, in ████████, MA. (Exhibit A; Exhibit B)
2. The Appellant is the mother the subject child; therefore she was deemed a "caregiver" pursuant to Departmental regulation and policy. 110 CMR §2.00; *DCF Protective Intake Policy #86-015, rev. 2/28/16*

3. The family has no previous history with the Department. (Exhibit A, p. 3; Exhibit B, p. 1)

4. On January 6, 2017, the Department of Children and Families received a 51A report from a mandated reporter alleging the neglect of the subject child by the Appellant pursuant to M.G.L. c. 119, § 51A. According to the reporter, the subject child's father went the police station at 7:30pm to report he had a fight with his girlfriend, AF. The father, ML, disclosed that he had A in his arms and attempted to walk away from AF. Reportedly, the father was pushed by AF while walking away with the child in his arms. The Appellant, AF, was arrested and charged with domestic assault and battery and held on bail. No bruises were observed to be on the child or her father, ML. (Exhibit A, p. 2; Exhibit 2)

5. The report was screened in and assigned for a non-emergency response, pursuant to M.G.L. c. 119, §51B. The allegation of neglect of the subject child by the Appellant was supported on January 30, 2017 by the Department at the conclusion of the DCF Response. The allegation was supported because the Appellant did confirm that an altercation took place while ML was holding the subject child. The father tried to separate himself from an escalating situation but the Appellant, who was agitated, continued to follow him and tried to open a door to a room where ML and A had gone. ML's account to the Department and to the police was consistent. The Appellant was arrested for assault and has pending criminal charges from the incident. (Exhibit B, p. 4; Testimony of the DCF Supervisor)

6. The Appellant and ML had not been on good terms since November 2016 and tension had escalated since they broke up as the Appellant wanted to take the subject child out of state in [REDACTED] where she had family. ML did not like that plan and hired an attorney to petition Probate Court and deny the subject child's move to [REDACTED]. (Exhibit B, pp. 2-3; Exhibit 1; Testimony of the Appellant)

7. The Appellant was reported to be angry with ML due to the Probate Court stipulation and tension in the home progressively escalated into the incident of January 16, 2017. (Exhibit B, p. 2)

8. The Appellant lived with ML until the night of the incident. ML had been caring for the baby and verbal argument ensued when the Appellant came home. The Appellant was reported to be agitated and ML denied letting the Appellant take the child as he was about to change her. According to ML, the Appellant escalated the situation by bumping and pushing while holding the subject child. (*Id.*)

9. ML went into the child's room with his daughter and shut/locked the door. The Appellant continued slamming the door with her foot and leg. He remained in there until the situation became more calm, upon which he proceeded to go to the police and file a report, resulting in the Appellant's arrest. (Exhibit B, p. 2; Exhibit 2)

10. The subject child's pediatrics office related that she was healthy and up to date with her medical care. They also noted that they did not have any protective concerns regarding how she has been cared for by the Appellant and ML. (Exhibit B, p. 3)

11. The Appellant described ML's description of the incident as "overblown." She described ML as the "verbal aggressor" in the situation, relating that he locked himself in the child's room while they argued and that she observed that he had been drinking alcohol before she came home. She denied that he ever pushed him or bumped ML during the incident but acknowledged that the subject child was crying. (Exhibit B, pp. 3-4; Testimony of the Appellant)

12. When ML went to the police station, she stayed at home and gave the subject child a bath. She never thought the police would go and arrest her and feels that she was substantially prejudiced because police never interviewed her. (*Id.*)

13. I find that the Department did have reasonable cause to support the allegations of neglect by Appellant. Through her actions, the Appellant did fail to provide minimally emotional stability and growth for A by engaging in a physical altercation with her partner and with her child present. (See, definition of "neglect" below.)

14. After review of credible evidence, I find that the Department's decision to support the allegation of neglect of the subject child by the Appellant was made in compliance with its regulations. 110 CMR §§2.00, 4.32; *DCF Protective Intake Policy #86-015, Rev. 2/28/16*

Applicable Standards

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)

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. *Care and Protection of Robert*, 408 Mass. 52, 63-64 (1990). "[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A. *Id.* at 63. 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.

Caregiver

- (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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. *Protective Intake Policy No. 86-015* (rev. 02/28/2016)

Neglect is 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 a failure to thrive. Neglect cannot result solely from inadequate economic resources or be due solely to the existence of a handicapping condition. (*Id.*)

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (*Id.*)

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. (*Id.*)

A Substantiated Concern means:

- There is reasonable cause to believe that the child was neglected; and
- The actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the children(ren)'s safety or well-being. (*Id.*)

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

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; or (e) if the challenged decision is a listing on the alleged perpetrators list, that there is not substantial evidence indicating the person is responsible for the abuse or neglect of a child. 110 CMR §10.23

Analysis

It is undisputed that the Appellant was a "caregiver" pursuant to Departmental regulation and policy. 110 CMR §2.00; *Protective Intake Policy No. 86-015, rev. 02/28/2016*

The Appellant disputes the Department's decision to support the allegation that she neglected subject child. The Appellant argued that the incident stemmed from stressors due to separation as a couple and the custody of their daughter, A. She related that this was an isolated incident and that they had never engaged in this type of altercation before this incident. The Appellant blamed ML for being the aggressor in the incident, relating that he had been drinking alcohol while caring for A and that he instigated the argument when she came home. The Appellant argued that ML was angry at her attempt to relocate to [REDACTED] with their child, citing that she had more family support in that state. The Appellant denies assaulting ML while he was holding the child, claiming that she was only attempting to see the child and that he pushed her and kept her out, sustaining a head injury in doing so. (Fair Hearing Record) Finally, the Appellant argues that the incident was not thoroughly investigated by the police and feels that she was substantially prejudiced by them because she was never given an opportunity to explain her side of the story, relating that they arrested her without considering her position in this instant matter.

The Hearing Officer is not persuaded by the Appellant's argument. The Department was able to show that they had reasonable cause to believe that the subject child witnessed a verbal altercation and physical altercation between her parents and that the perpetrator of violence was the Appellant. The Appellant acknowledged that the incident occurred, albeit situational, and that the subject child was crying during the incident, which shows that it had a clear impact on the child. She also acknowledged that she was trying to get hold of the child even when ML had gone into the child's room for safety and for the situation to calm down. (Fair Hearing Record) Subsequently, the situation escalated into a police incident where the Appellant was charged with domestic assault and was arrested. This hearing officer finds no credibility in the Appellant's argument that alluded ML was intoxicated and was the instigator. The police report references ML as someone who came to the police station to file a complaint and was entrusted with the wellbeing of the child once the Appellant was placed into police custody. While the situation is isolated, it still occurred and had an impact on the infant. Subsequently, I find that the Appellant failed to provide minimally adequate emotional stability and growth of the subject child

as defined by the Department's regulation. (110 CMR §2.00; *Protective Intake Policy No. 86-015, rev. 02/28/2016*) Additionally, the court has ruled that a physical or verbal altercation between caretakers, witnessed by children, "constitutes a failure to provide the children with minimally adequate stability and growth." John D. v. Department of Social Services, 51 Mass. App. Ct. 125, 132 (2001)

Concerns of domestic violence cannot be ignored by the Department. 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). Children who witness domestic violence, especially during important developmental stages, often have serious psychological problems. Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that a 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. 879 (1979)

In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there is a reasonable basis for the decision (110 CMR §10.05). After review of the testimonial and documentary evidence presented, I find that the Appellant has not demonstrated any failure by the Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. 110 CMR §10.06(8)

As provided for in the regulations quoted above, the Response Worker relied on available documentation, observable behavioral indicators and his clinical knowledge to support the decision made. Based on the totality of the circumstances, and the evidence gathered, I find that the Department's determination of neglect was based on "reasonable cause" and was made in conformity with Departmental regulations.

Conclusion & Order

The Department's decision to support the allegations of neglect of the subject child by the Appellant was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision 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 she lives within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.

Jorge F. Ferreira
Jorge B. Ferreira
Administrative Hearing Officer

1/30/18

Date

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor