

**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

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IN THE MATTER OF)
)
 DL) **FAIR HEARING DECISION**
)
 FH # 20170516)
)

The Appellant in this Fair Hearing was DL. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support an allegation of physical abuse pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On March 9, 2017, the Department of Children and Families received a 51A report filed by a mandated reporter, alleging the physical abuse of L by her guardian, DL. DL was a DCF approved foster parent. A response was initiated and on March 28, 2017, the Department made the decision to support the allegation of abuse of L by her guardian, DL. The Department notified DL (Ms. L or "Appellant") of its decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on July 26, 2017, at the DCF [REDACTED] 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
DL	Appellant
JL	Witness
KL	Department Response Social Worker
BQ	Department Family Resource 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 on one compact disk.

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

For the Department:

- Exhibit A Child Abuse/Neglect Report dated 3/9/17
- Exhibit B Child Abuse/Neglect Non-Emergency Response completed 3/28/17
- Exhibit C Family Resource License Renewal

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. In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a trained social worker, that there is reasonable cause to believe that a child has been abused or neglected.(110 CMR §10.05).

Findings of Fact

1. At the time of the filing of the subject 51A report, L was seven years old. She resided in [REDACTED] MA with her legal Guardian, DL, her sister K, who was six years old and also in the guardianship of the Appellant, and three foster children for whom DL was a foster parent. (Fair Hearing Record)
2. The Appellant is the legal Guardian of the subject child; therefore she is deemed a caregiver pursuant to Departmental policy. DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. L and her sister K were involved with the Department along with their biological parents due to issues of substance abuse and domestic violence. The girls were placed with DL in 2011; DL obtained Guardianship of the children (DCF sponsored and supported the Guardianship) in 2014. (Exhibit C)
4. DL had previously been investigated twice relative to allegations of physical abuse in 2014. Those reports were unsupported. (Testimony of KL)
5. On March 9, 2017, the Department of Children and Families received a report pursuant to

M.G.L. c. 119, s. 51A, filed by a mandated reporter, alleging the physical abuse of L by her guardian, DL. L told her teacher that her "Mom"¹ slapped her on the face this morning. L said she was walking the dog and while outside she touched the pool. Her Mom yelled at her to come inside. L reports she went inside and she was lying on the floor. She reported Mom pinched her to make her get up and then she slapped her face. L reports this made her nose bleed. The school nurse checked her out and the child had no injuries. The school asked L's sister, K, what happened and she said she did not see anything happen but she did see some blood. The reporter states that although the child had no injuries she did have some dried blood on her jeans and sneakers. (Exhibit A)

6. The mandated reporter stated that in January 2017, L said "Mom" hit her with a sandal. The school called Mom and she denied it. L had a history of making up stories and not being honest. She also had behavior issues and ADHD. (Exhibit A)

7. A few weeks previous feces were smeared all over the bathroom at school and after an investigation it was discovered that it was L who did it. (Exhibit A)

8. DL denied striking L; however acknowledged L had a bloody nose and did walk the dog that morning. DL said she took things away as discipline. She acknowledged she had threatened to "pop" L in the mouth but had not followed through with doing so. (Exhibit B, p.3)

9. L told the Department investigator a different reason for why her mother slapped her on the day in question. L reported she was slapped in the nose and bled because her mother had just looked at the school communication log. L said the teacher wrote that she had smeared feces but she didn't. L reported foster children GV and KV observed her mother hit her. (Exhibit B, p.3)

10. KV denied seeing L hit that morning by DL and said L was walking down the stairs and blood came out but DL was not near her when this happened. GV was not specific, however said she had observed DL hit L in the face more than one time. She spoke of an incident a long time before when L was hit on her arm with a black belt. (Exhibit B, pgs. 4, 5)

11. L was diagnosed with Attention Deficit Hyper Activity Disorder as well as Oppositional Defiant Disorder. L craved attention, negative or positive. L was prescribed Ritalin and had a recent medication increase one week before the reported incident. (Exhibit B, p.2)

12. L's behaviors had been escalating. Her half-brother, who was still in care of her biological mother, had enrolled in her school; she then saw her mother more often at drop off and pick up. (Fair Hearing Record)

13. L verbalized she wanted to leave DL's home to return to her biological mother. (Testimony of KL)

14. L had told school staff that she had recently gone on a trip to Disney and spoke at length about her favorite ride. The family has a Disney trip upcoming but L has never been. School staff noted L was "very believable". (Exhibit B, p.6)

¹ L called DL mom

15. L also spoke at length at school about DL being pregnant and how a new baby was making her feel. DL was not pregnant. (Exhibit B, p.6)

16. L was screened psychiatrically after this allegation arose and she met hospitalized level of care. She spent a few days in the hospital and returned to DL's home. (Fair Hearing Record)

17. While hospitalized, L told hospital staff she felt guilty for not telling the truth. (Testimony of DL)

18. L told DL's mother, "Nana, I feel guilty that I didn't tell the truth". DL's mother asked L why she lied and L said she did not know why. (Testimony of JL)

19. L was not a credible reporter and the Department was concerned about credibility issues with her disclosure. (Testimony of KL)

20. On March 28, 2017, the Department supported the allegation of the physical abuse of L by DL. In conclusion, the Department noted the family resource worker had no concerns of abuse or neglect, L's school personnel found DL to be a great communicator and had no protective concerns. (Exhibit B, p.8)

21. After review and consideration of all of the evidence, I find that the Department did not have reasonable cause to support the allegation of physical abuse of L by DL as there was no reliable evidence to support a finding that the Appellant abused L.

Applicable Standards and 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 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).

"Reasonable cause" is "[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

"Abuse" means the non-accidental commission of any act by a caregiver upon a child under age

18, which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the law of the Commonwealth or any sexual contact between a caregiver and a child under the care of that individual, or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 2.00, DCF Protective Intake Policy #86-015, rev. 2/28/16

“Physical injury” is defined as “(a) death; or (b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or (c) soft tissue swelling or skin bruising depending on such factors as the child’s age, circumstances under which the injury occurred, and the number and location of bruises...” 110 CMR 2.00.

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 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.

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

It was uncontested that the Appellant was a caregiver. DCF Protective Intake Policy #86-015, rev. 2/28/16.

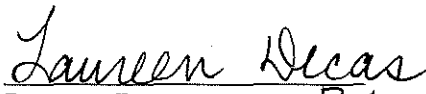
The Appellant disputed the Department’s decision to support an allegation that she physically abused L. She argued L was not a reliable reporter, that she did not strike L, and that L was suffering emotional turmoil at the time of her disclosure relative to increased contact with her biological mother, a medication increase, and her mental health diagnosis. L was not a reliable reporter, DL is attached and committed to L, denied striking L, professional collaterals had no

protective concerns relative to DL, and at the time of the Fair Hearing L was doing well in the home.

L did not have an injury, as she was examined by the school nurse and had no marks or bruises. The question then is whether or not DL's actions caused, or created a substantial risk of physical or emotional injury to L. The Department's Protective Intake Policy defines substantial risk of physical injury as an action taken or a situation which, left unchanged, might lead to physical injury to a child. The intent of such a policy is to allow the Department to intervene in situations where there is no evidence that a child has, in fact, suffered a significant injury, but the circumstances are such that if the situation were to continue unchanged there is a substantial likelihood the child will eventually suffer an injury. Such a finding was not warranted. The evidence simply did not support an inference that a substantial risk of physical injury, as defined by regulation, was present, thus the Department lacked reasonable cause to conclude that the Appellant abused L under Department regulations.

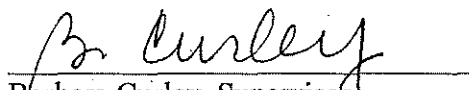
Conclusion and Order

The Department's decision to support the 51A report of abuse by the Appellant is REVERSED.



Laureen Decas ^{BC}
Administrative Hearing Officer

January 2, 2018
Date



Barbara Curley, Supervisor
Fair Hearing Unit

Date

Linda S. Spears
Commissioner