

**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

LO

2017-0055

Fair Hearing Decision

The Appellant in this Fair Hearing is LO. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of her son, M, pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

Procedural History

On September 19, 2016, the Department received a 51A report, which was filed by a mandated reporter. The allegation was screened in by the Department for a Non-Emergency Response and upon the conclusion of the Department's response, the allegation of neglect of S by the Appellant was supported by the Department. The Appellant made a request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was scheduled to be held on July 18, 2017 at the Department of Children and Families' Harbor Area Office in Chelsea, MA. Appellant's counsel contacted the Fair Hearing Unit and requested that a paper review be conducted on his client's behalf. The record officially closed on August 25, 2017 at which all documentary evidence was submitted by Appellant's counsel.

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

For the Department:

Exhibit A: 51A Report of September 19, 2016
Exhibit B: 51B Non-Emergency Response of November 15, 2016

For the Appellant:

Exhibit 1: 51A Report of September 19, 2016
Exhibit 2: 51B Non-Emergency Response of November 15, 2016
Exhibit 3: Police Report of September 17, 2016

- Exhibit 4: Affidavit of LS
Exhibit 5: Affidavit of DO
Exhibit 6: Affidavit of KO

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)

Statement of the Issue

The issue presented in this Fair 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 parents(s)/ caregiver(s) placed the child(ren) in danger or pose substantial risk to 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

The Appellant, through counsel, submitted a Memorandum which was reviewed by this Hearing Officer and taken into consideration when rendering this decision, along with all the evidence, which leads to the following factual findings:

1. The Appellant is the mother of the reported child, M, in this matter; therefore she is deemed a caregiver pursuant to Departmental policy. M was three months old at the time of this response. 110 CMR 2.00
2. Appellant and M's father, MT, were separated during this time. The couple had a history of domestic violence and substance abuse. In April 2016, LO secured a 209A order against MT. This order was later modified in June 2016 to a "no abuse order". This modification, allowed MT access to his son, M. (Exhibit B, p.4,6, Exhibit 3)
3. On September 17, 2016, LO was staying at her parents' home with M. LO had arranged for MT to visit the home and spend time with her and their child, M, while her parents, DO and KO, were out for the day. (Fair Hearing Record)
4. MT arrived to the home as scheduled to visit M. Soon after his arrival, the following events took place:

- MT appeared to be “on edge” and described as “combative and aggressive” by Appellant.
- Appellant and MT began to argue while home alone with M
- MT left the home with M, and Appellant began to scream after him “like a maniac” while MT was holding M.
- Neighbors witnessed the argument and police were notified. Responding police officers, interviewed Appellant and MT. MT was removed from the home and arrested for violation of his restraining order. He was released on the same day.
DO and KO were asked to return home by responding officers to assist in caring for M.
(Exhibit B, p. 5-6, Exhibit 3)

5. A second police response took place to the Appellant’s home on this date. This time, the response was initiated after Appellant’s parents called the police department seeking help for the daughter as she appeared to be having a “mental breakdown”. Both DO and KO reported Appellant becoming upset, breaking items in the home, confronting DO and eventually falling on a vase cutting her hand. (Fair Hearing Record)

6. Out of concern for M’s safety, DO and KO kept the child from Appellant by placing the child in the bathroom and locking the door. His grandmother, KO, kept him company while DO tried to deescalate the Appellant. (Exhibit B, Exhibit 5 and 6)

7. LO left the home prior to police arriving this second time. Eventually, she returned and was transported to the hospital for treatment of her injuries. M entered the Care and Protection of the Department and was placed in the care of his maternal grandparents on September 21, 2016. (Exhibits 4-6, Exhibit B, p.4-5)

8. On September 19, 2016, an allegation of the neglect of M by his parents, MT and LO, was filed by a mandated reporter. (Exhibit A, Exhibit 1)

9. On November 15, 2016; the Department of Children and Families completed its response and supported the allegation of neglect of M by Appellant and M’s father, MT. (Exhibit B, p. 1)

10. After review of the evidence provided by the Appellant and DCF, I find that the Department had reasonable cause to believe that the Appellant neglected M for the following reasons:

- a. Appellant and MT had documented violence in their relationship, yet Appellant still allowed him into her parent’s home.
- b. Both MT and Appellant engaged in an argument which consisted of yelling, “erratic” and “manic” behavior as described by Appellant, all while in a caregiving role of M.
- c. Appellant’s own behavior became volatile and concerning enough to her parents, DO and KO, that they resorted to denying Appellant access to the M while having an apparent “mental breakdown” and

placing the child in the bathroom and locking the door as a protective measure.

d. Throughout the evidence provided, it became obvious that Appellant was not suffering from any mental condition as she was not psychiatrically hospitalized during the report events. It was also obvious that Appellant was not able to maintain a level of containment while in caregiving role of M which led to the second police response to the home. Previously, Appellant also engaged in an argument with MT which consisted of yelling between the two, and chasing of MT in the presence of then three month old M, failing to provide M with minimally adequate care. . . emotional stability , meeting the Departmental definition of neglect. 110 CMR 2.00 , Protective Intake Policy #86-015 Rev. 2/28/16).

Applicable Standards

In order for the Department to “Support” an allegation of neglect, the Department must find that there is reasonable cause to believe that the child(dren) was abused and/or neglected ; *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 the child(ren) being a victim of sexual exploitation or human trafficking. DCF Protective Intake Police #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 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, 63-64 (1990) Id. at 63. 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 caretaker, 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. Protective

Intake Policy #86-015 Rev. 2/28/16

“Caregiver” means a child's: (1) a child's parent, stepparent, guardian or any household member entrusted with the responsibility for a child's health or welfare; or, (2) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under age 18). 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.
110 CMR 10.23

Analysis

After reviewing all of the evidence provided by Appellant, through counsel, and the testimony, the Appellant failed to provide the reported child in this matter with minimally adequate care as she along with M's father created a volatile environment in the family as evidenced by the police reports and description of Appellant's own behavior after the arrest of MT with her parents who had returned to the home to assist her. 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).

Appellant's behavior became unmanageable by her parents which led her mother, KO, to call the police for a second response to home. This behavior also prompted KO and DO to deny Appellant access to the child and KO to lock herself in the bathroom with M to ensure his safety. (Exhibit B, Exhibits 5-6) Although the subject child did not experience injury as a result of the Appellants actions, the Court has concluded that the Department's determination of neglect does not require evidence of actual injury to the child.

Lindsay v. Department of Social Services, 439 Mass. 789(2003). "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 physical or emotional injury." Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 795 (2003).

Attorney argued that the Department violated its regulations as within its intake report, Appellant was described as being suicidal and having locked herself in the bathroom with the child. After review of the evidence, it became clear that the Appellant was not suicidal or in need of psychiatric treatment, yet behaved in a way that was threatening enough to her parents that concerned them for the safety of M prompting them to not allow her near the child and locking the child in the bathroom while Appellant was "destroying" items in the home and arguing with her father, DO.

Based on the record as a whole and giving due weight to the clinical judgement of the Department Social workers, the evidence supported the Department's finding that the Appellant failed to provide minimally adequate care. As such, the Department's decision was made in compliance with its policies and regulations. 110 CMR 2.00, 110 CMR 10.05, DCF Protective Policy #86-015 Rev. 2/18/16.

Conclusion and Order

In conclusion, the Department's decision to support the 51A report of neglect of M by the Appellant is **AFFIRMED**

This is the final administrative decision of the Department. If 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 in 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 reserve the right to supplement the findings.

Carmen Colón

Carmen Colón (new)
Fair Hearing Officer

4-18-18
Date

Susan Diamantopoulos

Susan Diamantopoulos
Fair Hearing Supervisor