

**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)
(LD)
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(FH # 2017-0217)
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HEARING DECISION

Procedural History

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

On January 7, 2017, The Department received a 51A report from a mandated reporter alleging neglect of D and P by LD; the allegation was subsequently supported. The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on May 9, 2017, at the Department of Children and Families' Lowell Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

DH	Administrative Hearing Officer
TG	DCF Response Worker
MO	DCF Supervisor
LD	Appellant

In accordance with 110 C.M.R. 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 on a digital voice recorder, pursuant to 110 CMR 10.26

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

For the Department:

Exhibit A: 51A Report
Exhibit B: 51B Investigation

For the Appellant:

Exhibit 1: Letter from the Appellant

Exhibit 2: Text from Appellants Phone

Exhibit 3: Text from Appellants Phone

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 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

1. The children at the time of the investigation were D (hereinafter "D" or the "children") who was seven (7) years old and P (hereinafter "P" or the "children") who was nine (9) years old. (Exhibit A, p. 1)
2. The Appellant is the biological father to D and P. Therefore, he was a caregiver pursuant to Department regulation and policy. (Exhibit A, p.1; DCF Protective Intake Policy # 86-015, rev. 2/28/16; CMR 2.00)
3. On January 7, 2017, a 51A report was screened in alleging neglect of D and P by the Appellant. It was reported that the Appellant had been verbally abusive towards the mother, JD, in the presence of their children. The Appellant threatened to knock JD out in front of the youngest child. (Exhibit A, p. 6)
4. On January 12, 2017, the Response Worker (hereinafter "RW") spoke with the Appellant who reported that JD was having an affair. The Appellant reported that the marriage was over. The Appellant also admitted that he had been vulgar to JD. The Appellant reported that JD had been vulgar with him. (Exhibit B, p.4)
5. On January 12, 2017, the RW spoke with JD, who reported that the Appellant started to be verbally abusive a month ago. JD denied that she was having an affair with another man. JD

stated that the Appellant called her names in front of P and D. JD stated that she was able to obtain a no abuse order and no contact order. (Exhibit B, p. 5)

6. On January 12, 2017, the RW spoke with D. D reported that she was afraid that her parents were going to fight and yell. Her mother was going away and the Appellant facetimed her mother and was saying "loser" to her. D reported that she did feel scared. D reported when she felt scared she ran into her sister's room and that made her safe. D reported that when her parents fought she hid under the kitchen island. D reported that she was concerned that her dad might hit her mom. (Exhibit B, p. 6)
7. On January 12, 2017, the RW interviewed P. P reported not being worried when her parents argued. P reported that she was there when her parents argued but denied feeling scared when it happened. (Exhibit B, p. 6)
8. At the end of the response The Department supported the allegations of neglect for the following reasons:
 - a. JD reported an incident to the police and was granted a no abuse order as well as a summons for the Appellant to appear in court for threats to commit a crime.
 - b. JD and the Appellant were in a domestic dispute when the Appellant threatened to knock JD out in front of their youngest daughter.
 - c. JD and the Appellant were involved in a contentious divorce.
 - d. JD reported regular verbal abuse from the Appellant since December 2016.
 - e. D reported that she felt scared and rushed into P's room and it made her feel safe. D reported when her parents fought she hid under the kitchen island. D heard her father call her mother a loser. D also reported that she worried a lot about her parents fighting or arguing. D reported that she knows men are not supposed to hit women but always thought the Appellant was going to do it. (Exhibit B, p. 8, 9).
9. At the Hearing, the Appellant testified that JD wanted him out of the home. The Appellant provided text messages between him and JD. (Exhibit 2, pp. 1-6; Exhibit 3, pp. 1-4). The Appellant testified that JD made false accusations against him so she could get a restraining order. At the time of the hearing the Appellant testified that all his charges were dismissed in court. He testified that the restraining order was dropped and he has his children fifty percent of the time during the week. (Exhibit 1, p. 1, 2). The Appellant also denied that he has ever laid a hand on JD during their marriage: (Testimony of the Appellant).
10. At the Hearing, the Appellant testified that there was on-going arguing between him and JD and they both are going through a contentious divorce with one another. The Appellant also denied that he has ever neglected P and D in anyway. (Exhibit B, p. 4; Testimony of the Appellant)
11. In light of the totality of the evidence in this case, I find that the Department did have sufficient evidence to have reasonable cause to support the allegation of neglect of D by the Appellant.
 - a. A determination of neglect does not require evidence of actual injury to the child. Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 794-795 (2003).

- b. The Department had sufficient evidence to support a finding that the Appellant neglected D under Department policies and regulations. D reported feeling scared when her parents argued. D ran into her sister P's room to feel safe and hid under the kitchen island. D reported she was afraid her parents were going to fight and yell. D reported feeling worried that even though men are not supposed to hit women but she "always thinks" the Appellant is going to do it.
- c. The Appellant failed to provide D with minimally adequate care and his actions placed D in danger or pose substantial risk to her safety or well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16

12. In light of the totality of the evidence in this case, I find that the Department did not have sufficient evidence to have reasonable cause to support the allegation of neglect of P by the Appellant. While P acknowledged that her parents argue, P denied feeling worried or feeling unsafe.

Applicable Standards

"[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

"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)

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

A finding of support requires that there be reasonable cause to believe that a 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: 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. 2/28/2016)

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. 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) 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

Analysis

It is undisputed the Appellant was a caregiver pursuant to Departments regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev 2/28/16

On January 7, 2017, a 51A was filed by a mandated reporter alleging neglect of D and P. The reporter alleged that there was a verbal argument that took place between the Appellant and JD and that their children, D and P, were present during the arguments. The Department subsequently found the Appellant to have neglected P and D.

At the Hearing, the Appellant testified that he never laid a hand on his wife and that they were going through a contentious divorce. The Appellant testified that JD told him she would do anything to get him out of the home. However, the Appellant does acknowledge that there were verbal altercations in the home. P did not report feeling unsafe to the RW. P did not disclose that she was in fear or scared when her parents argued. D reported feeling unsafe and ran into her sister's room to feel safe or hide under the kitchen island. D also reported she was afraid that her parents will argue and that her father might strike her mother.

Considering the entirety of the record and evidence in this case, the Department had sufficient evidence to support a finding that the Appellant neglected D under Department policies and

regulations. The Appellant failed to provide D with minimally adequate care and his actions placed D in danger or pose substantial risk to her safety or well-being. A determination of neglect does not require evidence of actual injury to the child. Lindsay v. Dep't of Soc. Servs., 439 Mass. 789, 794-795 (2003). Therefore, the Department's decision to support the allegation of neglect of D by the Appellant is affirmed.


In contrast, considering the entirety of the record and evidence in this case the Department had insufficient evidence to support a find that the Appellant neglected P under the Department policies and regulations. While both D and P were exposed to their parent's verbal arguments, P did not express or verbalize impact the arguments had on her. Therefore, the Department's decision to support the allegation of neglect of P by the Appellant is reversed.

Order


The Department's decision to support the allegation of neglect of D by the Appellant was made in conformity with Department regulations and policy and is therefore **AFFIRMED**

The Departments decision to support the allegation of neglect of P by the Appellant was not made in conformity with the Departments regulations and policy and is therefore **REVERSED**

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 in Suffolk County, or in the county in which he resides, 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 reserves the right to supplement the findings.


David Halloran
Administrative Hearing Officer

Date: 6/8/2018


Sophia Cho, LICSW
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner