

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)
(AR)
()
(FH # 2017-0247)
()

HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is AR. The Appellant appeals 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 27, 2017 the Department received a 51A report from a mandated reporter alleging neglect of Z ("Child") by the Appellant; the allegation was 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 C.M.R. 10.06

The Fair Hearing was held on April 4, 2017 at the Department of Children and Families' Hyde Park Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
JG	DCF Supervisor
LT	DCF Response Worker

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 received 1/27//2017
Exhibit B: 51B Response completed 2/16/2017

For the Appellant:

Exhibit 1: Letter from Doctor M.

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) 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. 2/28/16

Findings of Fact

1. AR is the mother of Z. At the time of the instant 51A filing, Z was ten years old. Z is home schooled. I find that AR is a caregiver of Z in accordance with the regulations and policies that govern these proceedings. (Exhibit A p.1-2, Exhibit B p.1, Testimony of LT, Testimony of Appellant)
2. Z was diagnosed with diabetes in April of 2015. She was diagnosed by Dr. M. at the [REDACTED] clinic. (Exhibit A p.2, Exhibit 1, Testimony of Appellant)

3. When Z was initially diagnosed, the doctor was unable to discern exactly which type of diabetes she had. The doctor recommended to the family that Z could stop taking insulin, but that she should continue to check her blood sugar on a regular basis in order to establish the type of diabetes. (Exhibit 1, Testimony of Appellant)
4. On November 24, 2016, Z was admitted to [REDACTED] for severe Diabetic Ketoacidosis. She was admitted into the Intensive Care Unit (ICU). She was found to be dehydrated and to have other complications from her diabetes. (Exhibit A p.2, Exhibit 1)
5. At the Fair Hearing, AR testified that while Z was in the ICU, she did not feel that the medical staff was being helpful or cooperative with her. She told the nurse that Z was allergic to Tylenol, and asked that she not be given it. AR requested some alternative medications, or ibuprofen or a cold cloth on Z's forehead. (Testimony of Appellant)
6. At the Fair Hearing, AR testified that after Z's hospitalization they have attempted to attend every scheduled appointment with Z's pediatric endocrinologist. AR acknowledged that a few had been missed due to miscommunication. AR testified that she had did not want to continue meeting with the referred visiting nurse because she felt the meetings were repetitious and the issues were already addressed with Z's endocrinologist. (Testimony of Appellant)
7. At the Fair Hearing, the Response Worker testified that the consulting doctor from [REDACTED] team was very concerned about Z's condition upon admission because Z's body was not producing any insulin. The team doctor was concerned that Z's diabetic condition was being minimized. (Exhibit B p.8, Testimony of LT)
8. At the Fair Hearing, the Appellant testified that she had been working to address her daughter's diabetes diagnosis with Dr. M., a pediatric diabetes and endocrinology specialist since her initial diagnosis in 2015. She testified that she had informed the Department of Dr. M's role, but they had failed to contact him. I find that there is no evidence that the Department contacted Z's pediatric endocrinologist, Dr. M. (Exhibit B, Testimony of LT, Testimony of Appellant)
9. At the Fair Hearing, the Appellant testified that although some appointments with Dr. M. had been missed, they were due to miscommunication and scheduling mishaps. She has since made and attended several appointments with Z and Dr. M. This testimony is corroborated by a letter from Dr. M. (Exhibit 1, Testimony of Appellant)
10. At the Fair Hearing, the Appellant stated that she had been monitoring Z's glucose levels with regular daily testing. The Appellant acknowledged that Z's glucose level had spiked, precipitating her hospitalization, but explained that this incident had occurred during Thanksgiving. The Appellant had been giving her daughter a low carbohydrate diet, but allowed her to have carbohydrates during Thanksgiving. The

Appellant testified that she believes the intake of carbohydrates over the holiday was the primary cause for Z's hospitalization. (Testimony of Appellant)

11. At the Fair Hearing, the Appellant testified that she stopped working with the visiting nurse because the instructions the nurse was providing were at times redundant and at other times ran counter to the instructions she was getting from Dr. M. The Appellant testified that she terminated the service because it was voluntary and she did not feel it was being helpful. (Testimony of Appellant)
12. The record was left open for the Appellant to submit a letter from Dr. M., which was subsequently admitted into evidence. This letter states that Dr. M. indicated that Z could stop taking insulin, but continue to check her blood sugar levels. The letter goes on to state that since Z's hospitalization, Dr. M. was recommending Z utilize insulin therapy in the future. The letter does indicate that Dr. M. was concerned with the care that the Appellant was providing her daughter. The letter does not indicate that the Appellant was refusing to follow recommended course of treatment for her daughter. I find that there is no evidence the Appellant was refusing a recommended course of treatment for her daughter Z. (Exhibit 1)
13. I find that there is not reasonable cause to believe the Appellant neglected her daughter Z for the following reasons:
 - a. Prior to Z's hospitalization, the Appellant was following Dr. M's recommendations for monitoring Z's diabetic condition.
 - b. During Z's hospitalization, the Appellant argued with the staff about the care that was being provided her daughter, particularly in regards to administering Tylenol; however, the Appellant did not refuse any course of treatment in regards to Z's diabetes.
 - c. After Z's hospitalization, the Appellant re-established contact with Dr. M. and worked with his office towards a course of treatment for Z.
 - d. Dr. M. did not convey any concerns regarding the Appellant's care for Z.

Applicable Standards

A "support" finding means there is 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. 2/28/16.

"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.

"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." 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

"Caregiver". A caregiver is a child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or 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.

"Neglect". 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.

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.

Analysis

In this case, the Department appears to have supported the allegation of neglect based upon the Appellant's actions and inactions before, during and after her daughter's hospitalization for diabetes. However a more thorough review of the facts and timeframe

of events, with information from the Z's treating diabetes doctor, leads to a different conclusion.

The Department faults the Appellant for allowing her daughter's blood sugar to escalate to such a degree that she needed hospitalization. The Department implies that Z should have been on insulin before being hospitalized, but it provides no evidence from any treating doctor or specialist in the field to clarify if this was the only course of treatment. Moreover, the Appellant sufficiently presents sufficient evidence that Z was following the recommended course of treatment at that time. Further, the Appellant acknowledges that her daughter's blood sugar spiked on this particular occasion, but notes it was during Thanksgiving, a holiday associated with large meals.

In its Disposition Comment, the Department notes that the Appellant was resistant to having a visiting nurse come into her home. The Department appears to use this as part of its rationale to support the decision of neglect. However, as the Appellant correctly argues, a visiting nurse is a voluntary service. The Appellant clarifies that the visiting nurse's instructions and support were either redundant or in opposition to what Dr. M. was indicating. The Appellant terminated the service because she did not believe it was providing any help to Z.

The Department also appears to rely on several appointments the Appellant and Z missed with Dr. M. However, as detailed above those missed visits were due to miscommunications and were subsequently rescheduled.

Conclusion and Order

The Department's decision to support the allegation of neglect of Z by the Appellant is hereby REVERSED.

6-12-19
Date

Nicholas Holahan (Case)
Nicholas Holahan
Administrative Hearing Officer
Susan Diamantopoulos (BO)
Susan Diamantopoulos
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner