

**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)
)
 WW) **FAIR HEARING DECISION**
)
 FH # 20170608)
)

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

Procedural History

On April 5, 2017, and April 6, 2017, the Department of Children and Families received two (2) 51A reports from mandated reporters alleging the neglect of N (hereinafter "N" or "the child") by her father, WW. A response was conducted and on April 27, 2017, the Department made the decision to support the allegation of neglect of N. The Department notified the Appellant of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on January 16, 2018, at the DCF Brockton Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for one (1) week to allow the Appellant to submit additional evidence. On January 23, 2018, the record on this matter was closed absent any submissions from the Appellant.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
WW	Appellant
IR	Department Supervisor

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 110 CMR 10.26.

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

For the Department:

- Exhibit A: 51A Report, dated 4/5/17
- Exhibit B: 51A Report, dated 4/6/17
- Exhibit C: 51B Report, completed 4/27/17

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. 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. At the time of the filing of the subject 51A reports, N was ten (10) months old. She resided in ████████ MA with her mother, NW (hereinafter "NW"), and maternal grandmother, PC. N's father, WW, resided separately in ████████, MA. (Fair Hearing Record)
2. The Appellant is the father of the child; therefore he was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.
3. On April 5, 2017, and April 6, 2017, the Department of Children and Families received two (2) 51A reports pursuant to M.G.L. c. 119, §51A from mandated

reporters alleging the neglect of N by her father, WW. According to the reports, the Appellant was arrested for Assault and Battery of NW after an incident of domestic violence whereby the Appellant threw NW down stairs and punched her in the face. NW suffered a crushed eye socket. It was not known at the time where N was when the incident occurred; however NW reported the Appellant had been abusive towards her in the past. NW went to court and was granted a protective order on behalf of herself and N. There were concerns that N was present during ongoing incidents of domestic violence. The reports were screened in for a non-emergency response pursuant to MGL c. 119, §51B, and assigned. (Exhibit A, Exhibit B)

4. NW and the Appellant lived together prior to the April, 2017 incident. NW reported she and N moved out of the Appellant's apartment approximately 2 months prior; and moved in with her mother, PC. (Exhibit A, p. 5)
5. When interviewed by the Department, NW reported the Appellant had a history of abusing her; however this was the first time she called the police. (Exhibit B)
6. The Appellant alleged that on the date of the incident that led to his arrest, NW had tried to stab him with a knife. He also alleged in the past, NW tried to poison him with bleach. (Exhibit B; Testimony of WW)
7. It was uncontested that N was not present during the subject 51A reported incident between the Appellant and NW. (Fair Hearing Record)
8. NW disclosed two (2) other abusive incidents between her and the Appellant which N was present for when she and N lived with the Appellant. In addition, NW reported physical and emotional abuse she sustained by Appellant. (Exhibit C, p.2)
9. When interviewed by the Department, NW corroborated what was written in the 51A reports. NW had visible injury to her eye, which was swollen closed with significant bruising that was observed by the Department. (Exhibit C, p. 2; Fair Hearing Record)
10. The Appellant denied physically abusing NW; alleging she went after him with a sword, destroyed the door to his apartment, and that the altercation was only verbal. The Appellant alleged NW had mental health issues; including a psychiatric hospitalization in January, 2017. (Testimony of WW)
11. There was no evidence that NW was suffering from mental health issues which impacted her credibility. NW's injuries were consistent with her disclosure regarding the current altercation. There was no evidence offered by the Appellant to indicate NW had reason to fabricate past verbal and emotional abuse she suffered by him. Therefore, I find that NW was reliable reporter. Edward E. v. Department of Social Services, 42 Mass. App. Ct. 478, 486 (1997)
12. At the end of its investigation on April 27, 2018, the Department supported the 51A reports that the Appellant neglected N by his actions which compromised N's safety

and well-being.

13. In light of the totality of the evidence in this case, I find the Department did have reasonable cause to support the allegation of neglect of N by the Appellant.
- a. A physical or verbal altercation between caretakers, witnessed by children, constitutes neglect; it demonstrates a failure to provide a child with minimally adequate emotional stability and growth. John D. v. Dep't of Soc. Servs., 51 Mass. App. Ct. 125, 129 (2001).
 - b. The Appellant and NW had a history of ongoing domestic violence. They were verbally and physically aggressive while N was present.
 - c. The Appellant failed to provide N with minimally adequate emotional stability and growth, by exposing her to ongoing verbal and physical altercations. The Appellant's actions placed N in danger or posed substantial risk to the child's safety and well-being.
 - d. The Department had reasonable cause to intervene in order to ensure N's safety and well-being, especially given N's young age.
 - e. "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. Dept of Soc. Servs., 439 Mass. 789, 795 (2003).

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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. 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)

"[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 (1990) 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 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. DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00

"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. DCF Protective Intake Policy #86-015, rev. 2/28/16

"Risk" is defined as the potential for future harm to a child. DCF Protective Intake Policy #86-015, rev. 2/28/16

"Domestic violence" is a pattern of coercive control that one partner exercises over another in an intimate relationship. While relationships involving domestic violence may differ in terms of the severity of abuse, control is the primary goal of offenders. Domestic violence is not defined by a single incident of violence or only by violent acts. DCF Protective Intake Policy #86-015, rev. 2/28/16

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

"Caregiver" means (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; 110 CMR 2.00

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

The Appellant contested the Department's decision to support an allegation that he neglected his daughter, N. The Appellant argued there was no child present on the day of the instant matter, which was uncontested and supported by the evidence. However, the evidence supported that verbal and physical fighting was ongoing between the Appellant and his wife, NW, and N had been present. It was reasonable for the Department's concern that N was present and exposed to said fighting, given her young age and sole dependence on her parents to meet her needs. "The purpose of the mandatory reporting regime under M.G.L. c. 119, § 51A is to provide the DCF with information necessary to protect a child's health, safety, and development before actual harm is done." B.K. v. Department of Children & Families, 79 Mass. App. Ct. 777, 782 (2011)

The Appellant did not deny there was verbal domestic violence in his marriage. 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, 664 N.E.2d 434, 437 (1996); Adoption of Ramon, 41 Mass. App. Ct. 709, 714 (1996). Even with no indication or evidence that the 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, 389 N.E. 2nd 68, 73 (1979) In the instant case, there was sufficient evidence to support risk to N's emotional well-being, and the Department's basis to intervene.

In making a determination on the matter under appeal, the Hearing Officer shall give due weight to the clinical decision made by a Department social worker. 110 CMR 10.29 After review of the testimonial and documentary evidence presented, the Appellant did not demonstrate a failure by the Department to follow its regulations, policies, or procedures with respect to the decision to support the report of neglect. See, 110 CMR 10.06.

As provided for in the regulations quoted above, the Investigator relied on professional opinions and recommendations, available documentation, observable indicators and her clinical knowledge to support the decision made. Based on the totality of the circumstances, and the evidence gathered, the Department's determination that the Appellant's actions constituted neglect was based on "reasonable cause" and was made in conformity with Departmental regulations. The Appellant's actions placed N in danger.

Conclusion

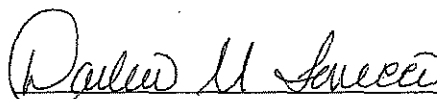
The Department's decision to support the allegation of **neglect** by the Appellant was made with a reasonable basis and therefore, is **AFFIRMED**.

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 he lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

 (circled initials)

Laureen Decas
Administrative Hearing Officer

Date: 4/26/18



Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit