EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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IN THE MATTER OF)
)
M. P. & A.W.) **HEARING DECISION**
)
FH # 2017 0903)

Procedural Information

The Appellants in this Fair Hearing are Mr. M.P., (hereinafter "Appellant M" or "the Appellants") and Ms. A.W., ("Appellant A" or "the Appellants). The Appellants appeal the Department of Children and Families' ("the Department" or "DCF") decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

On July 6, 2017, the Department received a 51A report filed by a mandated reporter alleging neglect of K, ("K" or "the child") by the Appellants; the allegations were subsequently supported. The Department informed the Appellants of its decision and of their right to appeal the Department's determination. The Appellants made a timely request for a Fair Hearing under 110 CMR 10.06.

The Fair Hearing was held on September 14, 2017 at the Department of Children and Families' Worcester West Area Office. All witnesses were sworn in to testify under oath. The record remained open until September 25, 2017, to allow for the submission of additional documents to be submitted and entered into the record.[1]

The following persons appeared at the Fair Hearing:

Anastasia King	Administrative Hearing Officer
Mr. M.P.	Appellant

[1] Exhibit 3
Exhibit 4
Exhibit 5

Ms. A.W.	Appellant
Ms. N.P.	DCF Response Worker

In accordance with 110 CMR 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 pursuant to DCF regulations 110 CMR 10.26.

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

For the Department:

Exhibit 1: 51A Report
Exhibit 2: 51B Response
Exhibit 3: [redacted]x Lab Results
Exhibit 4: Police Reports
Exhibit 5: Releases of Information

For the Appellants:

The Appellants did not offer documentary evidence at the Fair Hearing.

Pursuant to 110 CMR 10.21, 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.

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) 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. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)

Findings of Fact

1. The subject child of this Fair Hearing is K ("K" or "the child"); a male child who was approximately one day old at the time the 51A report was filed. (Exhibit 1, p.1)

2. On July 6, 2017, a 51A report was filed by a mandated reporter alleging neglect of the child by the Appellants. According to the report, Appellant A tested positive for cocaine after giving birth to the child. The Appellants also interfered with the hospital staff's efforts to collect urine and meconium screens on the child. In addition, Appellant M smelled of alcohol. However, the Appellants maintained that a bottle of alcohol had previously broken in Appellant M's backpack and that was the origin of the smell. Appellant A informed the reporter that she had a history of substance abuse and had six other children, none of whom were in her care. Appellant A had no prenatal care and refused to sign consent for prenatal records. It was further reported that Appellant A denied cocaine use during her pregnancy, but had no explanation for the positive drug screen results. The child was born via caesarian section and remained hospitalized for approximately four days (Exhibit 1, p.2; Testimony of RW)

3. The 51A report was screened in for a Non-Emergency Response and assigned to DCF Response Worker, Ms. N.P. ("Response Worker" or "RW") to complete a 51B Response. (Exhibit 2, p.1)

4. The Appellants are the child's biological parents. (Testimony of Appellant) The Appellants were caregivers, as defined by Departmental policy and regulation 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

5. The Appellants, who are not a married couple, are also the biological parents of M; a male child who is approximately four years old. DCF obtained custody of M shortly following his birth. At the time of the Fair Hearing, the Appellants' parental rights of M had been terminated, and M remained in the Department's custody. In April, 2013, following the birth of M, Appellant A tested positive for cocaine, opiates, and oxycodone. Although M was not initially tested due to the Appellants' refusal to allow M medical care, M tested positive for cocaine and oxycodone and began displaying signs of withdrawal on April 6, 2013. (Exhibit 2, p.1; Exhibit 2, p.10)

6. Appellant A is the biological mother of seven children, all of whom were removed from her care shortly following their births as a result of substance abuse and/or mental health concerns. (Exhibit 2, p.1; Exhibit 2, p.2; Testimony of Appellant A)

7. On July 7, 2017, the RW contacted the mandated reporter who confirmed that the information reported in the 51A report was accurate. (Exhibit 2, p.3;Testimony of RW)

8. Appellant A received no pre-natal care during her pregnancy with the child. (Exhibit 2, p.4; Testimony of RW)

9. Appellant A was diagnosed with Bipolar Disorder and had been participating in therapy. However, Appellant A reported to the RW that she did not take her prescribed

medication prior to, or during her pregnancy, due to her dislike of the medication's side effects. (Exhibit 2, p.4)

10. Appellant A tested positive for cocaine after giving birth to the child on July 6, 2017. (Exhibit 2, p.3; Testimony of RW)

11. The director of the hospital's Women and Infant Care, Ms. J.V., ("Director") provided the RW with the following information that occurred on July 6, 2017:

    - Nurse M completed the initial assessment with the Appellants prior to the child's birth. The Appellants were informed by Nurse M that following the child's birth, hospital staff would be collecting meconium and urine samples from the child. (Exhibit 2, p.8)
    - Following the child's birth on July 6, 2017, the following occurred:
      a) 11:01 p.m. – Nurse S entered Appellant A's hospital room to check for meconium and urine samples. Appellant M informed Nurse S that he changed the child and flushed the diaper down the toilet. (Exhibit 2, p.8)
      b) Nurse S reported that Appellant M smelled of alcohol; although there was no evidence that he was intoxicated or impaired. (Exhibit 2, pp.
      c) 3, 8)
      d) 4:00 a.m. – Nurse Z went to Appellant A's hospital room to check for child's meconium sample and the child's diaper had been changed. However, the child's soiled diaper was not able to be found. (Exhibit 2, p.8)
      e) 5:45 a.m. – Cotton balls that had been placed in the child's diaper to assist in obtaining a urine sample were missing from the child's diaper. (Exhibit 2, p.8)
      f) Nurse N observed the Appellants arguing and had felt it necessary to stand in between them at one point during their argument. (Exhibit 2, p.8; Exhibit 2, p.9)

12. On July 7, 2017, the RW met with the Appellants at the hospital to review the reported allegations. The reported child appeared clean, well-dressed and healthy. According to the RW, the Appellants held the child and responded to him without concern. On July 10, 2017, the child was cleared for discharge from the hospital; nursing notes reported no concerns and documented the Appellants as "appropriate."(Exhibit 2. P. 3)

13. On July 7, 2017, the child's meconium tested positive for cocaine. (Exhibit 3; Testimony of RW)

14. The reported child was a Substance Exposed Newborn, as defined by Departmental policy. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

15. Although Appellant A denied any domestic violence history involving Appellant M, police responded on at least two occasions regarding concerns of Appellant A being assaulted by Appellant M. (Exhibit 2, p.5; Exhibit 2, p.6)
    - On November 21, 2016, police responded to the Appellants' home and were informed by Appellant A that during an argument, Appellant M punched her in the torso with his right fist, causing her to fall to the ground. Appellant M, who was aware that Appellant A was approximately eight weeks pregnant at the time, had left

the home prior to the police officers' arrival. The police report indicated that Appellant M would be charged with Aggravated Assault and Battery. (Exhibit 2, p.10; Exhibit 4, p.10)

- On March 28, 2017, police responded to the Appellants' home after a third party called police reporting that Appellant A contacted this individual stating that Appellant M had punched her in the face. Upon police arrival to the home, the Appellants denied that an assault occurred and police did not observe any injury to Appellant A. Police observed empty bottles of alcohol "all over the place", and Appellant A, who was approximately five months pregnant, acknowledged to police that she had been drinking alcohol prior to their arrival. (Exhibit 2, p.11; Exhibit 4, p.4)

16. On February 4, 2017, police and emergency medical response workers responding to the Appellants' home found Appellant M in an upstairs bedroom with a wound to his upper chest and unresponsive due to a heroin overdose. Narcan was administered to Appellant M and a folding knife was located in the living room of the home. Appellant A was uncooperative with police, and reported that she did not know what occurred. Appellant A became agitated and would not answer any other questions by police. Appellant M was transported to the hospital for further treatment. (Exhibit 4, p.6; Testimony of RW)

17. Appellant A denied cocaine use prior to the child's birth and maintained that the positive drug screen result was false. The Appellants also denied that hospital staff informed them, as reported, that the child's urine and meconium would be tested following his birth. Appellant M further denied that his actions following the child's birth were an attempt by the Appellants to hinder the hospital's ability to test the child's urine and meconium. (Testimony of the Appellants) However, the Appellants provided no reasonable explanation or presented evidence to support their claims. Moreover, the Appellants failed to provide evidence that the information obtained by the Department was false, or that the hospital staff and police were motivated to make false allegations against them. (Fair Hearing Record) As a result, this Hearing Officer finds the Department's reliance on statements made by hospital staff and police, as well as the information provided in police reports when making its determination to be reasonable.

18. On July 10, 2017, the Department filed a Care and Protection Petition on behalf of the child and temporary custody of the child was granted to the Department. (Exhibit 2, p.7; Testimony of RW)

19. On July 13, 2017, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the child by the Appellants. The Department based its decision on information obtained during the 51B Response. (Exhibit 2, p.4; Testimony of RW)

20. The Department relied on statements made by hospital staff and police, as well as the information provided in police reports, when making its determination to support the

allegations of neglect of the child by the Appellants. (Exhibit 2, p.9; Exhibit 2, p.10; Testimony of RW)

21. Based upon a review of the evidence presented in its entirety, and after consideration of all the facts and circumstances, this Hearing Officer finds that the Department had reasonable cause to believe that the Appellants did not take those actions necessary to provide the child with minimally adequate care. (See, definition of "neglect" below) This Hearing Officer further finds that the Appellants' actions or inactions placed the child in danger and posed a substantial risk to his safety and well-being. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16). See Analysis.

22. Therefore, I find that the Department's decision to support the 51A report for neglect was based on "reasonable cause" and thus, made in compliance with its regulations. (See, "reasonable cause" below)

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 caregiver occurred ***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 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 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

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. (110 CMR 2.00)

"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)

Substance Exposed Newborn (SEN)
A newborn who was exposed to alcohol or other drugs in utero ingested by the mother, whether or not this exposure is detected at birth through a drug screen or withdrawal symptoms. A SEN may also be experiencing Neonatal Abstinence Syndrome (NAS), which are symptoms and signs exhibited by a newborn due to drug withdrawal. NAS is a subset of SEN. Fetal Alcohol Syndrome (FAS) as diagnosed by a qualified licensed medical professional is also a subset of SEN.

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

After a review of all the evidence provided, this Hearing Officer found no evidence to detract from the Department's finding, and although the Appellants disagreed with the Department's determination that the child was neglected as a result of their actions, this Hearing Officer did not find the Appellants to present persuasive evidence in this matter to allow for a reversal of the Department's support decision. Despite the Appellants' insistence that Appellant A's drug screen results were a false positive and she remained drug free prior to giving birth, the child's meconium tested positive for cocaine on July 7, 2017. In addition, the Appellants denied that the hospital informed them that the child's

meconium and urine would be tested following his birth, and therefore, insisted that their actions were not an attempt to hinder the hospital's ability to obtain the child's meconium and urine for testing. However, the Appellants' argument was not supported by the evidence, and the Appellants provided no reasonable explanation or presented evidence to support their claims. Moreover, the Appellants failed to provide evidence that the information obtained by the Department was false, or that the hospital staff and police were motivated to make false allegations against them. Although the Appellants' drug use alone was insufficient for a supported finding of neglect, the Appellants' history and their more recent behavior raised questions about their credibility, and thus, about their ability to keep their newborn child safe. Despite nursing notes that indicated that the Appellants acted appropriately with the child, such observations were made in a controlled and supervised setting. The nature of the relationship between the Appellants, as observed at the hospital, as well as the Appellants' actions while at the hospital, left reasonable questions about the current safety of a newborn child discharged to the Appellants' home. The Court has determined that the Department's determination of neglect does not require evidence of actual injury. (Lindsay v. Department of Social Services, 439 Mass. 789 (2003))

Even with no indication or evidence that a child has been injured, either physically or emotionally, 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.2d 68, 73 (1979)) Based on the information obtained during the 51B response, it was sufficient for the Department to find reasonable cause that neglect of the child occurred, and that the Appellants' actions, as defined by the Department's regulations, constituted neglect as they failed to provide the child with minimally adequate care. In this matter, additionally, the Court, based on the evidence, granted custody of the reported child to the Department.

Based on the totality of the evidence, for reasons cited above, and in the detailed Findings of Fact, the Department had "reasonable cause to believe" that neglect did occur in this instance. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 51B response, serves as 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)) Additionally, there was evidence that the actions or inactions by the Appellants placed the child in danger or posed substantial risk to his safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16) (Fair Hearing Record) As such, there was sufficient evidence to support a finding of neglect.

Conclusion

The Department's decision to support the allegations of neglect of the child by Appellant M is AFFIRMED.

The Department's decision to support the allegations of neglect of the child by Appellant A is AFFIRMED.

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for the county in which they live, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

Anastasia King (ATY)
Anastasia King
Administrative Hearing Officer

Date: 12-26-17

Nancy S. Brody
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