

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda Spears
Commissioner**

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IN THE MATTER OF: AF

#2017-0974

FAIR HEARING DECISION

Appellant, AF (“Appellant”), appeals 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 July 1, 2017, the Department received a report via the DCF Child at Risk Hotline which alleged neglect of T by the Appellant’s boyfriend RO, after the reporter received a call from the Appellant, who appeared to be in distress following a dispute with RO. The Department screened-in the report and assigned it to the Greenfield Area Office for a response. During the response, the Department added an allegation of neglect of T by the Appellant. On July 17, 2017, the Department made the decision to support an allegation of neglect of T by RO and the Appellant.¹ The Department provided the Appellant with written notification of the decision and her right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was scheduled for September 19, 2017 at the DCF Greenfield Area Office. The Appellant and her Attorney failed to attend, and the matter was dismissed.

On March 21, 2019, the Appellant contacted the Fair Hearing Unit requesting a new hearing date as her Attorney at the time had not provided her with notice of the scheduled hearing or its subsequent dismissal. The Appellant’s request was granted, and a hearing was rescheduled for November 12, 2019.

On October 25, 2019, Appellant’s successor counsel requested a continuance, which was granted.

¹ The instant decision addresses the Department’s support decision as to the Appellant only.

A hearing was held at the DCF Greenfield Area Office on March 3, 2020. In attendance were:

Maura Bradford	Administrative Hearing Officer
SH	DCF Response Worker
KA	DCF Response Supervisor
AF	Appellant
RW, Esq.	Appellant's Attorney
RO	Witness for Appellant

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 digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant, and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

Exhibit A: 51A Report of July 1, 2017
Exhibit B: 51B Report completed on July 17, 2017 by SH
Exhibit C: ServiceNet Documentation
Exhibit D: Text Messages ("1st Set")
Exhibit E: Text Messages ("2nd Set")
Exhibit F: Text Messages from JK
Exhibit G: Text Messages from RO to ED
Exhibit H: Text Messages ("Batch 2, JK")

For the Appellant(s):

Exhibit 1: Letter from Dr. S

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 Appellant is the maternal aunt of T, who at the time of the subject report was two (2) years old. (Exhibit A)
2. At the time of the subject report, the DCF Holyoke Area Office was in the process of completing a foster care licensing study with the Appellant at the time of the subject report; T had been in the Appellant's kinship foster care for only three (3) months at the time. Prior to the instant report, the Appellant contacted the assigned family resource worker with concern that she was not a "good match" for T and had inquired about T moving to a pre-adoptive home.² (Exhibit A, p. 4; Exhibit B, p. 2; Testimony of Appellant)
3. At the time of the subject report, the Appellant was a childcare assistant at a daycare. She was involved in T's care, including completing an evaluation for supportive services for T. (Exhibit C)
4. The Appellant and RO were involved in a dating relationship when T was first placed with the Appellant. The Appellant was residing with a friend and was financially unable to acquire a two (2) bedroom apartment as required by the Department at the time.³ RO desired to help and to that end, he and the Appellant moved in together.⁴ The Appellant was then twenty (20) years old and RO was then twenty-one (21) years old; neither had children. (Testimony of Appellant, DCF Supervisor and RO)
5. At the time of the subject report, the Appellant was T's caregiver under Department policy and regulations. (DCF Protective Intake Policy #86-015, rev. 2/28/16; 110 CMR 2.00)
6. The Appellant had no involvement with the Department prior to the instant report. (Exhibit A, p. 3) At the time of the Fair Hearing, the Appellant was the mother of an infant and there was no evidence to suggest any concern for the Appellant's parenting of her own child. (Fair Hearing Record)
7. The Appellant and RO had struggles in their relationship. There were two (2)

² The Appellant testified that she "went back and forth" regarding the decision to foster T given her young age and that because T was calling her "mommy" and she was not sure of being a permanent placement for T, that she did not want to encourage a strong attachment only to have it change.

³ The DCF Supervisor testified that the Department had physical standards requirements for foster homes.

⁴ RO testified that moving in together was a "big step".

disruptive incidents while T was present in the home. One in which RO rang the doorbell persistently after being locked out of the house after being out drinking with friends. RO then proceeded to loudly knock on T's bedroom door after he came inside the house and tried to have a discussion with the Appellant, who was then in T's room because RO's disruption had woken T up. The second incident was an argument precipitated by the Appellant asking RO's cousins to leave the house because they were loud, which led to an argument with RO. When RO blocked the door to prevent Appellant from leaving, the Appellant ran into him, which set her off balance and caused her to fall. T was upstairs asleep at the time. (Testimony of Appellant and RO; Exhibits D - G)

8. When the Appellant needed emotional support, she texted her former caregivers, family friends JP and ED.⁵ The Appellant testified that she had an increasingly strained relationship with the couple, ED in particular. ED was concerned for domestic violence in the couple's relationship. JP was concerned that RO's behavior was a possible precursor to violence. (Exhibit B, p. Exhibits D-F)
9. On June 30, 2017, the Appellant and RO went out for the evening; they drove to a local rural parking area in RO's truck. T was left with an approved babysitter. (Exhibit B, p. 2; Testimony of Appellant and RO)
10. It was undisputed that while the couple was out, the Appellant, who was under legal drinking age, consumed wine. RO was not drinking. On the return to the home, the Appellant and RO began to "bicker". To diffuse the situation, the Appellant wanted to get out of the truck and walk home. As RO slowed for a stop sign, the Appellant prematurely stepped out of the truck, landed on the uneven roadway and injured her foot.⁶ The Appellant then attempted to call her grandparents, misdialed⁷ and reached the reporter instead. (Exhibit A, p. 4; Testimony of Appellant)
11. The reporter called the police following the Appellant's call. The police established there was a "verbal domestic" in the truck. There was no indication of any further action by the police. (Exhibit I) The Appellant subsequently sought medical attention and was released without complication. (Exhibit A, p. 4)
12. On July 1, 2017, the Department received a report via the DCF Child at Risk Hotline, which alleged neglect of T by RO. The reporter stated the Appellant received a phone call regarding the Appellant jumping out of the vehicle and had called the police. T was not in the vehicle. The reporter was not concerned the child was being abused in any other way. (Exhibit A)
13. The Department spoke with the Appellant during the screening process. The

⁵ The Appellant was raised by her grandparents, who due to age and health enlisted JP and ED to care for the Appellant between age sixteen (16) to eighteen (18). (Testimony of Appellant)

⁶ RO described that he had a "really big truck" with a "lift kit" that requires a step for a smaller person to get into it.

⁷ The Appellant testified the phone number for her grandparents and ED was one digit apart.

Appellant provided an account of the incident that was consistent with her statements to the Department and with her testimony at the hearing as noted herein. (Exhibit B)

14. The Department spoke with the reporter. The reporter maintained that there was “concern for alcohol use and abuse in the home as well as domestic violence.” (Exhibit B, p. 2; DCF Testimony) The reporter sent screenshots of past text messages with the Appellant to the Response Worker which suggested the Appellant was upset with RO and which the reporter felt reflected domestic violence. (Exhibit B, p. 2; Exhibits D-G)
15. During the response, the Department contacted the Appellant’s therapist, “Dr. S”. Dr. S was aware of issues between the Appellant and RO but had not filed a report at the time as the Appellant denied being unsafe [in the relationship] and the Appellant had told her T was asleep. (Exhibit B, p. 7)
16. The Appellant submitted a letter from Dr. S at the Fair Hearing. The letter clarified Dr. S’s statements to the Department. In particular, the letter highlighted Dr. S’s concern that the Appellant was too young to foster T; and, that the Appellant was “more responsible” than her peers in regard to her occasional drinking. Dr. S reiterated that she was not compelled to file a report and did not feel the Appellant had placed T “in jeopardy.” (Exhibit I)
17. While the evidence suggested there was discord in the couple’s relationship, there was no evidence to suggest there was domestic violence as defined by the Department’s Protective Intake Policy. (See Applicable Standards below)
18. In light of the Appellant’s concerns for T’s placement, increasing stress T’s placement had placed on her relationship with RO, and as a result of the reported incident, the Department’s Holyoke Area Office placed T in another foster home. (Exhibit B, p. Testimony of DCF and Appellant) The Department’s decision to remove T from the Appellant’s care was not disputed by the Appellant.
19. On July 17, 2017, the Department supported an allegation of neglect of T by the Appellant. The Department determined the Appellant failed to provide minimally adequate emotional stability and growth for T, due to drinking, “chaos in the home” and T’s exposure to these conditions. (Exhibit B, pp. 9, 10)
20. Although the Department had considered a finding of “Substantiated Concern”⁸, the Department’s policy did not permit a finding of substantiated concern and the closure of the case. A finding of Substantiated Concern would not have resulted in the identification of the Appellant as a perpetrator of neglect. (Testimony of Department Supervisor; see DCF Protective Intake Policy #86-015, rev. 2/28/16)

⁸ As opposed to neglect, a finding of “Substantiated Concern” means: There is reasonable cause to believe that the child was neglected; and, the actions or inactions by the parent(s)/caregiver(s) create the potential for abuse or neglect, but there is no immediate danger to the child(ren)’s safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

21. In reaching the decision the Appellant neglected T, the Department gave significant weight to the text messages and information shared by ED. The evidence suggested the Department gave weight to ED's statements without any assessment of the reliability of her statements, or with respect to the Appellant's concern that ED had significant mental health issues.
22. The Department's support decision has affected the Appellant's ability to acquire a job in her chosen field of working with children.
23. Consistent with his statements during the response and evidence submitted by the Department RO was taken aback by the allegation of domestic violence, which he denied (Exhibit G). RO credibly testified that while he could have handled his interaction with the Department during the response differently, he had T's interests in mind and had wanted to help the Appellant and T. (Testimony of RO)
24. After a review of all the evidence and for the following reasons, I find the Department did not have reasonable cause to support an allegation of neglect of T by the Appellant:
 - a) The Department did not have sufficient evidence that the Appellant failed to provide minimally adequate care for T (110 CMR 2.00 and 4.32), and;
 - b) The Department did not have sufficient evidence that the Appellant's actions placed T in danger or posed a substantial risk to T's safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16)

Applicable Standards

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* 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 2.00 and 4.32; 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 caregiver; 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

"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 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 “The potential for future harm to a child.” DCF Protective Intake Policy #86-015, rev. 2/28/16

According to DCF Protective Intake Policy #86-015 (rev. 2/28/16), domestic violence is “A pattern of coercive controls 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.”

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) 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 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

The Appellant was a caregiver for T under Department policy and regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department’s determined the Appellant neglected T, basing its decision on information obtained during the response, including concern the Appellant lacked insight into caring for a young child, that T was exposed to domestic violence and concern the Appellant used poor judgment as a result of drinking alcohol.

The Appellant argued that while she and RO had arguments, T was not present for the reported incident and while present for two others, had only been awakened by RO

repeatedly ringing the doorbell and had slept through the other. The Appellant asserted the Department did not have sufficient evidence to support a finding of neglect. This Hearing Officer found the Appellant's argument persuasive and compelling.

It was undisputed that the Appellant, a young woman who agreed to foster her niece, was in a relatively new relationship with RO, himself a young man. The evidence suggested the Appellant was not prepared for the responsibility of fostering T and recognized the need for T to have a better match going forward. It was notable that the reported incident occurred when T was home with a babysitter. Information obtained during the response warranted concern; however, the Department's determination the Appellant neglected T was not well-founded.

During the Fair Hearing the Department conceded that there was no alternative to a supported allegation. The evidence suggested otherwise. The option to un-support the allegation was available, particularly where there was the Appellant had already broached the subject of T being placed elsewhere, there were no other children in the home, and there was no evidence to suggest the Appellant had failed to provide minimally adequate care for T prior to the reported incident. Additionally, there was no evidence to suggest the Appellant, by her actions, posed substantial risk to T's safety and well-being as required to support the allegation.

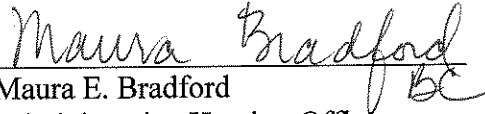
This Hearing Officer cannot overlook that there was concern the Appellant was a victim of domestic violence, yet the Department held the Appellant, the identified victim of the purported violence, accountable by supporting the allegation of neglect. Compounding this error was that the Department's decision to support the allegation has foreclosed job opportunities in her chosen field.

For these reasons and those included in the above Findings of Fact, this Hearing Officer has determined the Department's decision was not based on reasonable cause or supported by substantial evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass.App.Ct. 739, 843 N.E.2d 691 (2006). Additionally, there was no evidence that the Appellant's actions or inactions placed T in danger or posed a substantial risk to T's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

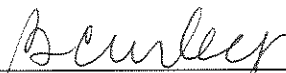
Conclusion and Order

Appellant has shown by a preponderance of the evidence that the Department's decision to support an allegation of neglect of T by the Appellant AF was not in conformity with Department policy and/or regulations or made with a reasonable basis, therefore the Department's decision is REVERSED.

April 27, 2020
Date


Maura E. Bradford
Administrative Hearing Officer

April 27, 2020
Date



Barbara Curley, L.I.C.S.W.
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner