

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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Commissioner

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IN THE MATTER OF)

M.P.)

FH # 2017-0999)

) **FAIR HEARING DECISION**

The Appellant in this Fair Hearing is the father of the subject children, A, C, J and M. He will be referred to as the Appellant or MP. The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support the allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

Procedural History

On June 20, 2017, the Department received two 51A reports which alleged the neglect of the children by the Appellant and the mother (EP). There were concerns about domestic violence between the parents as well as concerns about parent's alcohol use. The reports were screened in and assigned for a non-emergency response. On July 12, 2017, the Department made the decision to support the allegations of neglect of the child by the Appellant and EP.¹ The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on March 22, 2018, at the DCF Lawrence Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Ms. Lisa Henshall	Fair Hearing Officer
Mr. M.P.	Appellant (father)
Atty. N.F.	Counsel for the Appellant
Ms. E.P.	Witness (mother)
Ms. J.B.	DCF Response Supervisor (RS)

¹ This appeal was for the Appellant (MP). The allegations of neglect of the children by their mother (EP) were supported. However, she was an Appellant in this Fair Hearing.

Ms. P. K.

DCF Response Worker (RW)

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 DCF regulations. 110 CMR 10.26

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

For the Department:

Exhibit A Child Abuse/Neglect Report dated 6/20/17 9:23am
Exhibit B Child Abuse/Neglect Report dated 6/20/17 4:21pm
Exhibit C Child Abuse/Neglect Emergency Response dated 7/12/17

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) 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 children of the Fair Hearing were A, C, J & M, one (1), two (2), three (3) and five (5) years old, respectively, at the time of the reported incident. (Exhibits A & B; Exhibit C)
2. The Appellant is the father of the children; therefore, he is a caretaker pursuant to Departmental regulation and policy. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16) (Exhibit A; Exhibit B; Testimony of the Appellant)

3. There was a 51A filed June 16, 2017, that indicated there were concerns of domestic violence in the home. The report was screened out as there was no indication that the discord was anything more than a verbal dispute. (Exhibits A, B & C)
4. The Department received two 51A reports on June 20, 2017, pursuant to M.G.L. c. 119, §51A, alleging the neglect of the children by the Appellant and their mother. There was a concern that there was an incident of domestic violence in the home a few days prior during which the Appellant poured water on the mother's (EP) head and the pulled her off the bed by her hair. There had been suspicions by the mother's family of ongoing domestic violence in the home. In addition, there were concerns that both parents had issues with "alcohol abuse." The 51A reports were screened in and assigned for a non-emergency response, pursuant to M.G.L. c. 119, §51B. (Exhibits A, B & C; Testimony of the RW)
5. The Appellant and EP owned a restaurant that was open for breakfast and lunch. The Appellant started work at 5am. The Appellant and the mother opened the restaurant together. The day of the reported incident the Appellant asked the mother to leave the restaurant as she was under the influence of alcohol. (Testimony of the Appellant)
6. The Appellant arrived home and the mother (EP) was, "drunk as usual." Later the two argued about EP's drinking and then went to bed. At 2am, C (age 2) woke up coughing and sick and the Appellant decided to take the sick child to his mother's home (paternal grandmother) so he could go to work. The Appellant woke up the mother and informed her of this. When EP woke up she could not locate C and called the Appellant at work looking for C. (Testimony of the RW; Exhibit C, p. 7; Testimony of the Appellant)
7. There was evidence that at some time there was an altercation witnessed by the two oldest children during which the mother was intoxicated and the Appellant poured water on her and pulled her hair. (Fair Hearing Record; Exhibit C, pp. 2 & 6)
8. The Department reviewed handouts with the mother to assess for domestic violence. The reviewed documents included: a power and control wheel, the equality wheel, the warning signs of domestic violence and the danger assessment. All of mother's responses were no, she did not see the Appellant as having any of the behaviors identified on the wheel and their relationship appeared equal to her. (Testimony of the RW; Exhibit C; Testimony of the Witness)
9. There was no evidence that the Appellant withheld money from the mother. The two had a joint checking account and the mother controlled the money. Mother attributed her decreased contact with friends to the distance of her current residence and the demands of work and family. (Testimony of the RW; Exhibit C, p. 2; Testimony of the Witness)
10. Maternal grandfather of the children once observed bruising on mother's upper arms which he thought looked like grab marks. Grandfather did not believe mother's explanation for the bruising. (Exhibit C, p. 3)
11. It remains unclear if there was domestic violence, as defined by Department regulation,

in the home:

- Despite the mother's initial ascertain, at the time of the DCF response that she did not have a drinking problem, it was undisputed at the fair hearing that the mother (EP) had a drinking problem at the time of the reported incident. The mother sought services for alcohol abuse on August 9, 2017, subsequent to this response and was sober at the time of the hearing;
 - The mother initially reported being assaulted by the Appellant on 3-4 occasions but later recanted. The mother clarified that she meant the Appellant had "done the water thing and pulled my hair three or four times." The mother disclosed domestic violence to family members, which she later denied;
 - I find that there were concerns with mother's reliability;
 - The two oldest children reported seeing the Appellant yell and hit the mother. J spoke of hiding under his bed and M of hiding under his covers as they were scared when the two were arguing. J reported that the Appellant "put water" on his mother;
 - M spoke of the Appellant not liking their mother. (Exhibit C, pp. 2 & 6; Testimony of the RW; Testimony of the Appellant; Testimony of the Witness)
12. At the time of the reported incident the family was stressed with four young children, a new business and, as introduced at the hearing, mother's alcohol problem. The mother attributed her change in story to her drinking as she was trying to justify her behaviors to friends, family and the outside world. (Testimony of the Witness)
13. The children were up-to-date medially and there were no other protective concerns regarding the children. (Exhibit C; Testimony of the RW)
14. There were no prior restraining orders taken out by either party. There was no evidence of any police responses to the home. (Testimony of the RW; Exhibit C)
15. There was no evidence that the Appellant had any issues with alcohol abuse. (Fair Hearing Record)
16. At the end of its response, the Department supported the aforementioned report for neglect of the children by the Appellant, for the following reasons;
- The two oldest children (J & M) had reported to the Department that they had witnessed the Appellant hit their mother "all over;"
 - The children (J & M) pointed to their face and parts of their body where they had seen the Appellant hit their mother;
 - J & M reported being scared and hiding under the beds and blankets;
 - EP consistently reported ongoing domestic violence within her marriage to her sister;
 - EP initially told the Department that the father had put his hands on her 3-4 times but later retracted her statement. However, she was consistent in reporting that he had poured water on her and pulled her hair;
 - There were concerns that the Appellant isolated the mother from her family and friends;
 - In addition, the Department had evidence of the Appellant having controlling and

manipulative behaviors towards the mother. (Testimony of RW; Exhibit C, pgs. 2, 6, 8-9) The Department concluded that the Appellant actions, exposing the children to domestic violence, constituted neglect, as defined by its regulations. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

17. I find J & M were credible reporters of what they witnessed with no evidence they were manipulated, influenced or motivated to lie or mislead.
18. Based on the credible evidence, I find that the Department did have reasonable cause to believe that the Appellant failed to provide the children with minimally adequate care. There was evidence that the family was experiencing a great deal of stress due to the ages of the children and the opening of the restaurant, in addition to mother's alcohol abuse. The two oldest children disclosed that the parents did fight and that the Appellant hits the mother. The mother confirmed that the Appellant did pour water on her and pulled her hair on three to four occasions but recanted other reports of physical violence. I find that it was reasonable to determine that the Appellant's actions constituted neglect and that and that his actions placed the children in danger or posed a substantial risk to the child(ren)'s safety or well-being. (DCF Protective Intake Policy #86-015, rev. 2/28/16 (Fair Hearing Record, See Analysis)

Applicable Standards

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)

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. *Id.* at 63. 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

- (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 person entrusted with responsibility for a child's health or welfare, whether in the child's home, 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. *Protective Intake Policy No. 86-015* (rev. 02/28/2016)

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

Domestic Violence is defined by 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.

To Support a finding means:

- There is reasonable cause to believe that 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 . . . (*Id.*)

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. (*Id.*)

A 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. (*Id.*)

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

To prevail, an Appellants must show by a preponderance of all of the evidence presented at the hearing, 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-

Analysis

On the basis of the factual findings and standards set forth above and for the reasons set forth below, there was reasonable cause for the Department to support the allegations of neglect.

The Appellant, as the father, was a "caregiver," pursuant to Departmental regulation. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Appellant, as argued by Counsel, contested the Department's decision to support the allegation of neglect on behalf of his children. The Appellant argued that the supported decision of neglect in this case should be reversed. They argued that the Department based their entire decision on what was reported by 3 and 5 year old children who were impressionable and repeated things they overheard, things they should not have heard, and took out of context. Further, the children were interviewed two weeks after the reported incident and had been living outside of the home with mother and maternal grandparents during this time. Counsel argued that there was no domestic violence in the home and that the incident was a result of the mother's "disease, (which) precipitated" the reported incident. The Appellant was described as a good father who had been a stay at home father up until the time they opened the restaurant and still managed to hold it all together despite the mother's alcohol abuse. The Appellant did not do anything and only wanted to keep the family together. I did not find the Appellant's argument persuasive;

The Department argued that they had reasonable cause to believe that the children were neglected based on the evidence that they gathered during their response. The Department disputed that their decision to support was made only on the basis of the statements made by the two oldest children. Their decision to support was also a result the mother "retracted" her statement about the Appellant assaulting her, which they determined to be consistent with women who have experienced abuse. (DCF protective intake policy #86-015 p. 28, revised February 28, 2016; Fair Hearing Record)

There was evidence that the Appellant poured water on the mother and pulled her hair on three to four occasions. The mother reported this and this report was consistent throughout the DCF response. The oldest child (M) spoke of their father not liking their mother. Both M & J disclosed witnessing their father yell at and hit their mother. J spoke of his father putting water on his mother. J and M described the Appellant as being the aggressor and J spoke of hiding under his bed when this would happen, while M would hide under his blankets. The two youngest children could not be interviewed due to their young age. At the hearing it was undisputed that the mother had an alcohol problem which may or may not have been catalyst for these incidents. Regardless the incidents did occur and in addition to the children's consistent and specific disclosures, the interviews with the mother, that the altercations did happen and that the children witnessed the physical altercations more than reaches the threshold of "reasonable cause to believe" that the Appellant neglected his children. The Department had "reasonable cause to believe" that the Appellant failed to provide his children with minimally adequate care.

The Department has a particular definition of domestic violence based upon the coercive control exercised by one party over the other which may or may not include physical violence. It was not clear that the Appellant's actions met the Department definition of domestic violence. Regardless, our courts have found that witnessing verbal and physical conflict constitutes failure to provide children with minimally adequate emotional stability and growth. John D. v. Department of Social Services, 51 Mass.App. 125 (2001). Even with no indication or evidence that a child has been injured, either physically or emotionally by the witnessed 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.2d 68, 73 (1979).

Based on a review of the evidence, presented in its totality, the Department had reasonable cause to believe that the Appellant's actions constituted neglect as defined by the Department's regulations, and the Department did present evidence that the Appellant's actions placed the young children in danger and/or posed a substantial risk to the children's safety or well-being. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16 (See Findings)

Conclusion and Order

The Department's decision to support the 51A report for neglect of the children A, C, J & M, one (1), two (2), three (3) and five (5) years old, respectively, by the Appellant is **AFFIRMED**.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellant lives 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.

Lisa Anne Henshall
Lisa Anne Henshall
Fair Hearing Officer
BC

August 14, 2018
Date

Barbara Curley
Barbara Curley, Supervisor