

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

NCP

2017-1409

**Fair Hearing Decision**

The Appellant in this Fair Hearing is NCP. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support an allegation of neglect of J by Appellant pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

**Procedural History**

On October 10, 2017, the Department received a 51A report by a mandated reporter alleging the neglect of the above referenced child by NCP. The allegation was screened in for a Non-Emergency Response and upon the completion of the Department's response period, the Department decided to support the allegation of neglect of J by Appellant. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06.

The Fair Hearing was held on January 25, 2018, at the Department of Children and Families Area Office located in Lawrence, MA. All witnesses were sworn in to testify. The record was left open until February 1, 2017 for Appellant to submit documentary evidence and closed on that date.

The following persons appeared at the Fair Hearing:

Carmen Colón	Fair Hearing Officer
SW	DCF Response Social Worker
JB	DCF Response Supervisor
NCP	Appellant
TM	Interpreter

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 Intake Report of October 10, 2017
- Exhibit B: 51B Child Abuse/ Neglect Non-Emergency Response of October 26, 2017
- Exhibit C: ██████████ Police Department - Police Report

For the Appellant:

- Exhibit 1: Parenting ██████████ – Certificate of Completion
- Exhibit 2: Character Reference Letter – ██████████ Recovery Center

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 Fair 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 parents(s)/ caregiver(s) placed the child(ren) in danger or pose substantial risk to 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 reported child in this matter is J. The child resided full time with his father, KJ. As the child's father and custodial parent, KJ is deemed the child's caregiver pursuant to Department policy. Protective Intake Policy #86-015, Rev. 02/26/2016 (Appellant Testimony, DCF Testimony)
2. At the time of the Department's response, J was three (3) years old. (Exhibit A, Exhibit B )
3. The Appellant NCP is J's mother, as his mother she is deemed the child's caregiver pursuant to Departmental policy. Protective Intake Policy # 86-015 Rev 02/26/2016
4. On October 8, 2017, the Appellant arrived to the police department for a court ordered child exchange as she was meeting KJ and her son, J, for a scheduled visitation with the Appellant. The Appellant was late arriving for the pick-up and arrived without a car seat. She explained that she was in a cab and the cab did not have car seat. KJ then denied Appellant her visitation, which led to an argument leading to the Appellant punching KJ in the face in the presence of their son. KJ was holding the child during the event. (Appellant Testimony, Fair Hearing Record)

5. It is undisputed per the evidence gathered by the Department, and the Appellant's statements that after the altercation, KJ reported the incident to the police officer on duty. As a result, the Appellant was arrested for assault and battery (Exhibit C, DCF Testimony, Appellant Testimony)
6. On October 10, 2017, A 51A was filed by a mandated reporter alleging the neglect of J by the Appellant as argument / altercation took place while the child was being held by his father. ( DCF Testimony, Appellant Testimony)
7. On the day of the reported event, Appellant was not allowed to care for J as his father, did not comply with Appellants visitation schedule. ( Appellant Testimony)

8. After review of the documentation and testimony provided by the Appellant and DCF, I find that the Department's had reasonable cause to believe that the Appellant neglected J for the following reasons:

- a. Appellant engaged in an argument and physical altercation with KJ while KJ was holding the child.
  - b. The altercation consisted of Appellant punching KJ and then pulling his shirt as he was walking away with the child.
  - c. Appellant's behavior and decision to strike KJ while in the presence of her son, placed the child at risk of harm.
- (110 CMR 2.00, Protective Intake Policy # 86-015 Rev 2/26/2016)

#### Applicable Standards

In order for the Department to "Support" an allegation of neglect, the Department must find that there is reasonable cause to believe that the child(dren) was abused and/or neglected ; 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 Police #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. 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, 63-64 (1990) Id. at 63. 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 caretaker, 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; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. Protective Intake Policy #86-015 Rev. 2/28/16

“Caregiver” means a child's: (1) a child's parent, stepparent, guardian or any household member entrusted with the responsibility for a child's health or welfare; or, (2) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under age 18). DCF Protective Intake Policy #86-015 Rev. 2/28/16

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. 110 CMR 10.23

#### Analysis

After review of the evidence provided, it is undisputed that the Appellant and J's father, KJ, did engage in argument, which escalated to an altercation at the scheduled parent pick up for the Appellant's visitation with her son. The Appellant was arrested as a result on this date and released the following day. During the Department's response period, the Department was not able to obtain information in which concerns for the Appellant's behavior or ability to care for J were disclosed. The Department was able to gather information around the Appellant and KJ's volatile relationship as there was an active 209 order in place on the date of the reported event.

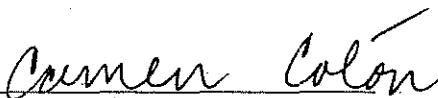
The Appellant argued that she her actions did not constitute neglect of the child and that child was not at risk due to father being the holding him and her not having been able to have access to the child at the time of the altercation. Although it is clear that both parents engaged in the argument, the Appellant decided to physically strike KJ without considering how this could impact or place J at risk.

The Appellants argument was not persuasive; therefore I affirm the Department's decisions. (Appellant Testimony, Fair Hearing Record)

**Conclusion and Order**

In conclusion, the Department's decision to support the 51A report of neglect of J by the Appellant is **AFFIRMED**.

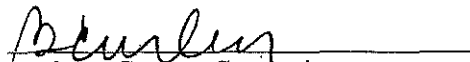
This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or in Suffolk County, within thirty (30) days of the receipt of this decision. See, M.G.L. c.30A, §14. In the event of an appeal, the hearing Officer reserve the right to supplement the findings.



Carmen Colón  
Fair Hearing Officer

BC

June 27, 2018  
Date

  
Barbara Curley, Supervisor  
Fair Hearing Unit