

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

Linda S. Spears  
Commissioner

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**IN THE MATTER OF**

**CD #2018-0110**

**FAIR HEARING DECISION**

CD appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On December 10, 2017, the Department received a 51A report alleging neglect of C and J by their mother (CD), father (JJ) and by their maternal grandmother (DD). The Department screened-in the report for a non-emergency response and, on December 28, 2017, the Department made the decision that the allegation of neglect of C and J by their mother, father and maternal grandmother was supported. The Department notified them of its decision and their right to appeal.

CD made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held on March 15, 2018, in the DCF Coastal Area Office. CD, the Department response worker, the Department response supervisor and the Department on-going social worker for the family testified at the hearing.

The Department submitted the 51A and B reports. (Exhibit A and Exhibit B).

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

### 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. 110 CMR 10.05.

For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issues are whether there was reasonable cause to believe that a child had been abused or neglected; and, whether the actions or inactions by the parent or caregiver placed the child in danger or posed substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking. DCF Protective Intake Policy #86-015 Rev. 2/28/16, 110 CMR 10.05.

### Findings of Fact

1. CD (hereinafter "mother") and JJ (hereinafter "father") are the parents of J (d.o.b. [REDACTED]). (Exhibit A, pp. 1-2; Exhibit B, p. 1).
2. Father is the parent of C (d.o.b. [REDACTED]). Father and C's mother were divorced. They shared legal custody of C. C lived primarily with her mother. She spent weekends with father. (Exhibit A, pp. 1-2; Exhibit B, pp. 2, 5).
3. Mother's mother (hereinafter "maternal grandmother") lived with mother and father. (Exhibit B, p. 2).
4. Mother worked as a nurse. She had no set schedule and worked on a per diem basis. Father was a network engineer. He worked in [REDACTED]. Maternal grandmother was home with the children when mother and father were working. Maternal grandmother usually only left the home to go to church. (Exhibit B, p. 2; Testimony of mother).
5. On Sunday, December 10, 2017, mother was scheduled to work beginning at 8:00am. Father brought mother to work that morning and they left the house at about 7:00am. After dropping mother off, father did not return to the home, but he called maternal grandmother and said he was pulling in. He apparently did not tell her that he did not plan on coming into the apartment. Maternal grandmother assumed he would be coming right inside so she left out the back door to go to church leaving the children alone. There was no clear evidence of what time maternal grandmother left, but it was before 10:00am. (Exhibit B, pp. 2, 5; Testimony of mother).

6. C became scared because she had never been left alone before. She called her mother at 10:02am. C's mother called and texted father, but he did not answer or responded so she called the police at 10:06am. Police responded to the home. C initially did not open the door because her parents told her not to open the door for people. She eventually let the police into the home. Ten (10) minutes after the police arrived, father returned home. He told police he had been gone for 1 and 1/2 hours. Police called C's mother back at 10:56am and informed her that father just returned home. (Exhibit A, p. 3; Exhibit B, pp. 2, 5, 6).
7. The Department received a 51A report alleging neglect of the children by mother, father and maternal grandmother due to the children being left home alone. The Department screener reviewed that family's history with the Department which showed a screened-out report from October 2016. At that time, a 51A report was filed after the parents had an argument over spilled milk. The Department screened-in the current report for an investigation. (Exhibit A).
8. The Department response worker went to mother and father's home and spoke with mother, father and maternal grandmother. They described the reported incident consistent with the above findings except that father reported that after he told maternal grandmother he was pulling in, he went to McDonald's to get food. Maternal grandmother thought he was coming right inside so she left. He indicated that the children were alone only a short time. This was contrary to time frames documented by C's mother's phone log and the police. (Exhibit A, p. 3; Exhibit B, pp. 2-3, 5).
9. The Department response worker went to C's mother's home and spoke with C's mother and C. They described the reported incident consistent with the above findings. (Exhibit B, pp. 5-6).
10. The Department response worker contacted the children's pediatrician who reported no concerns. (Exhibit B, pp. 4, 6).
11. The Department response worker spoke with the director of J's daycare center. She reported no protective concerns. She said J began attending the daycare on or about October 17, 2017. She noted that there have been a few days when J was picked up late. On one (1) occasion, father arrived at 6:10pm. On another occasion, father was stuck in traffic so mother picked up J at 6:55pm. The Department response worker did not contact the parents to discuss the issue of J being picked up late from daycare. (Exhibit B, pp. 4-5).
12. The Department response worker reviewed prior police responses to the home. The first response was for the incident in October 2016, after the parents argued over spilled milk. There were three (3) additional responses in December 2016, June 2017, and December 2017, after mother called police due to verbal arguments and father yelling. There was no evidence that the children were involved or that they witnessed the incidents. None of those incidents resulted in a 51A report being filed.

The Department response worker did not contact the parents to discuss the police responses. (Exhibit B, pp. 6-7).

13. On December 28, 2017, the Department made the decision that the allegation of neglect of C and J by mother, father and maternal grandmother was supported due to the children being left home alone, J being picked up from daycare late on two (2) occasions and several police responses to the home for domestic violence. (Exhibit B, pp. 7-9).
14. The Department on-going social worker for the family testified to the following at the hearing. The family has been cooperative with her. The children were up to date medically. She expected to close the case after she completed her assessment. (Testimony of the Department on-going social worker).
15. Mother testified to the following at the hearing. On the day the children were left alone, she had gone to work and she had no reason to believe that maternal grandmother and father would not communicate with each other to ensure the children were being supervised. J did begin attending daycare in early October 2017. Initially, father was picking her up after work. He was commuting from the Weston/Waltham area. He was late a few times because of traffic and he did not think to call the daycare to let them know. After the second time he was late, they decided that she would pick up J in the afternoon and there have been no further incidents of her being picked up late. She did call the police to the home on three (3) occasions, specifically, October and December 2016, and December 2017. On those occasions, father went out with friends and he had been drinking. He came home late and became loud so she called the police to diffuse the situation and got him to settle down and be quiet. The children were sleeping when this occurred. She denied that there have ever been any incidents of domestic violence. She did not call the police in June 2017. On that date, C's mother called police related to an issue between father and her. (Testimony of mother).
16. I find mother's testimony to be credible.
17. Considering all of the credible evidence, I find no reasonable cause to believe that mother neglected C and J under Department regulations or that her actions/inaction placed them in danger or posed a substantial risk to their safety or well being.

### Analysis

A "support" finding means 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) 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 C.M.R. 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.

“Neglect means 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.” 110 CMR 2.00(33).

The Department made the decision that mother neglected C and J because they were left home alone without supervision on December 10, 2017, J was picked up late from daycare on two (2) occasions and there have been police responses to the home for domestic violence.

Mother denied having responsibility for the children being left alone or the miscommunication between father and maternal grandmother. She acknowledged J was picked up late from daycare on two (2) occasions when she first started attending daycare. She contended that father was stuck in traffic and he did not think to call. On the first occasion, he was a few minutes late. On the second occasion, when she realized he had not picked her up, she went to get her. After the second incident, they decided that she would pick up J because father's commute time was unpredictable. Mother acknowledged calling the police on three (3) occasions when father came home late and was being loud. She denied any domestic violence in their relationship or that the children were exposed to any of the incidents.

The evidence showed that mother went to work on the morning the children were left home alone. She reasonably expected that maternal grandmother would watch the children until father returned home. Father called maternal grandmother and led her to believe he was parking the car and she assumed he would be coming inside so she left. Father assumed maternal grandmother would stay at home until he actually got to the apartment. Father did not return to the home as expected and, as a result, the children were home alone for at least an hour. C was afraid and called her mother who called the police. Mother had nothing to do with the miscommunication between father and maternal grandmother and, therefore, I find that there was no reasonable cause to believe that she failed to provide them minimally adequate supervision under the circumstances.

The evidence showed that J began daycare in October 2017. Initially, the parents planned that father would pick her up on the way home from work. He was late on two (2)

occasions because of traffic and he failed to call the daycare staff or mother to inform them. He arrived a few minutes late on the first occasion and mother picked up J on the second occasion. J remained in the care of daycare staff until one (1) of the parents picked her up. Although this may have inconvenienced the daycare staff, J was never left unsupervised. Mother and father have since changed their plans so that mother picks up J in the afternoon. Although the parents may have been unrealistic about father's commuting time, J was never without an adequate caregiver and they have since remedied the situation. Considering all of the evidence, I find no reasonable cause to believe that mother failed to provide minimally adequate care for J.

The evidence showed that there have been four (4) police responses to the home (other than the response when the children were left home alone). Neither parent was contacted by the Department during the response to address the issue. Mother explained in her testimony that one (1) call to police was made by C's mother due to an issue between her and father. Mother made three of the calls herself (October and December 2016 and December 2017). She called police when father came home late and became loud. She appropriately sought assistance from police to address the situation. Mother denied any domestic violence in her relationship with father and I find no evidence to the contrary. The response that resulted in a 51A report was the incident involving spilled milk. The children were reportedly being cared for by maternal grandmother at the time and the Department "screened-out" the report. None of the other three (3) police responses resulted in a 51A report being filed indicating the children were not exposed to the incidents. Considering all of the circumstances, I find no reasonable cause to believe that mother failed to provide adequate care for the children based upon the police responses to the home.

### Conclusion and Order

The Department's decision to support allegations of neglect of C and J by mother was made without a reasonable basis and therefore, the Department's decision is REVERSED.



Anne L. Dale Nialetz,  
Administrative Hearing Officer

5/7/2018

Date



Sophia Cho, LICSW  
Fair Hearing Supervisor

Date

Linda S. Spears  
Commissioner