

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 5TH FLOOR
BOSTON, MASSACHUSETTS 02111**

Linda S. Spears
Commissioner

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IN THE MATTER OF

RB #2019-0380

FAIR HEARING DECISION

RB 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 January 23, 2019, the Department received a 51A report alleging neglect of H by her father, RB, and physical abuse of H by RB's girlfriend, MR. The Department screened-in the report for a non-emergency response. On February 13, 2019, the Department made the decision that the allegations of neglect of H by RB and physical abuse of H by MR were supported. The Department notified RB of its decision and his right to appeal. RB made a timely request for a Fair Hearing to appeal the Department's decision¹.

A hearing was initially scheduled to be held on May 28, 2019. The hearing was continued twice at RB's Attorney's request and again due to a scheduling conflict at the hearing office. Most recently, the matter was scheduled to be heard on April 7, 2020, but the hearing was cancelled due to COVID-19. RB was offered the options to either continue the matter until the Department's offices re-open or have the matter decided based upon documents submitted. RB chose to proceed without a hearing pursuant 110 CMR 10.18.

An order was issued on April 7, 2020, outlining the time frames within which the parties were to submit documents. In accordance with the order, the hearing record closed on May 26, 2020.

The Department submitted the following exhibits:

Exhibit A: 51A Intake Report
Exhibit B: 51B Child Abuse/Neglect Non-Emergency Response

¹ MR was not a party to this instant matter nor was her allegations on appeal at this Fair Hearing. (Fair Hearing Record)

RB submitted no evidence.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter. 110 CMR 10.03

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. RB (hereinafter "father") and JL (hereinafter "mother") are the parents of He (age 7) and Ho (age 6). (Exhibit A, pp. 1-2)
2. Father and mother are divorced. They share physical custody of the children equally. At the time in question, the children spent every other week with father. The parents do not get along. They exchange the children at the police station and they only communicate through e-mail. (Exhibit B, pp. 2, 3, 4)
3. The family has had an open case with the Department since 2015. The case initially opened after a 51A report was filed, investigated and "supported" due to mother expressing suicidal ideation. She went into the woods with a firearm and was subsequently hospitalized. (Exhibit A, pp. 4-7; Exhibit B, p. 2)
4. At the time in question (January 2019), father's girlfriend (MR) was living with him. (Exhibit A, pp. 1-2; Exhibit B, pp. 4, 5)
5. On January 21, 2019, the children were with father. Father and his girlfriend were cleaning the home that day and they asked the girls to clean their rooms. (Exhibit B, pp. 3, 4, 5, 6)
6. On January 22, 2019, He and Ho met with their Department on-going social worker. Ho told her that the day before, father's girlfriend locked her in the bathroom because she did

not clean her room. She said she put toothpaste all over the bathroom. When father's girlfriend saw what she did, she put hot sauce on her tongue and towel and she put her outside on the porch wearing only leggings, a sweatshirt and socks. The on-going social worker then spoke with He. He corroborated Ho's story and said that father was there and did not intervene and Ho was on the porch for 2-3 minutes. (Exhibit A, p. 3)

7. On January 23, 2019, the Department received a 51A report alleging neglect of Ho by father and physical abuse of Ho by father's girlfriend based upon what Ho and He told their on-going social worker. The reporter stated that Ho was not always a reliable reporter. The Department screened-in the report for a non-emergency response. (Exhibit A)
8. On January 29, 2019, the Department response worker met with the girls individually at school. (Exhibit B, pp. 3-4)
9. During her interview, He reported the following. She feels safe at both her parents' homes. Regarding the reported incident, He's account of what happened was somewhat confusing. She said that father's girlfriend was mad at Ho because she was not eating her lunch so she put Ho in the bathroom. She said that Ho said father's girlfriend locked her in the bathroom, but father's girlfriend took the door knob off of the door and father told her to stay in there for 2 minutes. Ho put toothpaste everywhere in the bathroom right after they had just cleaned it. She said Ho lied about the hot sauce. She said that father's girlfriend put Ho outside wearing just leggings, a sweatshirt and socks. Father's girlfriend went to tell father about what Ho did to the bathroom. Father unlocked the door and Ho came inside after 2 minutes. She said that father and his girlfriend have never punished them like that before. (Exhibit B, p. 4)
10. During her interview, Ho reported the following. She feels safe at both her parents' homes. Regarding the reported incident, Ho's account of what happened was scattered and the Department response worker questioned her credibility. She indicated that father's girlfriend put her in the bathroom because she did not want to eat lunch. She said she lied when she told her social worker that father's girlfriend put her outside. She said she put herself outside because she was mad at father's girlfriend for putting her in the bathroom. She acknowledged that she put toothpaste everywhere in the bathroom. When asked what usually happens when they do not do what they are supposed to do, she said father yells and sends them upstairs for a time out. She denied being spanked at either of her parent's homes. (Exhibit B, p. 4)
11. The Department response worker spoke with mother. She said that the girls told her what happened. She said Ho said that father's girlfriend was being mean to her and locked her in the bathroom because she was not cleaning around the house and she was not eating her lunch. Mother did not say that the children told her Ho was locked outside. (Exhibit B, pp. 4-5)
12. The Department response worker spoke with father. Regarding the incident, he said that Ho was upset about something and she went to the bathroom and squirted toothpaste everywhere in the bathroom. His girlfriend had just cleaned the bathroom and she told Ho

to clean the mess. Ho cleaned the floor and father cleaned the rest of the room. Father told his girlfriend to "let her be" and his girlfriend went to the bedroom and the children watched television. He said he usually disciplines the girls by putting them in time out. (Exhibit B, pp. 5-6)

13. The Department response worker spoke with father's girlfriend. She denied that she put Ho outside. She said Ho covered the bathroom in toothpaste. She and father cleaned it up and she went to the bedroom. She denied they use any physical discipline with the children. (Exhibit B, p. 6)
14. On February 13, 2019, the Department made the decision that the allegations of neglect of Ho by father and physical abuse of Ho by father's girlfriend were supported. The Department determined that they failed to provide Ho with minimally adequate clothing when she was forced out of the home and they placed her emotional stability and growth at risk. (Exhibit B, pp. 7-8)
15. Considering all of the evidence, I find that there was no reasonable cause to believe that father failed to provide Ho with minimally adequate clothing or emotional stability and growth or that his actions or inaction placed her in danger or posed a substantial risk to her safety and well-being.

Applicable Standards

A "support" finding of abuse or neglect means that 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) placed 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 §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 §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 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

A "caregiver" means a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; and (e) 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; 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 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 #86-015, rev. 2/28/16

Analysis

The Department determined that father failed to provide Ho with minimally adequate clothing and emotional stability and growth by forcing her out of the home wearing only leggings, a sweatshirt and socks.

Father argued that there was no reliable evidence that he forced Ho out of the home. None of the witnesses to the events in the home that day reported that father forced or otherwise put Ho outside.

According to Ho's initial report to her social worker, it was father's girlfriend who put her outside. The social worker asked He about the incident and He said that father saw his girlfriend put Ho outside, but he did not intervene for 2 or 3 minutes.

During the Department response worker's interviews with the girls, they both contradicted their earlier statements to some extent. Ho said that she lied to the social worker about father's

girlfriend putting her outside and that she went outside on her own. When He was interviewed, she indicated that father did not know that Ho was outside until his girlfriend told him and then he let Ho inside about 2 minutes later. She also said that Ho lied about the hot sauce and about father's girlfriend locking the bathroom door.

Both father and his girlfriend denied that Ho was outside at all.

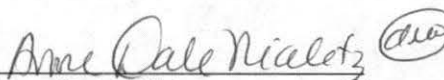
Given the inconsistencies in the children's statements and the inconsistencies between the statements of the children and the adults, I find the reliability of all of the statements to be questionable.

Even if the Department's decision was evaluated based upon the "facts" that are the least favorable to father (he watched his girlfriend put Ho outside and then let Ho inside after 2-3 minutes), I find that insufficient to support a finding that he failed to provide Ho with minimally adequate clothing or emotional stability and growth. Being outside in the cold with less than ideal clothing for no more than 2 -3 minutes was highly unlikely to result in any harm, physically or emotionally.

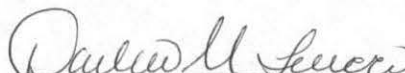
Considering all of the evidence, I find that there was no reasonable cause to believe that father failed to provide Ho with minimally adequate clothing or emotional stability and growth or that his actions or inaction placed her in danger or posed a substantial risk to her safety and well-being.

Conclusion and Order

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


Anne Dale Nialetz
Administrative Hearing Officer

6/4/2020
Date


Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner