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Interpreter

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: 51A Intake Report, dated 06/17/2019

Exhibit B: Child Abuse/Neglect Non-Emergency Response

For the 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) 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 10.05; DCF Protective Intake Policy #86-015, rev. 2/28/16

Findings of Fact

1. The subject children are E, R, A and J. At the time of the subject 51A report E was eleven (11) years old, R was thirteen (13) years old, A was fourteen (14) years old and J was seventeen (17) years old. (Exhibit A, p.1-3)
2. The Appellant, EJ, is the children's mother; therefore, she is a caregiver pursuant to Department regulations and policy. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16).

3. The Appellant was deaf and her primary means of communication was American Sign Language (ASL). The family had no history of involvement with the Department prior to the subject report. (Exhibit A)
4. On June 17, 2019, the Department received a report pursuant to M.G. L. c. 119, §51A, which alleged neglect of E, R, A and J by the Appellant, and their father, AF.¹ (Exhibit A)
5. On June 17, 2019, the Appellant arrived at the hospital via ambulance for a mental health assessment after an attempted suicide. The Appellant had cut curtains in order to make a noose with the intention to hang herself. E and R were home at the time; they intervened and stopped the Appellant. E, who accompanied her mother to the hospital, stated that her mother wanted E to tell everyone what happened. The reporter observed the E to be very upset, crying, and blaming herself for things and was concerned about getting home before 11 pm, so that she could attend her last day of school the next morning. (Exhibit A)
6. Since the Appellant was most likely going to be admitted for psychiatric evaluation, the reporter was concerned that the children were being left in the care of AF. The reporter was concerned that E had reported that AF drank wine “a few times a week” and had a drinking problem. Additionally, it was unclear where AF was as he had left the house following the argument with the Appellant. Since R, J and A were alone in the house, the reporter was concerned there was no appropriate caregiver for the children. (Exhibit A, p.3)
7. The report was screened in and assigned for an emergency response pursuant to M.G.L. c. 119, §51B. (Exhibit A, pp.3, 5; Exhibit B)
8. Before the incident, the Appellant and AF had been in a relationship for almost 7 years. AF was working in New York, while the Appellant had a part time job and was the main caregiver for the children. (Exhibit B, pp.3-5; Testimony Appellant)
9. On the day of the reported incident, the Appellant and AF went to a restaurant to have an alcoholic drink. On their way home, they stopped at another bar for another drink. As the couple was walking home, a verbal argument started between them and continued when they arrived home at approximately 6:00 pm. AF left the house for a short time. (Exhibit B, pp.3, 5)
10. After AF left the house, the Appellant told E and R that she was going to hang herself on the front porch balcony from a hook and started to cut curtains in order to make a noose. E and R stopped the Appellant and tried to comfort her, then E took the knife rack from the kitchen and the scissors and removed them from the area, while R took the curtains. As the Appellant was crying, E called her aunt in Russia to try to talk to EJ. The Appellant ran into J’s room and locked the door. E then told R to call 911. (Exhibit B, pp.3, 6)
11. When AF came home, he opened the door to the bedroom, where the Appellant was found asleep. The ambulance took the Appellant to the hospital where she was held for psychiatric evaluation. (Exhibit B, pp.2, 3, 6)

¹ E and R are the Appellant’s biological children and A and J are AF’s biological children. (Exhibit A)

12. A and J did not witness the incident; however, J stated that she felt that the Appellant did not want to hurt herself and that she was only seeking attention. She also showed the Department investigator a lightweight spring jacket that was wrinkled, expressing doubt that it was fit for hanging. (Exhibit B, p.5)
13. The Appellant asserted that everything was a misunderstanding and denied that she intended to hurt herself, rather that she was feeling highly isolated, alone, lacked AF's support and had to take care of four children while AF was working in New York. The Appellant also cited difficulty with AF's children, who were not subject to the same household rules as her own, which was a source of disagreement in their relationship. (Exhibit B, p.2-3; Testimony Appellant)
14. Both E and A corroborated that J exhibited mean behavior towards the Appellant. J noted she and the Appellant were not well bonded and attributed the Appellant's suicidal gesture to attention seeking. (Exhibit B, p.5; Testimony Appellant)
15. The school and the health care provider had no concern regarding the children; school personnel considered R and A "awesome kids" and had "absolutely no concerns". (Exhibit B, p.5-6)
16. On June 19, 2019, the Department supported the allegation of neglect of E and R by EJ for failing to provide minimally adequate emotional stability for E and R.² The Department asserted that the children were negatively impacted by witnessing their mother trying to commit suicide and the Appellant's actions "elicited feelings of fear and sadness" for the children. (Exhibit B, p.8; Testimony Investigator)
17. After review and consideration of all of the evidence, I find that the Department did not have sufficient evidence to support an allegation of neglect of R and E by their mother, the Appellant; and did not have sufficient evidence that the Appellant's actions or inactions had placed the children in danger or posed substantial risk to the children's safety and well-being.
18. Therefore, the Department's decision to support the allegation of neglect of the children by the Appellant was not made in conformity with its policies and procedures. (110 CMR 2.00 and 4.32; 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

² The Department unsupported the allegation of neglect of A and J by EJ and also the allegation of neglect of E, R, A and J by AF.

“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

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 the children. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The Department determined the Appellant neglected E and R, basing its decision on information obtained during the response, including that E and R were present when their mother attempted suicide and intervened to comfort and deter her. The Department determined the Appellant’s

actions posed substantial risk to the children. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16

The evidence suggested the Appellant was the main caregiver for four children, three of them teenagers, while AF was working in New York. There was some suggestion of discord in the Appellant and AF's relationship regarding disparate treatment of her children and AF's lack of understanding where it regarded the Appellant's hearing impairment and that the Appellant at times felt isolated and unsupported by AF. Prior to the reported incident, the Appellant and AF had an argument, and AF left the home to decompress. While he was gone, the Appellant made a suicidal gesture and R and E intervened. While understandably upsetting for the children, particularly E, there was no evidence to suggest that she suffered any lasting distress. While the reported incident warranted the Department's concern and intervention, no evidence was obtained to suggest that absent the reported incident, there were any other protective concerns for the children which would support the Department's assertion that the Appellant had failed to provide a stable home environment for R and E, or that her actions had posed risk to the children as necessary to support and allegation of neglect.

Conclusion and Order

The Department's decision to support the allegation of neglect of E and R by the Appellant EJ was not reasonable or made in conformity with Department regulations and/or policies; therefore, the Department's decision is **REVERSED**.

David Halloran
David Halloran
Administrative Hearing Officer

Maura E. Bradford
Maura E. Bradford
Supervisor, Fair Hearing Unit

5 JUN 20
Date

Linda S. Spears
Commissioner