

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

Linda S. Spears  
Commissioner

Voice: (617) 748-2030  
FAX: (617) 748-2062

IN THE MATTER OF )  
 )  
 AD )  
 )  
 FH #2019-1167 )

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing was AD (hereinafter "AD" or the "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to support the allegation of neglect pursuant to M.G.L. c. 119, §§ 51A and B.

**Procedural History**

On June 24, 2019, the Department received a 51A report from a reporter alleging neglect of H (hereinafter "H") and R (hereinafter "R") by the Appellant. The Department screened-in the report for a non-emergency response. On July 15, 2019, the Department supported the allegation of neglect of H and R by the Appellant. The Department notified the Appellant of its decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The Hearing was held on December 10, 2019, at the Department of Children and Families' Worcester East Area Office. All witnesses were sworn in to testify under oath with the exception for the Appellant's Attorney (hereinafter "JG").

The record was closed at the end of the Hearing.

The following persons appeared at the Fair Hearing:

David Halloran <sup>1</sup>	Administrative Hearing Officer
AD	Appellant
JG	Appellant's Attorney
TF	DCF Response Supervisor

---

<sup>1</sup> As David Halloran transferred to another position within DCF after the hearing concluded, this matter was assigned to a successor hearing officer pursuant to 110 CMR 10.29(5).

In accordance with 110 CMR 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 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 Report
- Exhibit B: Child Abuse/Neglect Non-Emergency Response

For the Appellant:

- Exhibit 1: Trial of AD
- Exhibit 2: 209A on JP
- Exhibit 3: Doctor's Note
- Exhibit 4: Receipt of Parking
- Exhibit 5: Police Report
- Exhibit 6: Text Messages from AD to JP
- Exhibit 7: Affidavit
- Exhibit 8: Facebook Message from JP
- Exhibit 9: Visitation Order

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 children of this Fair Hearing were R and H. At the time of the 51A report, R and H were one (1) month old. R and H were twins. (Exhibit A, pp. 1-3).

- 2) The Appellant is the biological mother of R and H. Therefore, she is deemed a caregiver pursuant to Departmental regulation 110 CMR 2.00 and DCF Protective Intake Policy #86-015, rev. 2/28/16. (Exhibit A, p. 3).
- 3) R and H resided with both the Appellant and the biological father (hereinafter "JP"). (Exhibit B, p. 3).
- 4) JP had three (3) other children that did not live with him. JP had one daughter (hereinafter "B") which he described as a "special" case; he was not involved in her life. He attributed his lack of involvement during B's younger years to being naïve, stupid and making bad decisions. B's mother had a lifetime restraining order on JP. (Exhibit B, pp. 3-4; Exhibit 2; Testimony of Appellant).
- 5) JP and the Appellant had been together for about three and a half years. (Exhibit B, p. 3).
- 6) On June 24, 2019, the Department received a report, pursuant to M.G.L. c. §51A, from a reporter alleging neglect of H and R by the Appellant. JP had red marks all over his chest. The reporter found it difficult to believe that the Appellant caused the marks on JP. JP called the Police because he did not want to expose R and H to chaos and fighting. The Appellant was arrested. (Exhibit A, pp. 3-5; Exhibit B, p. 3).
- 7) On June 25, 2019, the report was screened in for a non-emergency response and was assigned to a response worker (hereinafter "RW"). (Exhibit B, p. 2).
- 8) On the day of the incident, the Appellant and JP were arguing. The Appellant left to take R and H to an appointment. The Appellant arrived at the hospital, parked her car and was heading inside. Her cell phone rang and it said it was JP. When the Appellant answered the phone, it was a Police Officer on the line. The Officer explained that the Appellant had to come back to the apartment immediately. The Appellant went back and explained what had happened. (Exhibit B, p. 4; Testimony of Appellant; Exhibit 1; Exhibit 4; Exhibit 5).
- 9) The Appellant contended that she had been trying to leave JP for a while and he was the aggressor with anger issues. JP had been physical with the Appellant throughout the relationship. JP would throw things when he was mad. When the Appellant was six (6) months pregnant, JP cornered her in a bathroom, yelled at her and splashed urine from the toilet at her. (Exhibit B, p. 4; Testimony of Appellant).
- 10) The Appellant was diagnosed with Anxiety and takes prescribed medication. (Exhibit B, p. 4).
- 11) The Appellant was a Nursing Supervisor and had been working as one for four (4) years. JP worked at the same employer as a Certified Nursing Assistant. After the incident, JP sought and received a restraining order against the Appellant, which included R and H. The Appellant was concerned since she and JP worked in the same building. The Appellant was staying with her mother. (Exhibit B, p. 5; Testimony of Appellant; Exhibit 1).
- 12) RW contacted R and H's pediatrician. The pediatrician had no concerns. (Exhibit B, p. 5).



- 13) On July 15, 2019, the Department's decision was made to support the allegations of neglect of H and R by AD based on the following:
  - a) The Appellant was arrested for a domestic assault and battery against JP on June 24, 2019;
  - b) The Police report documented the incident where the Appellant was yelling at JP while he was holding H and the Appellant tried to grab H from JP;
  - c) JP put H down and the Appellant continued to push JP's chest violently leaving visible red marks on his upper chest;
  - d) JP reported that the Appellant had an anger problem throughout their relationship, but mainly while she had been pregnant and after giving birth to H and R; and
  - e) JP reported that the Appellant had a lot of mental health and anger issues that had not been addressed. JP could not talk to the Appellant without her escalating. (Exhibit B, p. 6).
- 14) After the alleged incident, the Appellant was charged with assault and battery on a household member. The transcript of her trial showed that JP stated he was punched on two separate incidents on the day of the event. However, that was not communicated to the police or DCF. The Appellant was found not guilty. (Exhibit 1, pp. 45-47, 97; Exhibit 5).
- 15) JP alleged that the Appellant put her hands on JP. JP showed the Police when they arrived but they did not believe that the Appellant could cause that injury. RW did not see the red marks on JP and he never took photos of the injury. (Testimony of Appellant; Exhibit A; Exhibit 1; Exhibit 5)
- 16) The Appellant testified that H was never out of the car seat. (Testimony of Appellant). JP reported to the police and DCF that he was holding H and the Appellant tried to take him from him. (Exhibit B pp. 3, 6) At the trial, he stated H was in the car seat. (Exhibit 1, pp. 40-43)
- 17) The Appellant denied that she pushed or punched JP. JP lunged at her face. The Appellant testified that the argument between her and JP started the day before where JP made rude comments at her during their only family outing. The Appellant stated there were periods of verbal and mental abuse by JP during their relationship and JP was aware that she wanted to leave him and take the children. (Testimony of Appellant) This officer credits the testimony of the Appellant.
- 18) In light of the totality of the evidence in this case, I find that the Department did not have reasonable cause to believe that the Appellant's behavior constituted a failure to provide the children with minimally adequate emotional stability and growth. There were not sufficient facts collected to conclude that that the Appellant's actions placed the children in danger or posed significant risk to their safety or well-being. (110 CMR 2.00; 4.23; DCF Protective Intake Policy #86-015, rev. 2/28/16).

### Applicable Standards

“[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

“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)

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

“Caregiver” is defined as:

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

“Danger” is defined as 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. DCF Protective Intake Policy #86-015, rev. 2/28/2016

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Policy z386-015, rev. 2/28/2016

“Domestic violence” is 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. DCF Protective Intake Policy #86-015, rev. 2/28/16

A finding of support requires that there be: 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. 2/28/2016

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**

It is undisputed that the Appellant was a caregiver for R and H. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

On June 24, 2019, the Department received a report, pursuant to M.G.L. c. §51A, from a reporter alleging neglect of H and R by the Appellant. JP had red marks all over his chest. The reporter found it difficult to believe that the Appellant caused JP's injuries. JP called the Police because he did not want to expose R and H to chaos and fighting. The Appellant was arrested.

On July 15, 2019, the Department made the decision to support the allegations of neglect of H and R by AD based on the fact that the Appellant was arrested for a domestic assault and battery against JP on June 24, 2019. The Police report documented the incident, noting that the Appellant was yelling at JP while he was holding H and the Appellant tried to grab H from JP. JP put H down and the Appellant continued to push JP's chest violently leaving visible red marks on his upper chest. JP reported that the Appellant had an anger problem throughout their relationship, but mainly while she had been pregnant and after giving birth to H and R. JP reported that the Appellant had a lot of mental health and anger issues that had not been addressed. JP could not talk to the Appellant without her escalating.

It is undisputed that the Appellant and JP got into a verbal argument and the police were called.



At the Hearing, the Appellant denied and disputed the allegations. After the alleged incident, the Appellant was charged with assault and battery on a household member. The Appellant was found not guilty. When comparing the facts contained in the investigation to the transcript from the trial, the alleged incident was discrepant. JP alleged that the Appellant put her hands-on JP. JP showed the Police when they arrived but they did not believe that the Appellant could cause that injury. RW did not see the red marks on JP and he never took photos of the injury.

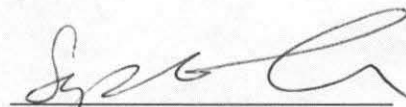
The Appellant testified that H was still in his car seat since they were going to the appointment. The Appellant only came back home to get R from JP to take the children to H's appointment. The Appellant was bringing both of the children to the appointment because JP was supposed to be at work at the same time as the appointment. JP ended up calling out of work early in the afternoon when he had R and the Appellant was with H. I find the Appellant's argument persuasive. There was insufficient evidence to support that H was in JP's arms while the Appellant allegedly hit JP.

The Appellant testified that she and JP got into a verbal argument because she realized that she could no longer be in a relationship with JP. The Appellant testified that she was not yelling at JP but she was speaking with him firmly. Throughout their relationship there were periods of mental and verbal abuse. When the Appellant was about six (6) months pregnant, JP shoved the Appellant in the corner of the bathroom and splashed urine and toilet water at her. The Appellant testified that on the day of the incident, there was no physical contact between she and JP. The Appellant and JP got into a verbal argument and the Appellant ended up leaving the house with H and R to go to H's appointment. While the Appellant was out of the home, the Police contacted her to return to the apartment. Once the Appellant got back to the apartment, the Police questioned the Appellant and arrested her.

Considering the totality of the evidence, this Hearing Officer has determined the Department's decision that the Appellant neglected H and R was not based on reasonable cause or supported by substantial evidence. 110 CMR 10.23; M.G.L. c. 30A, § 1(6); also see Wilson v. Department of Social Services, 65 Mass. App. Ct. 739, 843 N.E.2d 691 (2006). Additionally, there was no evidence that the Appellant's actions or inactions placed H and R in danger or posed a substantial risk to the children's safety or well-being, as required to support an allegation of neglect. DCF Protective Intake Policy #86-015, rev. 2/28/16

#### **Conclusion and Order**

The Department's decision to support allegations of neglect of R and H by the Appellant was made with reasonable basis and therefore, the Department's decision is **REVERSED**.

  
\_\_\_\_\_  
Sophia Cho, LICSW  
Fair Hearing Supervisor

8/6/2020  
Date

*Cristina Tedstone* (SS)  
Cristina Tedstone, Esq  
Director, Fair Hearing Unit

\_\_\_\_\_  
Date

\_\_\_\_\_  
Linda S. Spears  
Commissioner