

**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

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IN THE MATTER OF            )  
                                      )  
                  MBDS            )       **FAIR HEARING DECISION**  
                                      )  
                  FH # 20191254    )  
                                      )

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

**Procedural History**

On July 27, 2019, the Department received a 51A report alleging the neglect and physical abuse of G by her father, MBDS. A response was conducted and on August 15, 2019, the Department made the decision to support the allegation of neglect of G by the Appellant. The allegation of the physical abuse of G by the Appellant was not supported. The Department notified the Appellant of its decision and his right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. The hearing was held on March 3, 2020, at the DCF Plymouth Area Office. All witnesses were sworn in to testify under oath. The record remained open at the conclusion of the hearing for three (3) days to allow the Appellant to submit additional evidence. The Appellant did so, and on March 6, 2020, the record on this matter was closed.

The following persons appeared at the Fair Hearing:

Lauren Decas	Fair Hearing Officer
MBDS	Appellant
RS	Department Supervisor
HK	Department Response Social Worker

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 digitally recorded pursuant to 110 CMR 10.26.

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

Exhibit A: Intake Report dated 7/27/19

Exhibit B: Child Abuse/Neglect Non-Emergency Response completed 8/15/19

For the Appellant:

Exhibit 1: Police report dated 7/27/19

Exhibit 2: Affidavit dated 8/6/19

Exhibit 3: Text messages between AYF and Appellant (uploaded in IFNET)

Exhibit 4: Text Messages between AYF and Appellant (uploaded in IFNET)

Exhibit 5: Court agreement (Uploaded in IFNET)

Exhibit 6: Pictures of G/Appellant's apartment (Uploaded in IFNET)

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. At the time of the filing of the subject 51A report, G was twelve (12) years old. G resided with her mother, AYF, and visited with her father, MBDS, every other Saturday. (Exhibit A)
2. The Appellant is the father of G; therefore, he was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

3. The family had no history of involvement with child protective services.  
(Fair Hearing Record)

4. The Appellant had no criminal history. (Testimony of MBDS)

5. On July 27, 2019, the Department of Children and Families received a report pursuant to M.G.L. c. 119, §51A, filed by a mandated reporter, alleging the physical abuse and neglect of G by the Appellant. According to the reporter, AYF arrived at the police station with G to report the following incident: "The father picked the child up and took the child to his home. The child was in her room playing with her toys and at some point during the visit, she and the father got into an argument. The child put her foot up to block the father and the father slapped the child on the buttocks and child told him not to do that because it made her feel uncomfortable. The father then grabbed the child by the arm and led her outside to the middle of the parking lot, went back into the apartment, and left her there. The child called the mother who picked the child up and brought her back home. The mother noted that the child has only been to that location about 10-12 times since the father moved there 6 months ago. The child had no marks or bruising. The concern is that the father left the child in an area she is not familiar with sans adult supervision." This report was screened in for an investigatory response. (Exhibit A)

6. At the end of its investigation on August 15, 2019, the Department supported the aforementioned report that the Appellant neglected G. The allegation that the Appellant physically abused G was not supported. The Department determined that the Appellant physically managed his daughter while he was upset with her, to include grabbing her by the shoulders, spanking her and dragging her off the couch. He then escorted her outside and left her there alone. G contacted her mother, who retrieved her, and brought her to the police station. G did not have any marks or bruises. (Exhibit B, p.8)

7. The Appellant consistently denied spanking G. He maintained G came to his home and was disrespectful towards him, ignoring him for her cell phone. The Appellant took the cell phone away and asked G if she wanted to go home, to which she responded yes. The Appellant took her by the hand and escorted her outside, he did not drag her and had witnesses who were present to corroborate this. Once outside, the Appellant realized he did not have his keys, left G at the curb with an eight (8) year old cousin, and went inside to retrieve his keys. The Appellant denied locking G out of the home. (Exhibit B, p.4, Testimony of Appellant)

8. The Appellant maintained G was yelling at him, and he told her he was bringing her home. His cousins from Brazil were present with their children. He tried to tickle G out of her bad mood, she in turn began kicking him. (Exhibit B, p.4)

9. The Department failed to speak with any of the witnesses to the subject altercation.  
(Exhibit B)

10. AYF reported the altercation to the police upon picking G up. AYF told the police that G had told her the Appellant put his hands on her shoulders and G had put her foot up to keep him away from her. According to what AYF said, G stated that he spanked her on the buttocks and grabbed her by the arm dragging her out of the apartment. He then went back inside and shut the

door. G called her mother. (Exhibit 1)

11. G told the Department her father was upset with her over a video game. She said he “grabbed me by the shoulders from behind” and she lifted her leg in order to push him off of her, and he spanked her butt. G said she yelled at her father to stop and he turned around and “dragged me out of the house and into the car.” She texted and called her mother, who told her to get out of the car, which she did and sat on the curb. Her father was in the house, and when he came out, she told him her mother was coming to get her, and he returned to the house. G corroborated the Appellant’s statement that she was not left alone by saying R (a child) came and sat outside with her. (Exhibit B, p.3)

12. According to what AYF told the police, her main concern was that the Appellant left G alone in an area she was unfamiliar with because she had only been to the home ten (10) times before. (Exhibit 1)

13. AYF attempted to obtain a protective order against the Appellant on July 27, 2019 but was denied one by the on-call judge. (Exhibit 1)

14. AYF later petitioned Probate Court for a protective order, describing that G told her she was held down on the couch by her father, who spanked her and dragged her out of the apartment. (Exhibit 2) The temporary order was dismissed in October of 2019. (Testimony of Appellant)

15. AYF’s version of the subject altercation evolved over time and was not consistent. Neither the police nor DCF were told G was held down. (Fair Hearing Record)

16. The Appellant submitted pictures of G at his home and sitting on the curb in front of his apartment. The curb is directly in front of windows, not more than twenty (20) feet away from the Appellant’s apartment, and a door numbered #86. There would be no risk or danger to G while sitting on the curb, regardless of how many times she had visited the Appellant’s apartment. (Exhibit 6)

17. Before and after the subject altercation, AYF shared with the Appellant that she was experiencing difficulties with G’s disrespect and attitude relative to her cell phone. AYF took G’s cell phone away as discipline and ultimately bought her a flip phone instead of a smart phone. AYF was looking into counseling for G, which the Appellant expressed he was in favor of and willing to participate in. (Exhibit 3, Exhibit 4)

18. The Department closed the case after completion of a family assessment in January of 2020. (Testimony of Appellant)

19. In light of the totality of the evidence in this case, I find the Department did not have reasonable cause to support the allegation of neglect by the Appellant.

- a. It was reasonable for the Department to be concerned for G given the initial report. However, additional evidence was received which demonstrated inconsistencies in reporting, non-contacted witnesses, a pattern of disrespect over the cell phone, and the closeness of the curb to the apartment which negated

concerns of neglect.

b. There was insufficient evidence that the Appellant's isolated handling of a disrespectful altercation by G placed G in danger or posed substantial risk to G's safety or well-being, which would be necessary for the Department to support a finding of neglect. What was consistent was that the Appellant took G by her hand and brought her out to his car when she was yelling and kicking him over a cell phone. G wanted to go home and the Appellant was attempting to bring her home but had to retrieve his keys. In the meantime, G called her mother, and the Appellant allowed G to wait for her mother on the curb with her cousin.

c. The Department had already determined the altercation was not physically abusive, and the additional evidence showed the Appellant's actions did not rise to the level of neglect as defined by the Department's Protective Intake Policy.

d. The Appellant has shown by a preponderance of the evidence that the Department failed to comply with its regulations and policy when it made a finding to support the allegation of neglect.

### **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. 110 CMR 2.00; DCF

Protective Intake Policy #86-015, rev. 2/28/16

“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 #86-015, rev. 2/28/2016

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, or (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, or (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 Appellant was a caregiver pursuant to Departmental regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.

The Appellant contested the Department’s decision to support an allegation that he neglected his twelve (12) year old daughter while responding to an incident of disrespect over her cell phone/electronics. The Appellant consistently denied the altercation was abusive, or that he spanked or dragged his daughter out of the home. Rather, he explained his daughter was acting rudely so he removed her cell phone, which angered her. He asked her if she wanted to go home to which she replied yes. The Appellant took her by the hand and brought her to his car, at which

point he realized he did not have his keys. The Appellant went back inside to get his keys, and upon returning outside was told by G that her mother was on her way to pick her up. By all accounts, aside from mother's, G was not outside alone, rather she was sitting with her cousin. However, even if she had been alone, the proximity of the curb to the apartment was more than appropriate given G's age. I find the Appellant's argument that he did not neglect G to be persuasive.

As allowed by the Department's regulations, the Appellant presented additional documentation at the Fair Hearing; this was information that was available at the time of the investigation, that he hoped would raise convincing questions about AYF's credibility and motivation. I find that the Appellant presented credible evidence to support his position, evidence that was not considered by the Department. In making a decision to support a report of abuse or neglect, the Department must consider the entire record, including whatever in the record fairly detracts from the weight of the evidence supporting its conclusion. Arnone v. Commissioner of the Department of Social Services, 43 Mass. App. Ct., 33, 34 (1997). This was not done in the subject matter.

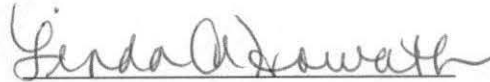
**Conclusion**

The Department's decision to support the allegation of **neglect** by the Appellant was not made with a reasonable basis and therefore, is **REVERSED**.



Laureen Decas  
Administrative Hearing Officer

Date: 6/10/2020



Linda A. Horvath, Esq.  
Supervisor, Fair Hearing Unit

Date: \_\_\_\_\_

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Linda S. Spears  
Commissioner