

**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

C. H.

**HEARING DECISION**

FH # 2019 1534

The Appellant in this Fair Hearing is Mr. C.H. (hereinafter “the Appellant”). The Appellant appealed the Department of Children and Families’ (“DCF” or “the Department”) decision to support allegations of neglect pursuant to Mass. Gen. L., c. 119, §§ 51A and B.

**Procedural Information**

On October 31, 2019, the Department received a 51A report filed by a mandated reporter alleging neglect of J (“J” or “the child”) by Ms. T.C. and the Appellant; the allegations were subsequently supported.<sup>1</sup> The Department informed the Appellant of its decision and of his right to appeal the Department’s determination. The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06.

The Fair Hearing was held on February 25, 2020, at the Department of Children and Families’ Greenfield Area Office. All witnesses were sworn in to testify under oath. The record remained open until March 6, 2020, to allow for the submission of additional documents to be entered into the record.<sup>2</sup>

The following persons appeared at the Fair Hearing:

Anastasia King	Administrative Hearing Officer
Mr. C.H.	Appellant
Ms. L.P.	Appellant’s Attorney
Ms. K.A.	DCF Supervisor
Ms. A.G.	DCF Response Worker

<sup>1</sup> Allegations of neglect of J by Ms. T.C. were also supported by the Department. However, Ms. T.C. was not a party to this appeal. (Fair Hearing Record)

<sup>2</sup> No additional documents were submitted, and the record closed on March 6, 2020. (Fair Hearing Record)

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 1: 51A Intake Report

Exhibit 2: 51B Child Abuse/Neglect Non-Emergency Response

Exhibit 3: Police Report

For the Appellant:

The Appellant did not offer documentary evidence at the Fair Hearing.

Pursuant to 110 CMR 10.21, 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.

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

**Findings of Fact**

1. The subject child of this Fair Hearing was J ("J" or "the child"), a male child who was approximately one month old at the time the 51A report was filed. (Exhibit 1, p.1)
2. On October 31, 2019, the Department received a 51A report filed by a mandated reporter alleging neglect of the child by Ms. T.C. and the Appellant. According to the report, police responded to the home after being contacted by the paternal grandmother. Ms. T.C. had locked herself in the bathroom and threatened to cut herself. Self-harm had been an ongoing issue with Ms. T.C., who had threatened to harm herself several times before the child was born. Ms. T.C., who had not been diagnosed with any mental

health issues, was placed under a Section 12 for suicidal ideation. It was also reported that the condition of the home was concerning as there were several dozen empty alcohol containers and the clutter in the home made it difficult to walk. The child remained home with the Appellant, paternal grandmother, and maternal great-grandmother. (Exhibit 1, p.3; Testimony of RW)

3. The 51A report was screened in as an Emergency Response and assigned to DCF Response Worker, Ms. A.G., (“Response Worker” or “RW”) to complete a 51B Response. (Exhibit 2, p.1)
4. The Appellant and Ms. T.C., (“TC” or “the mother”) were the child’s biological parents. Though not a married couple, the Appellant and the mother resided in the home with the child at the time of the reported incident. (Testimony of Appellant) The Appellant was a “caregiver” as defined by Departmental regulation and policy 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16.
5. The Appellant had no prior DCF involvement. (Exhibit 1, p.4)
6. At the time of the reported incident, the Appellant and the mother had been in a relationship for approximately 13 months and resided together for the majority of that time. (Testimony of Appellant)
7. On October 31, 2019, the RW went to the home and met with the mother, who reported the following information:
  - On October 30, 2019, the Appellant and the mother engaged in a verbal argument. The mother reported needing space and going into the bathroom and locking the door. (Exhibit 2, p.2; Testimony of RW)
  - The Appellant and the mother had been involved in a relationship for approximately one year. The mother denied any physical violence in their relationship and reported that their argument on the day of the reported incident was out of the ordinary as they normally got along well. (Exhibit 2, p.2; Exhibit 2, p.3)
  - Though she cares for J during the day while the Appellant was at work, the Appellant was responsible for J in the evenings and at night. (Exhibit 2, p.3)
  - The mother drank alcohol on a daily basis. (Exhibit 2, p.3)
  - Although she also smoked marijuana on a daily basis, the mother reported that she only smoked in the evening when the Appellant was home to care for the child. (Exhibit 2, p.3)
  - Although the Appellant drank alcohol, the mother denied that the Appellant smoked marijuana. (Exhibit 2, p.3)
  - The mother had not taken her medication for 2 or 3 days, reporting that she had trouble remembering to take it. (Exhibit 2, p.3)
  - The mother had a history of cutting that began in 2008. Although the mother denied cutting herself on the night of the reported incident, she reported cutting herself a couple of weeks prior to the incident. (Exhibit 2, p.2; Testimony of RW)



- As a result of her behaviors and locking herself in the bathroom, the Appellant contacted the paternal grandmother, Ms. S.H., (“the grandmother”) who in turn called 911. (Exhibit 2, p.2; Testimony of RW)
  - Police responded to the home, and due to the concerns regarding the mother’s mental health and safety, she was transported to the hospital where paperwork was completed to have the mother involuntarily committed under MA General Law Chapter 123, Section 12. (Exhibit 2, p.2; Exhibit 3; Testimony of RW)
8. The mother informed the RW that after the reported incident, the Appellant had taken the child to the grandmother’s home and neither the Appellant nor J were in the home. During the home visit, the RW observed the home to be cluttered and the bedroom to be messy and dirty. There were several empty liquor bottles and beer cans lined up on the floor, and a few full bags of empty containers. Empty plastic water bottles were also in the child’s bassinet. In addition, the RW observed a (pellet) gun and bong also in the bedroom. The mother reported that there was normally nothing in the bassinet, and the items noted by the RW were only present because J was not in the home. (Exhibit 2, p.3; Testimony of RW)
  9. Although the mother reported to the RW that the bags of empty containers and bottles were being collected for a craft project, the Appellant reported the containers were being collected to return for the deposit money. (Exhibit 2, p.3; Testimony of Appellant)
  10. Police Sergeant J.R., (“Sgt. R”) responded to the Appellant’s home at approximately 10:30 p.m., on October 30, 2019. Sgt. R was familiar with the mother due to prior incidences and was aware of the mother’s history of self-injurious behaviors. When it was determined that the mother would be transported to the hospital, due to the mother’s recent threats to harm herself, Sgt. R escorted the mother to her bedroom to retrieve some clothes. (Exhibit 3)
  11. In his police report, Sgt. R noted that the path to the bedroom was extremely cluttered and there were empty containers of alcohol around. Sgt. R did not report viewing a pellet gun or drug paraphernalia in the bedroom, and while Sgt. R acknowledged that J was too young to crawl or move around on his own, Sgt. R also noted that there did not appear to be a safe place for J “outside the bassinet”. (Exhibit 3)
  12. Based on Sgt. R’s observations and description of the bedroom, it is reasonable to infer that when viewing the child’s bassinet on the night of the reported incident, Sgt. R did not observe any safety concerns for J. (Fair Hearing Record)
  13. Sgt. R noted in the police report that when speaking to the mother, “there was a strong odor of alcoholic beverages coming from her, more pronounced when she spoke in my direction and had an odor of fresh burnt marijuana”. However, despite the Appellant being the first person Sgt. R spoke to upon his arrival to the home, there was no indication in Sgt. R’s report that the Appellant smelled of alcohol or marijuana. (Exhibit 3)

14. After leaving the mother's home on October 31, 2019, the RW arrived at the home of the grandmother to meet with the Appellant.
  - The RW observed J in the home and found the child to be clean and free from any visible marks or bruises. (Exhibit 2, p.4; Testimony of RW)
  - The Appellant and the mother had just returned from Probate Court. The Appellant had requested emergency custody of J and a hearing was scheduled for later that afternoon. (Exhibit 2, p.4; Testimony of RW; Testimony of Appellant)
  - The Appellant reported that after he arrived home from work on October 30, 2019, a verbal argument ensued between him and the mother. (Exhibit 2, p.4; Testimony of RW; Testimony of Appellant)
  - Although the child was present in the room, the argument did *not* escalate and become physical. (Testimony of Appellant)
  - However, the mother picked up a knife and stabbed holes in the wall. The mother then locked herself in the bathroom, at which time the Appellant called the grandmother. (Exhibit 2, p.4)
  - The Appellant denied any prior police responses to the home. (Exhibit 2, p.5)
  - The Appellant reported that he drank beer on a daily basis, approximately four to five beers. However, the Appellant denied that he drank to intoxication and denied any marijuana use. (Exhibit 2, p.5)
  - When asked about his living situation if he obtained custody of J, the Appellant reported that he and the child would reside in the grandmother's home, along with the Appellant's father and siblings. (Exhibit 2, p.5; Testimony of RW)
  - The grandmother, who was a great support for the Appellant, was present during the RW's interview with the Appellant, and showed the RW the home and provisions for the child during the visit. (Exhibit 2, p.5; Testimony of RW)
15. No evidence was obtained that the Appellant had ever been intoxicated while caring for the child. (Testimony of RW)
16. The Appellant had witnessed the mother drink alcohol prior to becoming pregnant with J. However, the Appellant did witness the mother drink alcohol while she was pregnant. (Testimony of Appellant)
17. Although the Appellant was aware that the mother had a history of cutting herself, he was unaware of any recent cutting. Prior to the night of the reported incident, the only other time the Appellant had heard the mother express a desire to commit suicide, was when the mother was approximately eight months pregnant with J. At that time, the Appellant had contacted the grandmother, who arrived at the home and together with the Appellant, spoke to the mother and calmed her down. (Testimony of Appellant)
18. In the afternoon of October 31, 2019, the RW received a call from Ms. J.N. ("JN") from Probate Court Probation. JN informed the RW that the mother was opposed to the Appellant obtaining custody of J. The RW informed JN that if the Appellant was not able to obtain custody of the child, the Department would be seeking custody of J "due to significant concerns regarding the mother's mental health, substance use, and the condition of the home". (Exhibit 2, p.6)

19. After speaking to the mother, JN contacted the RW a second time and stated the mother was in agreement with the Appellant obtaining temporary custody of J. (Exhibit 2, p.6)
20. On October 31, 2019, the Probate Court awarded the Appellant temporary custody of J. The mother's visits with J were to be supervised by the grandmother, and neither the mother nor the Appellant were to consume alcohol while caring for the child. (Exhibit 2, p.7; Testimony of RW)
21. At the time of the Fair Hearing, the Appellant and J continued to reside with the grandmother and his extended family. The Appellant was employed full time and was the child's primary caretaker when not at work. (Testimony of Appellant)
22. The conditions surrounding custody and visitation ordered by Probate Court on October 31, 2019 remained in place at the time of the Fair Hearing. However, although the mother continued to attend Probate Court proceedings, the mother had not contacted the grandmother to visit with the child since the first week of December 2019. (Testimony of Appellant)
23. On November 7, 2019, pursuant to MGL c. 119, § 51B, the Department supported allegations of neglect of the child by the Appellant and the mother, basing its determination on information obtained during the 51B response. (Exhibit 2, p.13; Testimony of RW)
24. Though the Department concluded that "the parents' actions created a substantial risk of physical and emotional injury to J", sufficient evidence was not presented that the child's safety had been compromised as a result of the Appellant's actions. (Fair Hearing Record)
25. Despite the Department's determination, considering the entirety of the record of this case, I find that the evidence presented was not sufficient to conclude that the Appellant failed to provide J with minimally adequate care or that the Appellant's actions or inactions placed the child in danger or posed substantial risk to his safety or well-being as required by the Department's intake policy when supporting for neglect. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16)
26. Therefore, I find that the Department did not have reasonable cause to support the allegations of neglect of J by the Appellant; the Appellant's actions did not constitute neglect as defined in its regulations, and its decision was not in compliance with its regulations. (110 CMR 2.00 & 4.32) (See, "Analysis")

#### **Applicable Standards**

A "caregiver" is defined as a child's (a) parent, (b) stepparent, (c) guardian, (d) any household member entrusted with responsibility for a child's health or welfare; or (e) any 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 the age of 18. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 02/28/2016)

“Neglect” is defined as a 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 a 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. 02/28/2016)

To “support” a finding of abuse or neglect means there is reasonable cause to believe that 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 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. (DCF Protective Intake Policy #86-015, rev. 02/28/2016)

“Reasonable cause to believe” is defined as 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(2))

To prevail, an Appellant must show by a preponderance of all the evidence presented, that: (a) the Department’s or Provider’s decision or procedural action 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 a n 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 their safety and 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)

When reviewing a support decision, the Hearing Officer may consider information available during the investigation and new information subsequently discovered or provided that would either support or detract from the Department's decision. (110 CMR 10.21(6))

### Analysis

At the conclusion of the 51B response, the Department determined that sufficient evidence existed to support allegations of neglect of J by the Appellant. However, though the Department concluded that "the parents' actions created a substantial risk of physical and emotional injury to J", sufficient evidence was not presented that the Appellant failed to provide J with minimally adequate care.

Though J was present at the time of the reported incident, the verbal argument between the Appellant and the mother did not escalate and become physical. In fact, when speaking to the RW, the mother denied any domestic violence in her relationship with the Appellant, stating that their argument on the day of the reported incident was out of the ordinary as they normally got along well.

The Department also had concerns regarding the condition of the home. When the RW met with the mother the day after the reported incident occurred, the RW observed the home to be cluttered and the bedroom to be messy and dirty. There were several empty liquor bottles and beer cans lined up on the floor, and a few full bags of empty containers. Empty plastic water bottles were also observed in the child's bassinet. In addition, the RW observed a pellet gun and bong also in the bedroom. The mother reported that the items noted by the RW were only present because J was not in the home as the Appellant took J to the grandmother's home after the incident and neither had returned. Sgt. R responded to the Appellant's home at approximately 10:30 p.m., on October 30, 2019. In his police report, Sgt. R noted that the path to the bedroom was extremely cluttered and there were empty containers of alcohol around. Sgt. R did not report viewing a pellet gun or drug paraphernalia in the bedroom. Because J was only approximately one month old at the time of the reported incident, Sgt. R acknowledged that J was too young to crawl or move around on his own, but noted that there did not appear to be a safe place for J "outside the bassinet". Sgt. R's statement allows one to reasonably conclude that when he viewed J's bassinet on the night of the reported incident, Sgt. R did not observe any safety concerns for J.

Though the Appellant, by his own admission, drank alcohol on a daily basis prior to the reported incident, no evidence was presented that the Appellant was ever intoxicated when caring for the child. In addition, Sgt. R stated in his police report that when speaking to the mother, "there was a strong odor of alcoholic beverages coming from her, more pronounced when she spoke in my direction and had an odor of fresh burnt marijuana". However, despite the Appellant being the first person Sgt. R spoke to upon his arrival to the home, there was no indication in Sgt. R's report that the Appellant smelled of alcohol or marijuana.

Lastly, the Appellant went to Probate Court the day after the reported incident to seek custody of J. When JN, from Probate Court Probation, called the RW to inform her that



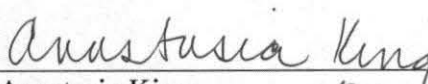
the mother was opposing the Appellant's request to obtain custody, the RW informed JN that if the Appellant was unable to obtain custody, the Department would be seeking custody due to significant concerns regarding the mother's mental health, substance use, and the condition of the home. Though the Department requested that any contact the mother had with the child going forward be supervised, this was not requested of the Appellant; it was only requested that the Appellant not consume alcohol while caring for J.

Based upon a review of the evidence presented in its entirety, and after consideration of all the facts and circumstances detailed in the above Findings of Fact, I find insufficient evidence with the Department's determination that Appellant's actions, as described by the evidence presented, rose to the level necessary to support the allegations of neglect. I further find that the Department failed to provide sufficient evidence that the Appellant's actions or inactions placed J in danger or posed a substantial risk to his safety or well-being as required by the Department's intake policy when supporting for neglect. (110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16) Thus, the Department did not have reasonable cause to support the allegations, and the decision was not made with a reasonable basis. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16; also see Wilson v. Dep't of Soc. Servs., 65 Mass. App. Ct. 739, 745-746 (2006))

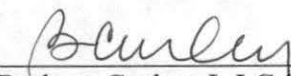
The Appellant has shown by a preponderance of the evidence that the Department acted without a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant.

### **Conclusion and Order**

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

  
Anastasia King  
Administrative Hearing Officer

June 29, 2020  
Date

  
Barbara Curley, L.I.C.S.W.  
Supervisor, Fair Hearing Unit

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

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Linda S. Spears  
Commissioner