

**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        )  
                                  )  
                  JC            )  
                                  )  
                  FH # 20191564    )  
                                  )

**FAIR HEARING DECISION**

The Appellant in this Fair Hearing was JC (hereinafter "JC" "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 October 16, 2019, the Department of Children and Families received a 51A report alleging the neglect of K by mother, AA. A non-emergency investigatory response was initiated. On November 7, 2019, a second 51A report was received by the Department alleging the neglect of K by her father, JC. On November 12, 2019, the Department made the decision to support the allegations of the neglect of K by AA and JC. 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 February 25, 2020, at the DCF Plymouth Area Office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
JC	Appellant
JM	Attorney for Appellant
CA	Attorney for K/Observer
KB	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 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 11/7/19
- Exhibit B: Intake report dated 10/16/19
- Exhibit C: Child Abuse/Neglect Emergency Response completed 11/12/19

Appellant

- Exhibit 1: Police report dated 9/14/19
- Exhibit 2: Police report dated 9/1/19
- Exhibit 3: Brewster Ambulance Patient Care Report dated 9/1/19
- Exhibit 4: Police report dated 8/27/19

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, K was days short of turning two (2) years old. The Department obtained emergency custody of K on October 16, 2019, and placed her in the care of her father, JC. (Exhibit A)
2. The Appellant is the father of K; therefore, he is 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 been known to the Department since K's birth, when she tested positive for

Suboxone and Marijuana. When K was four (4) months old a report was supported for the neglect of K by her father, JC, due to domestic violence. In March of 2019, a report was Substantiated for Concerns due to parent's inability to co-parent. This report was unsupported for the physical abuse of K by an unknown person. The family had an open case with the Department. (Exhibit A, p.6)

4. On October 16, 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 neglect of K by mother, AA. An emergency removal was conducted of K on October 16, 2019, and K was placed with her father, JC. (Exhibit B)

5. On November 7, 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 neglect of K by her father, JC. According to the reporter, JC had very recent substance abuse issues specific to IV drug use and was not three (3) years clean as he had reported to the Department when K was placed in his care. (Exhibit A)

6. Upon completion of the investigative response on November 12, 2019, the aforementioned reports were supported for the neglect of K by her parents, AA and JC. Relative to JC, the Department reviewed seven (7) police responses which indicated JC had very recent substance abuse issues, specific to IV drug use: There was a Tier 2 overdose follow-up to JC's home address on 10/7/19 with regards to JC's recent overdose. Two separate calls were made on 09/14/19, to the police within one hour for concerns of JC appearing to be under the influence of substances and/or nodding off at Walgreen's and then at McDonalds. On 9/01/19, police officers observed JC with a known narcotic drug user; JC entered a Dunkin Donuts bathroom and spent a long time in the bathroom and exited the store without purchasing anything; JC then went across the street into Stop and Shops' bathroom. The officer went into the Dunkin bathroom and observed a needle cap and blood on the floor. The officer went across the street and found JC in the Stop and Shop bathroom; a bloody needle was found in the bathroom and fresh injection sites were observed on JC's arm. On 8/31/19 JC was in a vehicle stopped by police that had drugs, needles and a crack pipe in it. On August 27, 2019, the police responded to a report of a male stumbling around; JC was located and said he was looking for his phone. Also, on 8/27/19 police and emergency medical personnel responded to a possible overdose of JC. (Exhibit C)

7. JC maintained he had not used drugs since 11/6/16 and that the P police just didn't like him. When asked what he did to maintain his recovery, JC stated he does not associate with people who use drugs. The information obtained from the police reports contradicts this and strongly indicated that JC continued to struggle with drug use. (Exhibit C) He used to do counseling and AA but has since stopped. He did not have any services in place but he was on Subutex. (Id. at p.4)

8. The following narratives were taken from P police reports pertaining to JC and relied upon by the Department:

a. "On Monday October 7, 2019, Officer Flynn was assigned to the street crimes unit wearing plain clothes and operating an unmarked cruiser. At approximately 1254 hrs I attempted to conduct a Tier 2 Overdose follow up on a Mr. JC at XXX I was

accompanied by a representative of Winchester of Project Outreach and a representative of Learn to Cope. Upon arriving at the residence we observed the side door to be open. Once we parked and walked to the side door of the residence, it had been closed by an unknown individual. I attempted numerous times to raise someone in the residence however we did not receive an answer. A PCO packet was left for Mr. JC and family.”

b. “On 9/14/19 at 11:39 am caller reports JC in store (Walgreens) is nodding off and having trouble standing. Police officer reports subject is fine - no issues, subject checked out fine.”

c. “On 9/14/19 at 12:25 pm caller reports JC inside McDonalds appears to be impaired-keeps passing out. Brewster evaluated JC and found no reason JC needed to go to the hospital and advised officers he checks out fine.”

d. “On 09/01/2019 while on patrol I, Officer observed JC and another male in the area of Dunkin's on Samoset. Both parties are known to me as using narcotics, typically heroin. I observed JC to spend a long period of time within the Dunkin's bathroom, never attempting to purchase anything from the store. It is my knowledge that public bathrooms are a common place for narcotics activity. JC then exited the restroom and walked across the street to Stop and Shop. I immediately entered the Dunkins and located a needle cap and blood on the floor. I was able to locate JC in the bathroom of Stop and Shop with a bloody needle nearby and fresh injection sites on his arms. No narcotics were found on his person however, Brewster EMS arrived and evaluated JC and medically cleared him.”

e. “On 8/31/19 into the early morning of September 1, 2019, Officer’s conducted a vehicle stop with four occupants, one being JC. Another male was observed with a crack pipe laying on the seat positioned next to his left leg. The officer also observed what he knew as psychedelic mushrooms (Class C substance) located in the bag. The male was then subsequently taken into custody for possession of a Class B substance and Class C substance. Upon further observations, the officer observed several hypodermic needles laying about the vehicle, as well as, several clear empty plastic bags, which is all indicative of narcotics use. 260 Gabapentin pills, 3 Suboxone tablets, and Xanax were also found in the car.”

f. On 8/27/19 a call of suspicious activity at Algonqui . The caller reported a man stumbling around by the R building, police response and spoke to JC, who informed us that he was just looking for his phone that he lost.”

g. “Also on 8/27/19 an unidentified caller reports possible over dose at Cumberland Farms on Samoset St. Police responded and spoke with JC, who was conscious and alert. JC stated he is fine and was just bent down tying his hair into a bun while he fixed his shoe. JC stated he was coming from his girlfriend’s house and waiting at Cumberland farms for a ride from his mother to take him home. EMS arrived on scene and evaluated JC, who was cleared by EMS.”

h. “On Tues, 7-30-19, Officer V was dispatched to MRA fields, 1197 State Rd, to speak to a caller who reported being jumped last night. On arrival I spoke to the caller, JC. He did not want to speak at his residence (XX Rd) because he did not want to be seen "talking to the police". He continued that last night he was dropped off in the area of Manomet Point Rd and Taylor Avenue. JC stated that he wanted to "go for a walk". He stated he had a backpack because he always carries his Subutex prescription. He also stated he had 43.00 dollars cash, a wallet, and keys. JC stated that around 10:30pm he

was walking on Taylor Ave when an unknown male asked for a cigarette. JC said "no". Moments later, JC stated he turned around and saw multiple unknown men (4?) and one female. JC stated an unknown Hispanic male, 6'0", 300lbs, punched him twice in the left temple. JC stated that he fell to the ground, and the group took his bag and ran. JC had no marks or bruising on his left temple. I asked him about that and he said "yeah that's weird". I asked why he did not report this incident when it occurred and he stated he did not have his phone with him. JC stated that after the incident he "walked home", arriving at XX Rd at approximately 1am the following morning. I asked why he waited 12 hours after that to report the incident, to which he had no answer. JC stated that his prescription had just recently been filled, and believed he lost 64 Subutex pills. JC had no idea who the involved parties were, had no clothing description. He stated that other than his attacker the other parties were "white", and did not see in which direction they fled. I was unable to verify any part of JC's report. He had no injuries consistent with what he claimed occurred. JC was advised how to obtain this report. No further information or leads at this time." (Exhibit C, pgs. 7, 8)

9. The Brewster Ambulance crew wrote a narrative pertaining to the call on September 1, 2019, for JC after he left the Stop and Shop bathroom. JC was found with a pipe on him, which he reported he used for "weed", the spoon on his possession was from blueberries his mom gave him and the copper wire was for smoking weed. JC was informed of all of the risks of not being seen in the emergency room if he used drugs. EMS noted JC's pupils were not pinpointed and there were no changes to his respirations. JC was able to sign his own refusal and left in his own care. (Exhibit 3)

10. JC testified at hearing on February 25, 2020, that he has Crohn's Disease, and needs to use bathrooms frequently. He was prescribed Methotrexate for this. (Testimony of JC)

11. In light of the totality of the evidence in this case, I find that the Department did have reasonable cause to support the allegation of the neglect of K by JC.

a. "If children are to be protected from neglect, it makes no sense for the department to wait until neglect has already run its course to the point of producing a physical or emotional injury." Lindsay v. Department of Social Servs., 439 Mass. 789, 795 (2003);

b. The Department had sufficient evidence to support a finding that the Appellant neglected K under Department policies and regulations. In assessing the totality of the situation, the Department relied upon numerous reports of concern for JC's presentation over a period of several months. All emergency medical responses cleared JC of overdosing on opiates, not of opiate use. K's age made her solely dependent on her caregiver to meet her needs.

\*The Appellant's actions posed a substantial risk to K's safety and well-being. DCF Protective Intake Policy #86-015, rev. 2/28/16;

\*The Department had reasonable cause to intervene with this family in order to ensure the K's safety and well-being.

12. Therefore, the Department's decision to support the allegation of neglect was made in conformity with its policies and regulations. (110 CMR 2.00; 110 CMR 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 caretaker 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. 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

“Danger” is 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. 2/28/16

“Risk” is defined as the potential for future harm to a child. DCF Protective Intake Policy #86-015, rev. 2/28/16

A Fair Hearing shall address (1) whether the Department’s or provider’s decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;. . . In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 CMR 10.05

“Caregiver” means (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

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

The Appellant, through counsel, contested the Department's decision to support an allegation that he neglected K. The Appellant argued that he was cleared by emergency medical staff and not found to be overdosed on the several occasions he interacted with the police when unknown people called for police assistance on his behalf. The Appellant explained away police concern for his well-being as that the P police just didn't like him. The Appellant's argument is not persuasive and his submitted evidence in this matter does not allow for a reversal of the Department's support decision.

This Hearing Officer is duty bound to consider the totality of evidence, and whether there was enough evidence to permit a reasonable mind to accept the Department's decision that JC neglected K. In reaching the instant decision, this Hearing Officer gave substantial weight to the extensive police involvement JC had within the three (3) months leading up to the supported decision. 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. As stated above, "reasonable cause" implies a relatively low standard of proof which, in the context of the 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990). "{A} presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of § 51B." Id. at 64; G.L. c.119,

s 51B.

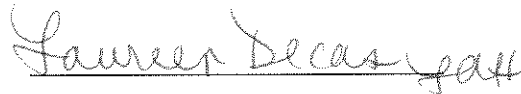
“The purpose of the mandatory reporting regime under G.L. c. 119, § 51A is to provide the DCF with information necessary to protect a child’s health, safety, and development before actual harm is done.” B.K. v. Department of Children & Families, 79 Mass.App.Ct. 777, 782 (2011). “A caretaker’s actions that fail adequately to protect a child’s well-being can constitute neglect, even in the absence of actual harm.” B.K., 79 Mass.App.Ct. at 783. As provided for in the regulations quoted above, the Investigator relied on professional opinions and recommendations, available documentation, observable behavioral indicators and her clinical knowledge to support the decision made. In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there is a reasonable basis for the decision (110 CMR §10.29).

Considering the entirety of the record in this case, there was no evidence that the Department acted unreasonably when supporting this report, the Appellant was not substantially prejudiced by the Department’s decision, and the Appellant has not 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 allegations of neglect. “Reasonable cause” implies a relatively low standard of proof which, in the context of the 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Care and Protection of Robert, 408 Mass. 52, 63-64 (1990). “{A} presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of § 51B.” Id. at 64; G.L. c.119, s 51B.

### Conclusion

The Department’s decision to support the allegations of neglect by the Appellant was made with a reasonable basis and therefore, is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county in which he lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



Lauren Decas  
Administrative Hearing Officer

Date: 7/31/2020



Linda Horvath, Esq.  
Supervisor, Fair Hearing Unit