STATE OF DELAWARE
Child Death, Near Death and Stillbirth Commission
900 King Street
Wilmington, DE 19801-3341

CAPTA[1] REPORT

In the Matter of
J.S.
Minor Child

9-03-2010-00008

February 20, 2015

[1] The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

Background and Acknowledgements

The Child Death, Near Death and Stillbirth Commission ("CDNDSC") was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child's death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

The case information presented below is based on documents reviewed and presented from the treating hospitals, the Department of Services for Children, Youth and Their Families, the Office of the Child Advocate, Family Court, Law Enforcement, and the Department of Justice.

Case Summary

The child who is the subject of this review, J.S., was born in August 2008 to Mother of the child (MOC). At time of delivery, both MOC and J.S. tested positive for crack cocaine. J.S. showed no signs of withdrawal symptoms during his hospital stay. He was discharged home to the care of his MOC, on day four of life, with a safety plan in place that they will live with the MOC's sister.

In December 2009, the Division of Family Services' Child Abuse Report line received an urgent referral alleging the severe physical neglect of J.S. Law Enforcement responded to the residence in reference to a welfare complaint regarding an infant left alone in a garage/tool shed. J.S., whom at the time was fifteen months of age, was found unresponsive, buckled in his car seat, positioned inside of a playpen, with two kerosene heaters (one on each side) burning. He was revived at the scene and flown to a Maryland hospital for further evaluation and treatment.

MOC's History

In 2002, the Division of Family Services (DFS) became active with MOC after receiving an urgent referral alleging dependency of a newborn, J.S.'s sibling. Infant was born in January 2002, to be placed in the custody of her maternal aunt as MOC was incarcerated. When the child was ready for discharge, the hospital was unable to locate the maternal aunt. DFS received emergency ex parte custody of the infant. A Preliminary Protective Hearing occurred in February 2002, whereas DFS retained custody of the infant. A home evaluation of the maternal aunt's was completed prior to the hearing. Conditions of the home were found to not be appropriate for a newborn; therefore, the aunt was ruled out at that time. MOC was interviewed at the correctional facility, and visitation with the child occurred there as well. MOC stated she would be incarcerated until April. She was involved in a local corrections and community-based substance abuse treatment program; however, the Judge moved her to the correctional facility to avoid risking a relapse while she was pregnant. The DFS case was founded for dependency with MOC as perpetrator. The DFS case was transferred to treatment for ongoing services.

In 2003, J.S.'s sibling was residing with a maternal great aunt out of state. She was awarded permanent guardianship of the child. There were no safety issues in her home. MOC had no other children with her. It should be noted that MOC also has a thirteen year old son that lives out of state with his father. There are no reports within DFS regarding this child. Services were no longer needed. The case was closed.

In August 2008, following the birth of J.S., an urgent referral alleging mild physical neglect of the infant is received due to MOC and infant testing positive for crack cocaine at time of birth. MOC admitted to using crack cocaine daily and also tested positive prenatally in May 2008; however, she stated that she stopped using but relapsed the Monday prior to delivery. MOC received limited prenatal care. The hospital notes that mom is special needs and has problems with cognitive functioning.

The hospital case worker met with DFS and informed them that MOC had a long history of drug use. MOC has cognitive delays and trouble reading. MOC did not know the dates of birth for her other children and could not spell the baby's name. MOC was willing to get treatment and knew she should not use drugs. She minimized her drug use and the reasons for not having her other children. MOC admitted that her six year old daughter lived with her aunt in another state because MOC was incarcerated when the child was born. MOC stated that her thirteen year old son lived with his father in another state because MOC wanted to move here and the father did not.

According to MOC, J.S's biological father is incarcerated in another state. Mom denied any domestic violence or mental health issues. DFS wrote a safety plan that the baby will be released to MOC and will reside in the MOC's sister's home. DFS planned to meet with MOC the day after she was discharged from the hospital. It should be noted that at this time, there has been no discussion with MOC's sister deeming her an appropriate, approved resource.

In September 2008, DFS made an unannounced home visit. MOC informed DFS that the home was left to her sister upon their father's death. MOC was renting a room there and had access to the kitchen and bathroom. No one else lived in the home. DFS did observe a bassinet in the home. MOC stated that she is on the waiting list for Section 8 Housing.

DFS discussed MOC's drug use to which MOC stated she used differently than most, she only used once per week. The DFS case worker discussed the effects on the baby and suggested the baby may suffer delays in the future. She mentioned the idea of MOC going into a drug treatment program, MOC agreed. She instructed MOC to call the 800 number on her insurance card to find out where she can go for treatment. DFS also made referrals on behalf of the family to Parents as Teachers and Child Development Watch (CDW). The home was appropriate but the caseworker did not meet the maternal Aunt. A collateral contact was made with CDW and they did provide services to her.

In October 2008, the case was closed, unsubstantiated with concerns for MOC's drug history. The MOC's sister was never seen or interviewed. No attempts were made to get the MOC into drug treatment.

Father's History, Father of the child (FOC)

In 2003, there was a founded case of sexual abuse. A 15year old female was interviewed at the Children's Advocacy Center where she revealed that her biological father (FOC) had

touched her inappropriately on two different occasions. FOC was charged with unlawful sexual contact. FOC was already in jail prior to this new charge. The teen girl claimed that this incident happened approximately two years ago. She no longer lived with her father. FOC denied having any sexual relationship with his daughter.

Following the near death event of J.S., a DFS history check revealed FOC was substantiated at Level IV sexual abuse/inappropriate touching of his daughter. He was criminally charged; however, the charges were Nolle Prossed.

J.S.' Near Death Event

In December 2009, the Division's Child Abuse Report line received an urgent referral alleging severe physical neglect of J.S. A neighbor contacted law enforcement reporting that there was a child left alone in a tool shed. Law enforcement reported to the residence to conduct a welfare check. Upon arrival, law enforcement entered the 10 x 10 shed and found two kerosene heaters running with J.S. in the middle of them. The infant was buckled in his car seat, and placed inside a playpen. There was one kerosene heater on either side of the playpen. Next to the child, in the playpen, was an insurance card with the infant and MOC's name on it. The infant was unresponsive. The police officer moved the infant to open air and attempted to get a response by performing a sternum rub; the infant finally took a deep breath and began breathing on his own. The infant became responsive. Paramedics determined the infant had a high level of carbon monoxide and he was flown to a children's hospital out of state.

An eight year old boy was also there; he was discovered to be the grandson of the neighbor. The child was looking in on the infant periodically and happened to arrive just prior to law enforcement arriving. The neighbor stated the infant had been left alone for approximately one hour.

The shed was in deplorable condition with only electric; there was no water, no sewage and garbage strewn everywhere. There was no parent on scene and none arrived during the response from emergency personnel.

Reportedly, MOC heard police were looking for her and she returned. She claimed that she left the infant with her FOC. His whereabouts were unknown at the time. MOC admitted to law enforcement that she had previously left the infant alone once before. She also admitted that she last used crack cocaine the day prior to the incident. MOC was charged with Reckless Endangering 1st, Endangering the Welfare of a Child, Conspiracy 2nd, Reckless Endangering 2nd, and another charge of Endangering the Welfare of a Child (the latter two charges are concerning the non-relative child looking in on the infant).

Law enforcement returned to the scene at approximately 1:00 AM the next morning, finding the FOC at the residence. He was taken into custody. He alleged that the paternity of J.S. had not been established but he has fathered fifteen other children. (It was revealed later in Family Court that FOC was determined to be the father of J.S. by genetic testing conducted in November 2009.) He admitted to leaving the infant alone in the shed because the MOC went out to do drugs and he grew tired of waiting for her to return. He stated that he had the eight year old boy watching the infant. The FOC was also charged with Reckless Endangering 1st, Endangering the Welfare of a Child, Conspiracy 2nd, Reckless Endangering 2nd, and another charge of Endangering the Welfare of a Child (the latter two charges concerning the non-relative child looking in on the infant).

The Division petitioned for and was granted custody of J.S. There was a No Contact Order in place between the parents and J.S.

The DFS case worker contacted CDW to inquire if the family's case was still active. She was informed that the family had been active from September 2008 to November 2009, when the family refused ongoing services. The CDW worker later reported that the case was actually closed because they could not locate the family. The case worker requested a new assessment in light of this incident.

Two days after this near death event, J.S. was released from the hospital and placed in foster care. He was doing well and required no medical care other than a follow-up appointment with his primary care physician.

MOC's sister contacted DFS and expressed her desire to care for J.S. She stated that she had no children and lived alone in a two-bedroom house; she has worked the same job for three years. She informed the case worker that when the MOC and J.S. lived with her previously, something happened and she lost the home. She had to find another place to stay. Around July 2009, MOC moved into the shed. She had picked the MOC up from the residence a few times so she was aware of her living in the shed but had not been inside so she was unaware of the conditions. She stated that MOC took good care of the infant when she was living in the home, and she knew the MOC was not using drugs at that time. She has heard that the MOC and FOC were back to using drugs at the current time. The case worker informed her that her information would be placed in the file and she had the option of filing for guardianship.

The Preliminary Protective Hearing occurred in December 2009. The FOC'sattorney informed the court that MOC was to be released soon and that she had in fact left the infant in the care of the FOC. The FOC left the infant alone in the shed. MOC advised that she wanted her cousin to take the infant. The court inquired about other relatives. The case worker advised that she was familiar with the sister, and had spoken to her; however, the sister was aware of MOC's drug history and that the MOC and infant were residing in the shed and did nothing to protect the child. The case was transferred to a DFS treatment worker.

In December 2009, the case worker spoke with the MOC's sister. She seemed to be very intelligent on the phone. She noted that the MOC had learning disabilities and that she wanted to be a resource for the infant. MOC's sister informed the case worker that she filed for guardianship the week prior. A home assessment was scheduled. MOC's maternal aunt also contacted the Division to express her interest in taking care of the infant but stated that she only wanted the infant to remain in the family. She spoke highly of MOC's sister.

A concern was noted by the DFS supervisor of family members aware of the MOC living in the shed but not acting to protect the infant at the time. The supervisor explained that this could be reason to deny placement. The supervisor instructed the case worker to ask this specifically of family members.

The DFS case worker completed a home assessment at the home of MOC's sister. She explained that the home they had lived in belonged to her deceased father. When the home went into foreclosure, she moved to her current residence. She believed that the MOC and J.S. moved into the trailer located next to the shed. She learned of the incident from a family member and later saw the media coverage. She stated that she is committed to raising J.S. until he reaches the

age of eighteen. The home is noted to be very appropriate and clean. MOC's sister will receive a psychology degree in May 2010 from a state university. She is approved for placement.

In January 2010, J.S. was moved into MOC's sister's home. She had all necessary infant supplies and acknowledged that he is to have no contact with his parents.

The case worker visited the home in February 2010. MOC's sister stated that all was going well. She had received assistance from Women, Infant and Children's program (WIC), Medicaid, financial assistance, and purchase of care for daycare assistance. MOC's sister had not paid her Family Court filing fee; the case worker instructed her to do so immediately as the paperwork would not be processed until she did so. J.S. also received early childhood education through Easter Seals to address his expressive language delay. The education took place at the daycare.

The adjudicatory/guardianship hearing occurred in March 2010. Both parents were incarcerated; however, both support MOC's sister's petition. Guardianship was awarded to MOC's sister. The Division was to remain involved for sixty days.

During review of this case, it was noted that MOC delivered a fourth child in February 2011. The child was born prematurely weighing only 3 pounds and 2.8 ounces. Concern was raised by the medical staff as to MOC's ability to properly care for a premature infant due to her low functioning/cognitive delays. The child was discharged into MOC's care. A report was called into the Child Abuse Report line. The case was unsubstantiated with concerns for the family's history with the Division, substantiations and parent's substance abuse issues. The case was transferred to treatment. The treatment case was opened for approximately four months and closed in June 2011. During this time, four home visits were recorded, two of which were conducted by the Division's interns rather than caseworker. There was no follow through after closure of the case. It was noted that the family repeatedly refused to comply with services.

Criminal /Civil Disposition

The case was substantiated for child, age six or younger, left alone – Level IV on the child protection registry. In May 2010, MOC pled guilty to Endangering the Welfare of a Child (Misdemeanor) and received one year confinement at Level 5 suspended to one year probation at Level 3. The father pled guilty to Endangering the Welfare of a Child (Felony) and received two years confinement at Level 5, suspended after serving nine months, suspended to one year probation at Level 3. Subsequently, the father violated the conditions of his parole in May 2011 and received fifteen months confinement suspended to 75 days at Level 4. The remaining charges for both MOC and father were Nolle Prossed.

System Recommendations

After review of the facts and findings of this case, the Commission determined that all systems did not meet the current standards of practice and therefore the following system recommendations were put forth.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH & THEIR FAMILIES (DSCYF)

1. CDNDSC recommends that the Children's Department Safety Council (DSC) review all cases of this family as a whole, with significant emphasis on the last two cases. This is

critical since it appears that the DFS worker did not factor in the significant child welfare history when making decisions for safety or risk in this case. Upon completion of the Department's review, it is recommended that the DSCYF representative (who attends the CAN panel) present the findings of this internal review to the CAN panel.

a. Rationale: This is being requested so that we can collaboratively support the findings of the Department of the many systemic issues in this case and not duplicate possible recommendations.
b. Anticipated Result: Collaborative response to address the systems in this case
c. Responsible Agency: DSCYF

2. CDNDSC shall make a report to the Child Abuse Report line regarding mother's capability to care for her children, with specific attention to the birth of mother's fourth child and the case that was opened with mother by the Division of Family Services in February 2011 and then closed in treatment in June 2011.
    a. Rationale: From review of the information, it does not appear that DFS addressed the issues of drug addiction which put the infant at risk given the Mother's previous history of founded neglect.
    b. Anticipated Result: That DFS would reopen this case in investigation to assess risk and the mother's ability to provide care for the child.
    c. Responsible Agency: CDNDSC. A report to the DFS report line was made the same day as the CAN panel documented their concerns. The case was accepted and opened for investigation.

CHILD DEATH, NEAR DEATH AND STILLBIRTH COMMISSION (CDNDSC)

1. CDNDSC shall immediately write a letter to the Division of Family Services highlighting the grave concern of the most recent casework, i.e. the birth of mother's fourth child and the completion of services by the family.
    a. Rationale: From review of the information, it does not appear that DFS addressed the issues of drug addiction which put the infant at risk given the Mother's previous history of founded neglect.
    b. Anticipated Result: That DFS would address the concerns regarding risk and safety within this family.
    c. Responsible Agency: CDNDSC. This occurred the day following the Can Panel and was sent to the Cabinet Secretary of DSCYF.