

**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: Ai

2017-0031

FAIR HEARING DECISION

The Appellant, Ai, (hereinafter "Ai" or "Appellant") appealed the Department of Children and Families (hereinafter "DCF" or "the Department") decision to terminate her services and close her case pursuant to 110 CMR 10.06(3)(a).

Procedural History

Ai was an adult who was formerly a child in the Department's custody. Following her 18th birthday, she entered into a voluntary placement agreement with the Department and continued to receive services, including funding of her placement, a clothing allowance, school tuition and case management. On December 12, 2016, the Department gave Ai written notice that her services would be terminated and her case would be closed on March 12, 2017.

Ai made a timely request for a fair hearing to appeal the Department's decision.

The Fair Hearing was held on April 26, 2017 at the Department of Children and Families' Dimock Street Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

Nicholas Holahan
Ai

Administrative Hearing Officer
Appellant

ED
JR
LB
SR
QB
SD
IP
SDi

Appellant's Counsel
Appellant's Counsel
DARE Social Worker
DCF Supervisor
DCF Social Worker
DCF Social Worker, observing
DCF Area Program Manager
Court Reporter

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 on a digital voice recorder and transferred to one (1) compact disc, pursuant to 110 CMR 10.26.

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

For the Department:

Exhibit A: Criminal Docket Number 1602CR003626 (unredacted)

For the Appellant:

Exhibit 1: Case Dictation Report
Exhibit 2: Letter from [REDACTED]
Exhibit 3: Declaration of ML
Exhibit 4: Case closure letter dated 12/12/2016
Exhibit 5: Criminal Docket # [REDACTED] (redacted)
Exhibit 6: Pretrial Probation documentation for Appellant
Exhibit 7: Massachusetts Court System Probation Programs printout.
Exhibit 8: Letter detailing court related appointments
Exhibit 9: Fair Hearing request notice drafted by Appellant's counsel
Exhibit 10: Notice of Fair Hearing date
Exhibit 11: Notice of Fair Hearing rescheduling date
Exhibit 12: Letter from Appellant's counsel requesting Appellant's DCF file.
Exhibit 13: Letter from Appellant's counsel requesting discovery of documents
Exhibit 14: Order and Response from Department in regards to request for discovery
Exhibit 15: Request by Appellant for continuance
Exhibit 16: Notice of Fair Hearing rescheduling date
Exhibit 17: Appellant request for additional discovery of documents
Exhibit 18: Response to additional discovery request
Exhibit 19: Letter from Appellant in regards to discovery process and possible continuance
Exhibit 20: Appellant request for discovery of additional documents
Exhibit 21: Order and Response from Department in regards to additional request for discovery
Exhibit 22: Email printout from MM in regards to discovery request

Exhibit 23: Email printout from MM in regards to discovery request

Exhibit 24: Printout of Case Closing Policy

Exhibit 25: Printout of Ongoing Casework and Documentation Policy

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 Fair Hearing is whether, based upon the evidence and the hearing record as a whole: (a) the Department's decision or procedural action violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant; or (b) if there is no applicable statute, policy, regulation or procedure, whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant. 110 CMR 10.05

Findings of Fact

1. At the time of the Fair Hearing, Ai was a [REDACTED] year old female who voluntarily signed herself into the Department's custody for the purposes of placement and other supportive services. In February, 2017 Ai turned [REDACTED] years old. (Exhibit A, Exhibit 1, Testimony of Appellant)
2. Ai was previously a consumer child with the Department. Since January, 1998 she had been placed out of home in numerous settings. (Exhibit 1, p.128)
3. Prior to December 8, 2016 Ai's foster mother notified the Department that she wanted Ai removed from her home within 30 days. She cited for a reason that Ai was leaving the home late at night, and leaving the door unlocked. The foster mother also noted that Ai had given her address to her former boyfriend, who was incarcerated. There was also a confrontation between Ai and her foster father about taking her shoes off upon entering the building. (Exhibit 1, p.218)
4. On December 9, 2016 Ai was charged with assault and battery after an incident between herself and her foster father, LL. She was arrested and detained. Her boyfriend bailed her out. The Appellant did not notify the Department of her arrest. The Appellant was AWOL from her placement for two (2) days. (Exhibit A, p.5; Exhibit 5, p.5; Testimony of QB; Testimony of Appellant)
5. Prior to the incident that led to her arrest, the Appellant was found to be in compliance with her assigned tasks at the Foster Care Review. (Exhibit 1; Testimony of QB)

6. The Department did not attempt to meet with Ai in order to ascertain her account of the incident that led to her arrest. (Testimony of QB)
7. On December 12, 2016 the Department provided Ai with notice that her case would be closed. The Department's rationale for case closure was that Ai had been charged with Assault and Battery of LL resulting in her arrest. (Exhibit 4; DCF Policy #2013-01 p.59; Testimony of QB; Testimony of SR)
8. Ai was AWOL for two days after being released from jail. (Exhibit 1, p. 93-95; Testimony of QB)
9. On January 9, 2017 Ai requested a Fair Hearing in regards to her case closing. (Fair Hearing Record; Testimony of Appellant)
10. In August, 2015 Ai was given 90 day notice of her case closing. The closing rationale was Ai's missing curfews, not following the rules of her placement, and lack of academic progress. (Exhibit 1, p.188-189)
11. In May 2016 the Appellant left her previous foster home after she was charged with property damage. She had slammed the foster parents' door, damaging it. (Exhibit 1, p.205; Testimony of QB)
12. The DCF social worker testified that approximately a week before the current incident, she had a conversation with the Appellant regarding the importance of adhering to the rules of the foster home. In the previous 12 months, the Appellant was disrupted from three (2) foster homes. The Appellant was informed that if this behavior continued, the Department would have to reevaluate the viability of placement for the Appellant; and she risked the issuance of a 90 case closing notice. I credit the Department's testimony that the Appellant had been notified that further violations of the conditions of her placement could lead to a case closing notice being issued. (Testimony of QB)
13. QB monitored the Appellant's finances and employment. After case closing, the Appellant would be eligible for discharge funding to assist with housing and educational support from the Department including an Adolescent Outreach worker that would meet with her on a weekly basis. QB and the Appellant's placement agency were to begin transition planning which included, helping the Appellant with housing options. I find that the Department had collaboratively worked with the Appellant on a 90 Day Transition Plan as outlined in the Permanency Planning Policy #2013-01. However, I find that the Department had not found stable and appropriate housing for the Appellant as part of the Transition Plan. (Testimony of QB)
14. The Appellant had a good relationship with her current foster home, and she was attending the [REDACTED] Program, in addition to, working part time. (Testimony of Appellant; Exhibit 3)

15. On March 1, 2017, the Appellant was given pre-trial probation with the condition of attending the "choice program" for the incident with her foster father. The "choice program" is the [REDACTED] Program. (Exhibit 2; Exhibit 6; Testimony of Appellant).
16. I find that the Department did not follow its regulations and policies in its decision to close the Appellant's case, for the following reasons:
- a. Prior to the incident that initiated the case closing the Appellant was found to be in compliance with her service plan tasks at a Foster Care Review.
 - b. The Appellant was arrested for assaulting her foster father on December 9, 2016, and did not contact the Department for several days afterwards.
 - c. There is no evidence that the Department met with the Appellant and attempted to work towards resolving the problems emerging between her and her foster parents.
 - d. The Department did not engage the Appellant in a transition planning process as outlined in the Permanency Planning policy #2013-01, in order to address the following:
 - i. The Appellant's education, employment or work skills development
 - ii. Source of income
 - iii. Appropriate and stable housing
 - iv. Health insurance
 - v. Other specific support services

Applicable Standards

The Department may elect, on a case by case basis, to continue to serve children as they turn 18 years of age until their 22nd birthday. The decision to continue to serve individuals beyond age 18 is discretionary and based upon their educational and/or rehabilitative needs, their willingness to enter into an agreement with the Department, and the availability of resources. Such decisions require the approval of the Area Director. 110 CMR 8.02

110 CMR 9.03 Case Closure Procedures:

(1) The Social Worker And His/Her Supervisor Make The Case Closing Decision. Case closing is a clinical decision between a social worker and his/her supervisor, which decision is thereafter discussed with the client family. Case closing takes into consideration the slated goals of the case, the individual's or family's participation in services, the reduction of risk to the child, legal issues, and the Department's responsibility to provide services. When a family which is the subject of a supported 51A report refuses further Department services, and if the social worker and/or supervisor wish to seek court-ordered custody of the children in question, then a consultation with a Department attorney shall be conducted to determine if there are grounds for legal action. The social worker documents in writing in the case record the outcome of this consultation. If legal action is not warranted and despite reasonable casework efforts, the family persists in refusing Department services, the social worker documents this in the

case record and proceeds to close the case, by following the procedures set forth in 110 CMR 9.00.

Department of Children and Families Permanency Planning Policy #2013-01:

The Department Expects Youth/Young Adult to Avoid All Criminal Activity:

The Department considers requests for sustained connection from youth/young adult that have criminal charges on a case by case basis; such history does not exclude the youth/young adult from consideration for sustained connection. Youth/young adults must inform their Department Social Worker of any arrests, arraignments or court involvement and sign authorizations for release of information about these circumstances to the Department. Prior to authorizing young adult support payments, the Department will check the Criminal Offender Record Information (CORI) system to determine if the young adult has a criminal record. If the youth/young adult has been incarcerated, she/he is required to explain in her/his request for sustained Department connection the details of her/his criminal history, evidence of relevant treatment and rehabilitation (e.g., drug screen results, verification of participation in treatment or training) and/or other supportive documentation (e.g., probation/parole reports, prosecutor or other court report/information). The Department will consider the youth/young adult's level of cooperation and behavior during and since incarceration, including the productive activities she/he pursued or is pursuing such as completion of a GED or group treatment and the progress she/he has made.

Criteria for Sustained Connection:

The Department's policy regarding continuing services for youth over 18 outlines certain eligibility requirements. For a young adult to continue receiving services from the Department beyond the age of 18, the young adult must meet one of the following criteria:

- a) Completing secondary education or a program leading to a GED; or
- b) Enrolled in a post-secondary or vocational education program or trade school, full or part time; or
- c) Participating in a program or activity designed to promote, or remove barriers to employment; or
- d) Employed for at least 80 hours per month; or
- e) Incapable of doing any of the above education or employment activities due to a medical condition; or
- f) Participating in a program or plan which promotes specific educational or rehabilitative skills; or
- g) Participating in a program which promotes and supports the young adult in fully developing and fulfilling the young adult's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the Department and the young adult

Arrest and/or Incarceration of Young Adults who have Sustained Department Connection:

The young adult who is receiving sustained connection support from the Department must inform their Department Social Worker immediately if she/he is arrested, arraigned or otherwise becomes involved with the court. The Department will determine whether any placement support should be maintained. If the Department decides to close a young adult's case after incarceration, the Department must fulfill the requirements for the 90 day notice and discharge planning described below.

Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults

90 Day Notice and Discharge/Case Closing Plan

Planning for discharge and transition from placement and case closing can begin at many different points but the Department must, beginning 90 calendar days prior to discharge and case closing, provide a transition planning process in collaboration with the youth/young adult, based on an assessment of her/his readiness for living interdependently in the community, age and follow up supports. The discharge and transition planning process must include a discussion of the youth/young adult's education, employment or work skills development, housing, health insurance including the importance of a medical health care proxy, local opportunities for mentoring and other specific support services. The plan should be reflected in the Service Plan and/or dictation and must be reported in any Permanency Hearing Report filed with a court after the youth/young adult turns age 17 years and 9 months old. Any outstanding life skills needs are prioritized and addressed prior to discharge from placement and case closing. The Department must also provide written notice to the youth/young adult at least 30 calendar days prior to the anticipated date of discharge from placement and case closing (which may occur later). The scheduling of both steps should be planned.

- For the youth who intend to leave Department care or custody on her/his 18th birthday, the discharge and transition planning must begin 90 calendar days prior to discharge and the closing of the case. The written notice of discharge from placement and case closing should be sent within 90 calendar days and at least 30 calendar days prior to her/his 18th birthday. The notice must contain notice of the right of the youth to challenge the discharge from placement and the closing of her/his case through the fair hearing process.
- For the young adults who have continued sustained connections with the Department beyond age 18, the discharge and transition planning is completed within 90 days prior to the closing date. The dates for discharge from placement and case closing should be reflected in youth readiness assessment tool if being utilized and the current Service Plan. Written notice of the discharge from placement and/or case closing is sent at least 30 calendar days prior to the date of the discharge from placement or case closing accordingly.

During the 90 calendar days prior to the case closing, the Department Social Worker, and the Adolescent Outreach Worker if applicable, collaborate with the youth/young adult to plan specific tasks/activities necessary to address identified needs and achieve targeted

goals, as well as the person responsible to assist in the process. The discharge and transition planning should include a description of the resources that will be available to the youth/young adult and documents to be provided to the youth/young adult prior to case closing, including:

- Appropriate and stable housing arrangements:

"Appropriate Housing" is defined as all housing except shelters, hotel/motels and dwellings that fail to meet governmental health and building code standards. Appropriate housing can include apartments, shared apartments, boarding homes, room and board arrangements and housing with biological parents, relatives, friends and former foster parents.

"Stable Housing" is defined as housing in which there would be reasonable expectation that the residence will remain accessible for the first 12 months after discharge.

- Employment/source of income.
- Appropriate community resources such as health insurance; medical, mental health and dental providers; recreational, educational, vocational, child care and legal services.
- Consistent, caring adult(s) with whom the youth/young adult is anticipated to maintain a life-long relationship.
- The medical, dental and educational information from records held by the Department that will be provided to the youth/young adult, including but not limited to:
 - the names and addresses of the youth/young adult health and educational providers;
 - the youth/young adult grade level performance;
 - the youth/young adult school record;
 - a record of the youth/young adult's immunizations;
 - the youth/young adult's medications;
 - information about the importance of having a health care proxy and a health care proxy form; and
 - any other relevant health and education information concerning the youth/young adult determined to be appropriate by the Department.
- Original Social Security card, birth certificate and Immigration documents that will be provided to the youth/young adult by the Department

The decisions regarding the discharge and transition planning should be reflected in the youth/young adult's case record. The discharge from placement/case closing notice identifies the anticipated date of case closing which may be set for up to 12 months after the date the youth/young adult is discharged from placement, based on a joint assessment of the youth/young adult's need for post-placement follow-up. The discharge from placement/case closing notice states that the youth/young adult may request, within 30 calendar days after receipt of the notice, a fair hearing to appeal the termination of services, unless the young adult has reached the age of 22. If the discharge from placement and/or the case closing is earlier than requested by the youth/young adult, the

notice should include the reasons the youth/young adult is being discharged from placement and/or the case is being closed. Copies of the notice must be included in the youth/young adult's case record and forwarded to the youth/young adult's placement provider.

IMPORTANT: The youth/young adult should not be discharged from Department placement until appropriate and stable housing is found. However, the Department understands that at times, a youth/young adult may sign themselves out of care, terminate the VPA, etc., or take other actions beyond the Department Social Worker's control which result in a discharge before appropriate and stable housing is found.

Analysis

In this case, the Department closed Ai's case due to her arrest after she allegedly assaulted her foster father, LL. However, the Department needed to adhere to the relevant regulations and policies that govern case closing of a young adult and to provide adequate transition planning for a young adult whose case was going to close. As detailed in my analysis below, although the Appellant's arrest provided the Department with the discretion to close the case, a review needed to take place regarding such factors as the goals of the case, the Appellant's participation in services, the reduction of risk to the Appellant and the Department's responsibility to provide services. The Appellant's alleged assault on her foster father was serious and a departure from the Department's expectations for the Appellant, however; there was no evidence that the Department adequately reviewed other criteria as mandated by the Department's regulations and policies before closing the Appellant's case.

At the Fair Hearing, the Appellant submitted a Motion to Vacate the Department's case closure decision. The Appellant argued that the case closing decision should be vacated on several grounds. First, the Appellant argued that the Department did not adequately document the decision as indicated in the Case Closing Policy #86-001 and Case Closing Regulations 110 CMR 9.03. However as shown in the Appellant's Exhibit #1 p.221, the Department documented their rationale behind the case closing in the ongoing case dictation.

Second, the Appellant argued that the Department failed to comply with the Permanency Planning Policy #2013-01 in regards to sustaining connections with young adults. In particular the Appellant argued that the Department did not adequately account for her participation in productive activities and her level of cooperation during and since incarceration. While I will not consider the Appellant's actions after the Department provided notice of the case closing, I find merit in the Appellant's argument regarding her actions before her arrest. I find the Appellant was generally adhering to the tasks and requirements she had agreed to with the Department. The Appellant was found to be compliant with her assigned tasks at a Foster Care Review, shortly before the arrest. As shown above in the 110 CMR 9.03, case closing takes into consideration the slated goals of the case, the individual's or family's participation in services, the reduction of risk to the child, legal issues, and the Department's responsibility to provide services. In this

case, aside from the arrest, there was evidence that the Appellant was generally complying with the Department and that a case closing would not have adequately accounted for her participation in services, the potential increase of risk to her, or the Department's responsibility to provide transitional planning services. Therefore, the Appellant's argument that the Department did not adequately account for the Appellant's productive activities had merit and was persuasive.

The Appellant objected to the Department's introduction of Exhibit A, a police report. The Appellant argued she requested this same document (Exhibit 5), but received a redacted version of the document. Upon review of the documents, there are no discernable redactions or any other differences in the documents that would support the Appellant's objection.

The Appellant objected to testimony regarding Ai's previous case history. The Appellant argued that since the Department only cited Ai's arrest as the basis for the case closing, any other testimony should not be considered relevant. However, as noted in the Permanency Planning Policy, after a young adult is arrested, the Department will review the young adult's cooperation with the Department during and since the arrest was made. Additionally after an arrest, the Department will determine whether the placement will be maintained. The policy does not state that the Department was solely limited to the arrest in question to determine if a case closing was warranted for a particular individual. Therefore, the Department's testimony regarding the Appellant's conduct before and after the arrest was allowed into the record. Moreover, the Appellant had positive actions after her arrest, in attending Year-up and her good relationship with her new foster mother, which was encouraging.

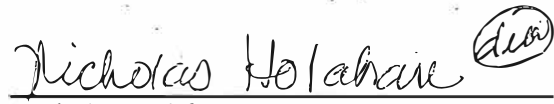
At the Fair Hearing, the Appellant argued that she was not allowed to explain the details of the arrest as outlined in the above mentioned Policy #2013-01. However, the Appellant was AWOL for two days after being released from jail after the arrest. She could have notified the Department of her arrest, and explained the details of the incident that led to her arrest. The language in the policy indicated it was the young adult's responsibility to notify the Department with the details regarding the incident. The Appellant alluded to it being the Department's responsibility to contact her after her arrest to obtain details regarding the incident. However, Policy#2013-01 indicated it was Ai's responsibility to make this contact, and she did not do so.

In regards to the 90 day transition planning process, at the Fair Hearing the ongoing social worker testified that the Department had been monitoring the Appellant's income and employment. However, the Permanency Planning Policy #2013-01 specifically outlines a collaborative process in regards to closing a case of a young adult. The collaborative process was to include addressing concerns such as employment, education, income, health insurance and stable and appropriate housing. The policy stated: "The youth/young adult should not be discharged from Department placement until appropriate and stable housing is found." There was no evidence submitted that the Department had worked collaboratively with the Appellant to find her appropriate and stable housing after her case had closed.

In summary, while the Appellant's arrest was serious and raised concern, this alone was not grounds to close the Appellant's case. The arrest provided the Department and the Area office with the discretion to review the Appellant's case, however; other factors needed to be considered and addressed as outlined in the applicable regulations and policies. In particular, the Department did not sufficiently complete the 90 day transitional planning process, as required by the Permanency Planning Policy.

Conclusion and Order


Based upon a review of all the evidence and that presented at the Fair Hearing, the Department's decision to close the Appellant's case and terminate services was not made in conformity with its policies and regulations and is **REVERSED**.



Nicholas Holahan
Fair Hearing Officer

12/27/17

Date



Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit

Date

Linda S. Spears
Commissioner