

**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

Voice: 617-748-2000
FAX: 617-261-7428

IN THE MATTER OF OS #2017-0035

FAIR HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is OS. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to terminate her Young Adult Support Payments (hereinafter YASP) and close his case.

On November 17, 2016, the Appellant received a notice from the Department informing her that her case would close within 90 days. The Department informed the Appellant of its decision and of her right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on March 15, 2017 at the Department of Children and Families' Area Office located in Lawrence, MA. All witnesses were sworn in to testify under oath. The record officially closed on this date.

The following persons appeared at the Fair Hearing:

Carmen Colón
SB
OS
RD
LB

Fair Hearing Officer
Appellant Attorney
Appellant
DCF Area Program Manager
DCF Social Worker

In accordance with 110 C.M.R. 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, pursuant to 110 CMR 10.26

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

For the Department:

- Exhibit A: Voluntary Placement Agreement of January 2014
- Exhibit B: Service Plan dated August 24, 2016 – February 25, 2017
- Exhibit C: Noncompliance of VPA notification of May 2, 2016
- Exhibit D: 90 Day Case Closing Notification of November 7, 2016
- Exhibit E: OS College Registration History
- Exhibit F: Transition Plan of February 7, 2017
- Exhibit G: OS Request for a Fair Hearing

For the Appellant:

Exhibit 1: Request for Fair Hearing

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)

Statement of the Issue

The issue presented in this Fair 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 investigation, 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; 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

On the basis of my assessment of all the evidence, I make the following factual findings:

1. OS signed a Voluntary Placement Agreement with the Department upon turning eighteen years old. (DCF Testimony)
2. Throughout OS's involvement with the Department as a young adult, OS was granted Young Adult Support (YASP) Payments by the Lawrence Area Office as well as placement and then housing through [REDACTED] program. At the time of the Fair Hearing, OS lived in an apartment which he paid for with financial assistance from [REDACTED]. (DCF Social Worker Testimony, Exhibit F)

3. YASP payments are approved on a case by case basis by the Area Office Director. In order to receive payments the youth must be working and attending school on a regular basis. At the time of the Fair Hearing, OS provided proof of longstanding employment as he was working over forty hours a week. (DCF Social Worker Testimony, Exhibit G, Exhibit F)
4. In May 2016, OS was found to be noncompliant with his voluntary placement agreement due to poor academic performance, poor participation in treatment meetings at [REDACTED] and he left the country without informing DCF or [REDACTED] of his whereabouts. This noncompliance continued as OS was given a Partial compliance rating in the foster care review meeting of February 2017. (Exhibits C, DCF Social Worker Testimony)
5. On November 7, 2016, the Department provided OS with a case closing letter citing the following reasons:
 - a: OS did not refrain from illegal acts and was on probation after being arrested in August 2015.
 - b: OS was also on academic probation and had only acquired 3.0 credits at [REDACTED] College in three academic semesters.(Exhibit D, D:1)
6. OS subsequently appealed the Department's decision to close his case which has kept his case open to this date. (Exhibit G)
7. Throughout 2016, OS was offered the following services from the Department to address the above mentioned concerns:
 - a. Adolescent Outreach Services
 - b. Ongoing Case Management
 - c. YASP Payments
8. The Department was able to assist OS in securing housing. He was residing in an apartment which he shared with a roommate. OS also received financial assistance from [REDACTED] to pay for his rent along with assistance in paying his electric bill and groceries. (Exhibit F)
9. On February 7, 2017, the Department provided OS with a Transitional Plan. (Exhibit F)
10. In review of the evidence provided by both parties, I find that the Department's decision to close the Appellant's case and terminate the Voluntary Placement Agreement was done in compliance with Departmental regulations for the following reasons:
 - a. Appellant has secure housing (Exhibit F, DCF Testimony)
 - b. Appellant has shown ability to maintain employment and provide for himself. (DCF Testimony, Exhibit F,G)

- c. Appellant receives additional financial support from [REDACTED] which assists him with his housing payment and utilities
- d. Appellant does not require the assistance of any adult agencies Such as DDS or DMH

Applicable Standards

110 CMR 8.02 Service Continuation for Ages 18 through 22:

The Department is committed to assisting older adolescent and young adults in their transition to independence and self-sufficiency. Towards this end the Department may elect, on a case by case, basis, to continue to serve children as they turn 18 years of age and up until their 22nd birthday, to the extent that other departments (for example, Department of Mental Health (DMH), Department of Mental Retardation (DMR), etc.) are not primarily responsible for the such persons. The decision to continue to serve individuals beyond 18 years of age is based on 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

Policy #2013-01 Permanency Planning Policy for Youth in Department Placement:

The Department is committed to assisting youth 14 and older to address issues relative to their developmental stage and individual needs. It is critical that the Department *systematically and comprehensively* prepare youth for living independently as adults and functioning as productive members of society. All youth should participate, to the extent they are capable, in decisions being made about them. The Department offers youth in care or custody a range of programs that assess preparation for adulthood, support life skills development and provide resources to promote adult interdependence.

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.

110 CMR 10.23

Analysis

The Appellant disputed the Department's determination to close his clinical case, not because she was in need of ongoing case management support, but solely to request to continue to receive YASP payments in order to cover his living expenses. At the time of the Fair Hearing, the Department presented evidence of its attempts to assist the Appellant on reaching a higher level of independence (i.e. budgeting, payment of utilities, etc) without success. The Appellant had also been involved in a court case, which lead to his being on probation and he did not notify the Department. Additionally, the Appellant was on academic probation for an extensive list of failed classes.

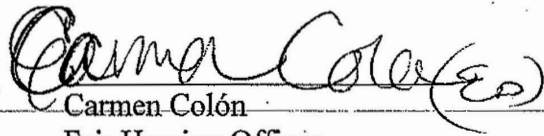
The Appellant was not able to provide sufficient evidence to prove that the Department's decision to close his case and terminate his Voluntary Placement Agreement was not in conformity with the Department's policies and / or regulations.

Appellant was also not able to verbalize a clear need to have the Department involved in his life other than to provide financial assistance, which is not an issue the Hearing Officer can address, is up to the discretion of the Area Office.

Conclusion and Order

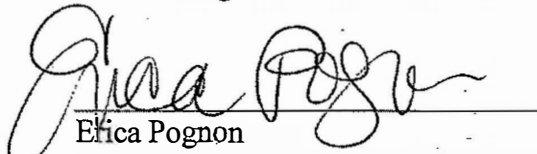
Therefore, the Department's decision to close the Appellant's case and terminate his Voluntary Placement Agreement is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, MGL c. 30A, s. 14.


Carmen Colón

Fair Hearing Officer

2/6/18
Date


Erica Pogon

Supervisor
Fair Hearing Unit