

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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LINDA S. SPEARS
Commissioner

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(IN THE MATTER OF)
(A.R.)
(FH # 2017-0061)
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HEARING DECISION

Procedural Information

Appellant, A.R., appeals the Department of Children and Families' [hereinafter the "Department" or "DCF"] decision, to revoke her unrestricted family resource license, pursuant to Family Resource Policy 2006-01 [revised 7/8/2008], which resulted in the closing of her home.

The Department provided written notice to the Appellant of her license revocation, the reasons why, and her appeal rights by letter dated December 15, 2016. The Appellant filed for a request for Fair Hearing [hereinafter "Hearing"] on January 17, 2017. The Appellant's request was granted and her Hearing held on March 29, 2017 at the Department's Dimock Street Area Office in Roxbury, MA. Present at the Hearing were the DCF Area Program Manager, S.H.; the DCF Family Resource Supervisor; H.B.; the DCF family resource social worker, L.C.; the Appellant; and the Appellant's adult daughter, O.Z., who served as the Appellant's interpreter because the Appellant predominately speaks and understands Spanish. The family resource social worker also assisted with translation and explanation as she is bilingual. All parties were sworn in under oath and testified. The proceedings were digitally recorded, pursuant to 110 CMR 10.26; and downloaded to a CD. Admitted into evidence for the Appellant was the Appellant's Request for Hearing and the DCF Notice of Revocation [Exhibit 1] stemming from a DCF license renewal study of her home. The Department made no submissions. The Hearing record was closed at adjournment.

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]

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement or bias in this case.

Standard of Review

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 the license revocation and subsequent

to this, the Department's decision or procedural action, in making the decision, 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. [110 CMR 10.00]

Findings of Fact

1. The Appellant had been an unrestricted, licensed family resource for the Department's Dimock Street Area Office since 1989. Her last license renewal occurred in August 2016, which resulted in a recommendation to revoke her license. The Appellant's home was closed in November 2016. [Testimony of the Appellant; Testimony of the Area Program Manager]
2. The Department made a decision to revoke the Appellant's license due to her unavailability, which prevented the placement of children in her home. Although the Appellant's Dimock Street Area Office family resource social worker, L.C., had no problem setting up appointments with the Appellant, either by calling her or otherwise sending her a letter, other area offices could not get a hold of the Appellant to discuss the possible placement of children in her home and would convey this to the Appellant's Dimock Street family resource supervisor, H.B. The Appellant's phone would ring and no one would answer. In addition, there was no voice mail service. [Testimony of the Area Program Manager; Testimony of the Family Resource Supervisor; Testimony of the Family Resource Social Worker]
3. Between March 20, 2015 and October 11, 2016, a fifteen month period, the Appellant received only one overnight placement of a foster child. There had been a conversation between the Department and the Appellant about her unavailability for about a year, before her license was revoked. [Testimony of the Area Program Manager] The Department did not want to close the Appellant's home and delayed this decision as long as possible, because the Appellant was a valuable resource for Spanish speaking foster children. The Department had suggested that the Appellant call in as a solution. [Testimony of the Family Resource Supervisor]
4. The Appellant's care of children was exemplary. There was no question about the quality of care the Appellant gave to foster children; this was only question about the Appellant's availability. [Testimony of the Area Program Manager; Testimony of the Family Resource Social Worker]
5. The Appellant was not available to receive placements due to the following: (a) The Appellant had medical issues and was going to the doctors a lot. (b) The Appellant was caring for her grandchildren while her adult daughters worked. (c) The Appellant travelled to respond to family emergencies such as an aunt in [REDACTED] who passed away and a brother in [REDACTED] who was ill. (d) The Appellant vacated her home for five months, because of a problem with her oil tank, and went to stay with her daughter, until repairs were made. [Testimony of Family Resource Social Worker; Testimony of the Appellant]

6. The Appellant reported having a ten year-old phone. She did not dispute she has no voice mail service. [Testimony of the Appellant]
7. The Appellant reported that that all of the above issues were resolved [except Finding #6]. She wanted to continue on as a foster parent and would like to accept placements. Her health issues were better. Her heating problem was fixed and she had returned to her home. However, she was not going to stay home waiting around for a call about a placement. She liked to be out and about to do food shopping, go to doctor's appointments, etc. [Testimony of the Appellant]
8. The Department was not receptive to keeping the Appellant's home open. The Appellant's unavailability had been going on for a long time without resolution and the impact on family resource staff, who continued to assess the home, even though when there were no placements, was an added burden to their caseload. The Department would have to be convinced that things were different and had changed. The Appellant would have to be the one to take the initiative and reach out to the Department. The phone issue would have to be resolved. [Testimony of the Area Program Manager]
9. The Appellant had a good record. If she needed to care for her grandchildren, the Department could reopen her home for kinship care. [Testimony of the Area Program Manager]

Applicable Standards and Analysis

Foster parents and foster parent applicants have a right to appeal through the Fair Hearing process a decision by the Department to not renew a license to be a foster/per-adoptive home. [110 CMR 10.06]. In the instant case, the Appellant requested an appeal of the Department's decision to revoke her family resource license. The Appellant's request was granted and her appeal heard on March 29, 2017.

Regulations and/or policies applicable to this appeal include, but are not limited, to the below.

Department decisions regarding application, eligibility, recruitment, assessment/reassessment, approval and licensing/re-licensing of foster/pre-adoptive parents, and placement of children are governed by 110 CMR 7.100 et seq.

Specifically, regulations governing reassessment and licensing renewal of Foster/Pre-Adoptive Parents and Foster/Pre-adoptive Homes are found at 110 CMR 7.113.

License Revocation - 110 C.M.R. 7.113 (B)

(1) Except as otherwise provided in 110 CMR 7.100 *et seq*, whenever the Department reaches a decision to revoke a license, it shall give written notice to the foster/pre-adoptive parent. The written notice shall include at least the following information:

- (a) notice that the Department will no longer place any foster children in the home;
- (b) notice that agreement(s) between the Department and the foster/pre-adoptive home are terminated and that the license should be returned to the Department;
- (c) the reason(s) for license revocation; and

(d) if applicable notice of the foster/pre-adoptive parent's right to appeal the decision and the procedures for taking such an appeal.

A copy of the written notice shall be entered in the foster/pre-adoptive parent file.

(2) If the decision to revoke the license is concurrent with a decision to remove one or more children from the foster/pre-adoptive home, the written notice required under 110 CMR 7.000 may be modified as necessary and combined with the written notice of the decision to remove foster children from the foster/pre-adoptive home as required under 110 CMR 7.116.

Establishing Capacity Re: Maximum Number of Children in a Foster/Pre-Adoptive Home – Family Resource Policy, Revised 7/8/2008, p.18.

The foster/pre-adoptive family may decide that it will not be available to accept placements from the Department for a period of up to six months determined jointly with the Department (e.g., due to the illness of a household member or relative, a vacation or other family event). The Department indicates the family's lack of availability in the Foster/Adoptive Record and FamilyNet [now IFNET] Information. During this period, the Department completes the regularly scheduled Annual Reassessment or License Renewal Study. The foster/pre-adoptive family is not required to re-apply or to complete a new License Study to resume accepting placement.

Burden of Proof - 110 C.M.R. 10.23

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.

The Appellant is commended for her long years of exemplary service providing quality foster care to DCF children in need of her care.

Pursuant to Family Resource Policy, a foster/pre-adoptive family may decide that it will not be available to accept placements from the Department for a period of up to six months determined jointly with the Department, e.g., due to the illness of a household member or relative, a vacation, or other family event. During this period, the Department completes the regularly scheduled Annual Reassessment or License Renewal Study. The foster/pre-adoptive family is not required to re-apply or to complete a new License Study to resume accepting placements. In the instant case, the Appellant's unavailability exceeded the six month period during which time the Department conducted a license renewal study and made a recommendation to revoke her license. Despite her fifteen month unavailability, with minor exception, the Appellant had been a valuable resource given the quality of her care and her cultural and language background for like-minded foster children. The Department did not want to revoke her license and attempted to work with the Appellant to resolve the issue without success.

Although the Appellant testified that many of the issues that prevented her from accepting placements were resolved. I do not find this testimony supported by any substantial or compelling evidence to such an extent that the Department acted unreasonably and/or abused its discretion in making its decision in this matter. Based upon a review of the evidence presented at the Hearing, I find the decision to revoke the Appellant's license to provide foster care was made in conformity with its policy. I find that there was a reasonable basis for the decision because, due to her unavailability, there have been no children placed in her home from March 20, 2015 to October 11, 2016, with the exception of one overnight placement in March 2016. The Appellant made no effort to resolve this issue, prior to requesting an appeal of the Department's decision, to revoke her license. She did not request a meeting with the Area Program Manager to discuss this matter nor did she obtain voice mail service for her phone so message could be left. The Appellant has not met her burden of proof required by 110 CMR 10.23.

Any resolution of this case now rests with the Department. At the end of the Hearing, the Appellant's family resource social worker conveyed that she was going to meet with the Appellant that day, so the Appellant could re-apply to become a family resource. Considerable issues will need to be discussed and resolved to the satisfaction of the Area Program Manager, given her viewpoint on this matter [Finding #8].

Order

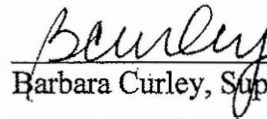
1. The Department's decision, to revoke Appellant's unrestricted family resource license resulting in the closure of her home, is AFFIRMED.

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 in Suffolk County within thirty (30) days of the receipt of the decision. [See, M.G.L., c. 30A §14].



Frances I. Wheat *BC*
Administrative Hearing Officer
Office of the General Counsel

Date: October 2, 2017



Barbara Curley, Supervisor