

**Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
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Linda S. Spears, Commissioner

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IN THE MATTER OF: AJ

Fair Hearing #20170083

FAIR HEARING DECISION

Appellant, AJ, appeals the decision of the Department of Children and Families, pursuant to 110 C.M.R. §7.113, to revoke her foster care license.

Procedural History

On or about December 22, 2016, the Department of Children and Families ("Department" or "DCF") notified AJ ("Appellant") in writing that, as a result of a limited reassessment/license renewal study of her home, it was revoking her license. The Department also notified Appellant of her right to appeal said decision.

Appellant made a timely request for a Fair Hearing relative to the above referenced decision. The Fair Hearing was held on March 22, 2017 at the Department's Dimock Street Area Office in Roxbury, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

SH	DCF Family Resource Area Program Manager
HB	DCF Family Resource Supervisor
LI	DCF Family Resource Worker
EM	DCF Ongoing Social Worker
IP	DCF Ongoing Supervisor
SA	DCF Ongoing Area Program Manager
JA	Appellant/Foster Mother
CS	Friend of Appellant

The Fair Hearing was digitally recorded. In accordance with 110 C.M.R. §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 following exhibits were entered into the record for this Fair Hearing:

For the Department:

Exhibit A Ten day notice letter

For Appellant:

Exhibit 1 Fair Hearing Request with attached letter to Governor Baker and DCF revocation letter
Exhibit 2 [REDACTED] Hospital note, dated 9/2/16
Exhibit 3 [REDACTED] Hospital Asthma Action Plan
Exhibit 4 Letter of [REDACTED] dated March 1, 2017
Exhibit 5 Handwritten note, dated Sept. 2, 2016

The record closed upon the conclusion of the oral evidence.

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 C.M.R. §10.21.

Statement of the Issues

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, the Department's decision or procedural action to revoke Appellant AJ's license 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 C.M.R. §10.05

Findings of Fact

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

1. At the time in question, E was an eight year old female foster child in the care and custody of the Department. [Exhibit 1]
2. At the time in question, Appellant was a school teacher and a licensed foster care provider for the Department. Appellant also was very involved in her union and often traveled for union business. [Exhibit 1; Testimony of Appellant]
3. On or about May 26, 2016, the Department placed E in Appellant's foster home. E was Appellant's first foster care placement. [Testimony of Appellant; Exhibit 1]

4. E had eczema and asthma. Appellant was proactive in educating herself about E's conditions and obtaining an Asthma Action Plan from E's doctor. [Exhibit 1; Testimony of Appellant; Exhibit 3]
5. Appellant frequently conferred with E's teacher as to E's progress and behavior and participated in all of E's end of year school activities. [Exhibit 4]
6. E had episodes where she would burst into tears. [Testimony of Appellant; Testimony of EM; Exhibit 4]
7. Appellant requested that the Department secure therapy for E. EM, E's ongoing social worker, informed Appellant that she would look into it but after a few months still had not been able to secure therapy for E. [Testimony of Appellant; Exhibit 1; Testimony of EM]
8. At some point after having been in a respite placement,¹ E reported to Appellant that she had been scratched by a needle while on the bed at the respite placement. Appellant examined E and noticed a scratch on her bottom. Appellant spoke with the respite care provider who denied any incident with a needle taking place. E later recanted her story but was unable to provide a viable explanation for the scratch. Appellant reported the incident to the Department. [Testimony of Appellant]
9. At one point, E's baby brother was reunited with E's birth mother. EM explained to E that she would be the next to go home but that it may be a few months before that happened. [Testimony of Appellant; Exhibit 1]
10. In August 2016, Appellant expressed dissatisfaction with some of the Department's policies and practices. HB, the family resource supervisor, connected Appellant with a Family Resource Liaison for support and guidance. [Testimony of HB]
11. On September 2, 2016 (the Friday before Labor Day), E complained to Appellant of vaginal discomfort ("hurting down there"). Appellant called EM and requested that E be removed from her home. EM consulted with LI, Appellant's family resource worker, and informed Appellant that she needed to give the Department ten days' written notice to request removal of E from her home. Appellant was referred to SH, the family resource area program manager. Appellant expressed her displeasure with the Department's ten day notice policy and with the fact that the ongoing supervisor and the family resource supervisor were on vacation and unavailable to speak with her. Appellant feared that allegations of sexual abuse would be made against her and, being a school teacher, did not want to risk those allegations. SH requested that Appellant seek medical care for E, stating that she most likely had an infection or similar medical ailment due to it being the end of the summer and the child was often swimming and wearing a bathing suit. SH gave Appellant the Department Hotline and Foster Parent Helpline numbers for support over the long weekend. [Testimony of SH]

¹ Appellant at times needed respite care for E as she was traveling for union business.

12. On September 2, 2016, E gave Appellant a handwritten note indicating that she was "sorry for lieing," "crying," and "herting" Appellant. It is unclear from the evidence to what the child was referring in the letter. E did tell Appellant that she wanted to go home (be returned to her birth mother). [Testimony of Appellant; Exhibit 5]
13. On September 2, 2016, HB called Appellant, returning a voice mail message from her, even though he was on vacation. [Testimony of HB]
14. On September 2, 2016, Appellant took E to the doctor who medically cleared E. [Testimony of Appellant; Exhibit 2]
15. On Tuesday, September 6, 2016, HB called Appellant who informed him that E had been medically cleared and the irritation had resolved. [Testimony of Appellant]
16. On Friday, September 9, 2016, Appellant gave the Department written notice requesting removal of E from her home on September 22, 2016. Appellant did not cite any reasons in her letter for requesting the removal.² [Exhibit A]
17. After receiving Appellant's written request to remove E from her home, HB called Appellant. Appellant expressed a lot of anger relative to issues of communication on the part of the Department. HB did not feel that the placement of E in Appellant's home was salvageable. He scheduled a meeting between Department staff and Appellant to take place after E's removal (September 30, 2016) to discuss Appellant's request to remove E from her home and to process what had worked and what had not worked. [Testimony of HB]
18. On September 22, 2016, the Department removed E from Appellant's home. The Department was unable to explain to E why she was being moved to a new foster home. [Testimony of SH]
19. Appellant needed to cancel the September 30, 2016 meeting due to a death in the family. [Testimony of SH; Exhibit 1]
20. On October 7, 2016, SH and HB called Appellant to reschedule the meeting to discuss Appellant's removal request. The meeting was rescheduled to October 14, 2016. During this conversation, Appellant complained of poor communication on the part of the Department. Appellant and the Department staff also discussed E's medical issue and the events of September 2, 2016. Appellant did not inform SH and HB until the end of the conversation that the call had been on speaker phone and her friend/advocate had been listening to the conversation. [Testimony of SH]

² The Hearing Officer notes that the Department's Family Resource Policy does not require that a foster parent provide an explanation for the removal in the written request. The policy does require the Department to interview the foster parent to determine the reasons for the request and whether the situation can be resolved without removing the child. See Family Resource Policy, effective:02/06/2006

21. Appellant's allowing her friend/advocate to listen in on her October 7, 2016 conversation with Department staff without informing the Department violated E's right to confidentiality. *See* 110 C.M.R. 7.104 (1)(g)
22. On October 14, 2016, the Department held a meeting with Appellant at its office to discuss E and Appellant's request to have E removed from her home. Appellant brought a friend with her to the meeting whom the Department did not allow to attend. In attendance for the Department were: SH, Family Resource Area Program Manager; HB, Family Resource Supervisor; LI, Family Resource Worker; IP, Ongoing Supervisor; and LG, Foster Parent Liaison. Appellant again expressed concerns regarding poor communication with the Department, including issues around specific staff being unavailable to speak with her after work hours or while they were on vacation and issues with the Department not identifying a respite placement for E until the day it was needed instead of when it was requested. Appellant was not able to articulate her reasons for requesting removal of E from her home, stating that the Department knew why she had requested removal of E from her home. The Department was unable to come to a resolution of its concerns regarding Appellant's foster home at the meeting. [Exhibit 1; Testimony of SH]
23. As a result of the October 14, 2016 meeting with Appellant, the Department completed a limited reassessment of Appellant's home. [Testimony of SH]
24. On December 22, 2016, the Department informed Appellant in writing that, after completing a limited reassessment/license renewal study of Appellant's home, the Department decided to revoke Appellant's license and close her home. [Exhibit 1]
25. The Department's December 22, 2016 letter to Appellant indicated the Department was revoking Appellant's license and closing her home due to her failure to meet specific standards which included: 110 CMR 7.104 §1(d), (f), (g), (i), (o), (p), and (q). *See* below.
26. The Department decided to revoke Appellant's license as: it did not understand her rationale for requesting the removal of E from her home and it had significant concerns regarding (1) Appellant's ability to manage the stressful situations related to the placement of foster children in her home, (2) Appellant's ability to be bound by the standard of confidentiality, (3) Appellant's inability to talk with the Department or the child about why E was being moved to a new home and thereby assist E in transitioning to a new placement, and (4) Appellant's preoccupation with concerns of being accused of sexual abuse versus seeking medical care for E. [Testimony of SH]
27. Appellant filed a timely appeal of the Department's decision to revoke her license. [Exhibit 1]
28. Appellant was concerned that E was lying about events and concerned about what else she might say. She did understand that it was not unusual for foster children to do inappropriate things and/or not always tell the truth as she had learned this in

MAPP training.³ Appellant chose to request that E be removed from her home to protect herself from any potential allegations that may be made by E. She was concerned that allegations made by E could cause Appellant to lose her job. [Testimony of Appellant]

29. I do not credit Appellant's Fair Hearing testimony that, although she did tell the Department that someone had been listening in on the conversation of October 7, 2016, no one else actually was there. [Testimony of Appellant]
30. The Department's family resource policy dictates that a foster parent provide a child's social worker "at least 14 calendar days notice" when requesting removal of a child from her home. The Department's informing Appellant that she needed to give ten days' notice did not prejudice Appellant as she actually did give the Department fourteen calendar days' notice. See Family Resource Policy, effective: 02/06/2006

Applicable Standards and Analysis

110 C.M.R. §7.104

Standards for Licensure as Foster/Pre-Adoptive Parent

In order to be licensed as a foster/adoptive parent, a foster/pre-adoptive parent applicant must meet the following requirements:

- (1) A foster/pre-adoptive parent applicant must demonstrate, to the satisfaction of the Department the ability:
 - (d) to promote the physical, mental, and emotional well-being of a child placed in his or her care, including supporting and respecting a child's sexual orientation or gender identity;
 - (f) to manage the stressful situations which are frequently associated with the placement of a child in substitute care, such as the temporary nature of such placement, the integration of a child in crisis into the foster/adoptive family, and the potential return of the child to his/her family;
 - (g) to respect and be bound by the same standards of confidentiality as the Department and its employees;
 - (i) to assist a child in handling his/her situations such as removal from the home of their parent(s), placement in a new home environment, placement in a new school (when applicable), visits with parents and siblings, and possible return to the home of the parent(s) or placement in other substitute care;
 - (o) to deal with difficult issues in the child's background, and be able to talk with the child comfortably and constructively about his/her birth parents and family;
 - (p) to have reasonable expectations of a child's behavior and potential growth; and
 - (q) to assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents.

³ MAPP is an acronym for Massachusetts Approaches to Partnerships in Parenting. MAPP provides training for prospective foster parents.

110 C.M.R. §7.113A: Limited Reassessments

In addition to the annual reassessment or license study, the Department may perform a limited re-assessment of the foster/pre-adoptive parent and/or foster/pre-adoptive home at other times.

- (2) The Department may conduct a limited reassessment whenever the Department:
- (a) removes a foster child from a foster/pre-adoptive home on a non-emergency basis, whether the foster/pre-adoptive home is an unrestricted licensed home or a kinship or child-specific home.

Family Resource Policy, Effective: 02/06/2006

Procedures for Removing Children from a Foster/Pre-Adoptive Family

Initiated by the Foster/Pre-Adoptive Family

1. **Foster/Pre-Adoptive Family Requests Removal.** The foster/pre-adoptive parent(s) provides to the child's Social Worker at least 14 calendar days notice (which the child's Social Worker requests her/him to confirm in writing), except when immediate removal is necessary to maintain the life, health or emotional well-being of the child or household members.

The child's Social Worker arranges for the Family Resource Worker (FRW) to be informed of the request for the child's removal.

The child's Social Worker and the FRW interview the foster/pre-adoptive parent(s), the child, other household members, and any other individual deemed necessary (preferably during a home visit) to determine the reason(s) for the request and whether the situation can be resolved without removing the child. A referral for family-based services to stabilize the placement is considered.

- If the situation is **resolvable**, the child's Social Worker updates the Service Plan and the FRW updates the "Child Placement Agreement" to reflect any assistance to be provided.
- If the situation is **not resolvable**, the child's Social Worker initiates arrangements to remove the child and notifies the foster/pre-adoptive family, in writing, using the "Notice to Foster/pre-Adoptive Family: Child(ren) Being Removed" (copy to FRW) to confirm the removal and the actual or estimated removal date.

110 C.M.R. §10.05

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 C.M.R. §10.23

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department's or provider's decision was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party....

Considering all of the evidence, I uphold the Department's decision to revoke Appellant AJ's foster/pre-adoptive resource license.

Aside from Appellant's inability to provide E with a reason for being moved to a new foster placement, the Department did not elaborate any concerns relative to Appellant's care of E. Nevertheless, the Department identified valid concerns relative to Appellant's ability to work productively with the Department and concerns relative to Appellant's understanding/acceptance of the stressors that come with being a foster parent, the boundaries of a foster parent, and the limitations of Department staff.

A foster parent acts *in loco parentis* and needs to be reasonably available to respond to the needs of a foster child at all times (or arrange for respite care). The Department, while being ultimately responsible for a child in its custody, has staff limitations. It was unreasonable of Appellant to expect that specific staff (who are responsible for many families) always would be available to her, whether during work hours or after hours and/or while on vacation. The Department did provide limited after hour resources to foster parents and made those known to Appellant. The Department also connected Appellant with a Family Resource Liaison. During work hours, supervisors or managers were available to speak with Appellant when her family resource worker or E's ongoing worker were unavailable. The family resource supervisor even made himself available during his non-work hours. Appellant's concerns regarding lack of adequate communication with the Department were difficult to understand and did not explain why she asked that E be removed from her home.⁴

In focusing on the implications of some future allegations that might be made by E, Appellant failed to consider the emotional impact on E of requesting to have her removed from Appellant's home. Appellant offered no evidence to suggest that a similar situation would not reoccur if the Department were to place another foster child in Appellant's home. The Department had valid concerns that Appellant was unable to meet the standards of managing the stressful situations frequently associated with the placement of a foster child, having reasonable expectations of a foster child's behavior, assisting a foster child in handling placement in a new home, promoting the emotional well-being of a foster child, and respecting a foster child's right to confidentiality.

The burden was on Appellant to show, by a preponderance of the evidence, that the Department's decision to close her foster home and revoke her license was not in conformity with Department regulations and/or policy. A Fair Hearing officer must defer to the clinical judgment of a trained social worker if there is a reasonable basis for the questioned decision. 110 C.M.R. §10.05. This Fair Hearing Officer had no reason to doubt the clinical experience and judgment of the Department staff involved in the instant matter. The information offered by Appellant was not compelling to the degree to find 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 Fair

⁴ This Hearing Officer does appreciate Appellant's frustration regarding not getting E into therapy. However, this was not identified by Appellant as a factor in requesting that E be removed from her home.

Hearing, including testimony from the parties and documents submitted by both parties, the Department's decision to revoke Appellant's license was made in conformity with its policies and regulations and was supported by sound clinical judgment. Due to the inability to come to a resolution of the Department's concerns, there was a reasonable basis for the Department's decision.

Conclusion and Order

The Department's decision to revoke Appellant AJ's license was made in conformity with Department regulations and with a reasonable basis. Therefore, the Department's decision is **AFFIRMED**.

Antonia Chronis
Antonia Chronis,
Administrative Hearing Officer *BC*

October 2, 2017
Date

Barbara Curley
Barbara Curley, Supervisor