

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda S. Spears
Commissioner**

**Voice: 617-748-2000
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IN THE MATTER OF)	
)	
JE & DE)	FAIR HEARING DECISION
)	
FH # 20170113)	
)	

The Appellants in this Fair Hearing were JE and DE. The Appellants appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision pursuant to 110 C.M.R. §7.113B, to revoke their license to provide kinship or child-specific foster care.¹

Procedural History

On or about January 20, 2017, the Department of Children and Families ("Department") decided to revoke JE and DE's ("Appellant") license to provide kinship or child-specific foster care to the subject child, S. The Department sent written notice to the Appellants of its decision and of the Appellants' right to appeal. The Appellants made a timely request for a fair hearing pursuant to 110 C.M.R. §10.06.

The Fair Hearing was held on March 8, 2017, at the Department's Taunton/Attleboro Area Office in Taunton, Massachusetts. All parties were sworn in to testify under oath. The record remained open until March 18, 2017 to allow the Appellants and the Department the opportunity to submit additional documentary evidence.

The following persons appeared at the Fair Hearing:

Jorge F. Ferreira	Fair Hearing Officer
TZ	DCF Family Resource Worker
NB	DCF Supervisor

¹ The Appellants had also requested to have a hearing on the removal of the subject child. However, the Appellants had no right to a hearing on the removal. Pursuant to 110 C.M.R. §10.07(4)(a), when a child specific or kinship family is not reapproved following a limited or annual reassessment or a license renewal study, a Fair Hearing will not be allowed on the child removal issue. (Exhibit 1)

DE Appellant
JE Appellant

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 pursuant to the Department regulations. 110 C.M.R. §10.26

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

For the Department:

Exhibit A Family Resource Limited Reassessment completed 01/20/2017
Exhibit B Family Resource Dictation Report dated 08/16/2017-01/23/2017

For the Appellant

Exhibit 1 Letter from Appellant requesting a Fair Hearing dated 01/30/2017
Exhibit 2 DCF Revocation and Removal Letters dated 01/20/2017
Exhibit 3 Character Reference Letters

Issue to be Decided

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 Department's decision to deny the Appellants license to be a kinship or child-specific foster care resource is in conformity with the Department's policies and/or regulations and, if not, whether any regulatory violation resulted in substantial prejudice to Appellant. 110 C.M.R. §10.05

Findings of Fact

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

1. The Appellants were the kinship foster parents for their grandson and subject child, S, age 7. S had been placed with the Appellants along with his sibling, A, on May 9, 2016. (Exhibit A, p. 3; Testimony of the DCF Family Resource Worker)
2. On September 8, 2016, A was hospitalized and subsequently transitioned to a partial hospitalization following a behavioral crisis, which required the higher level of care. (Exhibit B, p. 2; Testimony of the DCF Family Resource Worker)
3. Once hospitalized, the Appellants had little to no contact with A, citing that they did not want to confuse him and did not wish to see him as they could no longer care for him as his behavioral issues were beyond their skill to manage. The Department expressed concern because both A and S had never had consistent adults in their lives to care for them. The Department encouraged them to visit the child, A. (Exhibit A, p. 3; Exhibit B, pp. 2-3, Testimony of the Family Resource Worker)
4. Following A's removal from the Appellant's kinship placement, the Appellants expressed how

well S was adjusting behaviorally, especially when A left the home and that he expressed fear of A when he resided with them. (Exhibit B, p. 4; Testimony of the DCF Family Resource Worker; Testimony of Appellant DE)

5. The Appellants considered obtaining legal guardianship of S at one point if his biological father was unable to follow through with a reunification plan. The parents had been inconsistent and both S and A had experienced a lot of loss in their life. (Exhibit A, p. 4; Testimony of the DCF Family Resource Worker)

6. On January 17, 2017, the subject child's DCF Social Worker received a phone call from the Appellants, complaining that S entered JE's office, which is "off-limits." S was confronted and denied being in the room and told the Appellants he no longer wanted to reside with them. (Exhibit A, p. 3; Exhibit B, p. 6)

7. The Appellants wanted to have S removed by the Department as he did not want to reside with them and DE expressed feeling hurt by S saying that he did not want to live there. The DCF Social Worker was able to talk through the situation, which led the Appellants to agree to let S stay with them. The DCF Social Worker followed up with S in the morning at his school. (Exhibit B, p. 6; Testimony of the DCF Family Resource Worker)

8. The DCF Family Resource Worker had met with the Appellant DE on January 17, 2017 prior to the incident in Finding # 6. DE reported that S was excelling at home and bonding with the Appellants. The Department was surprised at the Appellant's reaction and lack of understanding of the age appropriate reaction from the subject child's comment. (Testimony of the DCF Family Resource Worker)

9. The DCF Social Worker for S contacted the DCF Family Resource Worker on January 19, 2017 expressing concern about a text received from Appellant JE. The DCF Social Worker related that JE reiterated that if S did not want to reside with them, DCF should pick him up or he would be dropped off at the local fire department. Additionally, he emphasized that he "...does not play ...games" and that S was not his son, that he belonged to the State and that he did not want to be miserable nor make S miserable since he wanted to be somewhere he would be more comfortable. (Exhibit A, p. 3)

10. The Appellant JE had a phone conversation with the DCF Social Worker prior to sending the text, stating that he sent the text out of frustration because he did not like the worker's response to his concerns. The Appellant had called the worker after business hours and felt the Department had not been responsive. The DCF Social Worker took exception of being contact directly after business hours. The Appellant felt it was a moment of frustration and apologized. (Testimony of Appellant JE)

11. On January 20, 2017, the DCF Family Resource Worker spoke with Appellant JE and expressed concerns regarding the text to the DCF Social Worker and the Appellants' commitment to permanency with S. The DCF Family Resource Worker also expressed concern that there might be a pattern by the Appellants to commit to their grandchildren when faced with challenging behavior. (Exhibit A, pp. 3-4; Testimony of the DCF Family Resource Worker)

12. The Appellants were not willing to engage in supportive therapeutic services that would give the tools to address S' behavior as well as manage their own stress and anxiety in raising their grandchildren. (Exhibit A, p. 4)

13. On January 20, 2017 the Department decided to revoke the Appellant's license to provide kinship and/child specific foster care and remove S. The Department concluded that the Appellants violated the foster parent agreement pursuant to 110 C.M.R. §7.104. (Exhibit A, p. 4; Exhibit 2; *See Applicable Standards*)

14. The Appellant JE testified that caring for S was like raising a son, rather than a grandson. JE regretted sending the text to the ongoing social worker and desired to keep the kinship license even for future use only. (Testimony of the Appellant JE)

15. The Appellants were described in character reference letters as caring and loving grandparents who have done a great job raising their grandchild. The letters also address how S "blossomed" following A's departure, allowing the Appellants better focus on S and meet his needs, advocating for the Appellants to retain their license and having S reunify with them. (Exhibit 3)

16. The decision to revoke the Appellants' license to provide kinship care was a clinical decision based on the Department's concerns regarding the Appellants unwillingness to engage in supportive services to better manage S and a pattern they established with A and lack of contact following his removal. The Department was concerned about another future crisis where S would be given notice again to be removed and the Appellants unwilling to learn skills to prevent such a crisis. (Exhibit A; Exhibit B; Testimony of the DCF Family Resource Worker)

17. I find that the Department's decision to revoke the Appellant's license to provide kinship foster care for S was made in compliance with its regulations. 110 CMR §7.113A; 110 CMR §7.113B; 110 CMR §7.104 (1)(a)

Applicable Standards

110 C.M.R. §7.101: Out-of-Home Placements

(1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety of the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:

(d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or adoptive parents to meet those needs;

(2) The Department shall consider, consistent with the best interests of the child, the following placement resources:

(a) placement with kinship family;

Every reasonable effort should be made to place a child in accordance with 110 CMR 7.101(2).

(3) When considering a relative or extended family member or any individual chosen by parent(s) to be utilized to provide substitute care for a child, the Department shall require that the

relative or extended family member or individual chosen by parent(s) meet the Department's requirements for child - specific placements, as set forth at 110 CMR 7.108.

110 C.M.R. §7.104: Standards for Approval as Foster/Pre-Adoptive Parent

In order to be approved as a foster/pre-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:
 - (a) to assure that a child placed in his or her care with experience a safe, supportive, nurturing and stable family environment which is free from abuse or neglect;
 - (d) to promote the physical, mental, and emotional well-being of a child placed in his or her care;
- (3) A foster/pre-adoptive parent applicant or any member of his/her household must have a record which is free of criminal conduct which, in the judgment of the Department, bears upon his/her ability to assume and carry out the responsibilities of a foster/pre-adoptive parent, as established by Department Policy on background checks and 110 CMR 18.00 *et seq.*

110 C.M.R. §7.113: Reassessment and License Renewal of Foster/Pre-Adoptive Parents and Foster/Pre-Adoptive Homes

- (1) The Department shall annually re-assess foster/pre-adoptive parents and foster/pre-adoptive homes whether unrestricted, kinship or other child-specific, in accordance with the procedure set forth in 110 CMR 7.113(1)(a). Every two years a license renewal will be conducted in place of the annual reassessment.
- (2) The Department may, six months after a foster/pre-adoptive home is first licensed, conduct a review of the foster/pre-adoptive home whether unrestricted, kinship or child-specific. The review held under 110 CMR §7.113(2) may include, but not be limited to, the procedures set forth in 110 CMR §7.113(1). At the conclusion of the review the Department shall reach one of the decisions set forth in 110 CMR §7.113(1)(d). The Department shall send written notice to the foster/pre-adoptive parent of the outcome of the review.

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.

Analysis

Amongst other qualifications, in order to be licensed as a foster or pre-adoptive parent an applicant must demonstrate, to the Department's satisfaction, the ability to assure a safe, supportive, nurturing and stable environment for a child in their care and to carry out responsibilities as detailed in the written agreement between the Department and the foster parent. The applicants or household members must be free of physical or emotional impediment

or handicap which would impair their ability to carry out the responsibility of a foster or pre-adoptive parent. An applicant or household member must have a record free of criminal conduct which would bear upon their ability to carry out their duties. Finally, an applicant shall maintain a household that has sufficient income, financial security and stability and meets physical standards as established by Department regulation. 110 CMR §§7.104, 7.105

All Department placement decisions ultimately must be made in the best interests of a child. The Department must take into consideration the individual needs of the child in question as well as the capacity of a foster parent to meet those needs. See 110 C.M.R. §7.101 (1) (d). A key element in the success of a foster child thriving in an identified foster home is the ability of the pre-adoptive parent and the Department to work constructively together. It is of critical importance in the Department's work with families that the agency and the foster parent have an open and honest exchange of information so that *collective* decisions in the best interest of the child are made. That being said, it is the Department that has custody of the child and unequivocally has the primary responsibility for every aspect of the child's life until she/he is returned home, legally adopted or becomes an adult.

This Fair Hearing Officer had no reason to doubt the clinical experience and judgment of the Department staff involved in the instant matter. There was no evidence offered by the Appellant that was compelling to the degree to find that the Department acted unreasonably and/or abused its discretion in making its decision. Based upon a review of the evidence presented at the Fair Hearing, including testimony from all parties and documents submitted, I find the Department's decision to revoke Appellant's license as a Kinship/Child Specific Foster home was made in conformity with its policies and regulations and was supported by sound clinical judgment. A thorough review of the evidence in the subject matter reflects the Appellants as loving foster parent/kinship providers of their grandson and who had shown an interest in the permanent goal of becoming legal guardians. That same record showed that the Appellants struggled in managing A (S' brother) early on in his placement, resulting in his removal and transition to a higher level of care. (Fair Hearing Record) The Department argued that the Appellant showed a pattern in their lack of commitment when faced with difficult and challenging behavior by both children. In the case of A, they refused any meaningful contact or life-long connection. When S began to exhibit the same challenging behavior, they hastily requested his removal, only to retract until the next crisis when Appellant JE threatened to leave S at the local fire station if he was not picked up. The Appellants argued that JE requested S' removal and threatened to leave him at the fire station in a moment of frustration with the DCF Social Worker. The Appellants further argued that S was doing exceptionally well and bonding once A was removed from their placement and they cared for him like their own son, rather than a grandson, relating that revoking their license would be extremely prejudicial because they would like if for future use in case S would to return.


The Appellants' argument was unpersuasive. The Appellants were quick to have S removed from their placement once he exhibited difficult behavior and created a stress situation in the home much like his brother A. Subsequently, the Appellant were in violation 110 C.M.R 7.104 *et seq.*, specifically a foster parents obligation "...to manage the stressful situations which are frequently associated with the placement of a child in substitute care" and "that a child placed in his or her care will experience a safe, supportive, nurturing and stable family environment..." The facts in this instant matter show that the Appellants failed to do the latter. On the contrary, rather than

utilize supportive therapeutic services offered by the Department, they concluded that S needed to be removed and were unwilling to learn new parenting skills to address S' issues and safeguard his placement in their home, so that a permanent goal of guardianship could be finalized.


Conclusion

The Department's decision to revoke the Appellants' license to provide foster/pre-adoptive care was made in conformity with Department regulations and with a reasonable basis. Therefore, the Department's decision is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court for Suffolk County, or the county in which they live, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Jorge E. Ferreira
Administrative Hearing Officer

10/27/2017
Date


Sophia Cho
Fair Hearing Unit Supervisor
Office of the General Counsel