

**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: )  
( WE )  
( )  
( FH # 2017-0165 )  
(

**HEARING DECISION**

**Procedural History**

The Appellant in this Fair Hearing is WE (hereinafter "WE" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to close the ongoing case affiliated with Appellant's family.

The Department had an ongoing case with this family as a result of a supported 51B Response for neglect of the family's children. The Department decided to close the ongoing case. The Department informed the Appellant of its decision and of his 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 July 20, 2017 at the Department of Children and Families' Hyde Park Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

Nicholas Holahan  
BC  
CT  
WE

Administrative Hearing Officer  
DCF Supervisor  
DCF On-going social worker  
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 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:

The Department did not submit any documentary evidence.

For the Appellant:

Exhibit 1: Letter from insurance agency denying coverage based on Interior Substandard Condition.

Exhibit 2: Envelope of photographs of the interior of the family residence.

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 issues 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. WE is the father of four (4) children with his wife, EE. All of the children are under the age of 18. (Testimony of CT; Testimony of Appellant)
2. In July 2016, the Department became involved with this family after a 51A report for neglect was filed and supported against parents, WE and EE. (Testimony of CT; Testimony of Appellant)
3. The family was assigned an ongoing social worker who conducted a family assessment and provided ongoing case management. (Testimony of CT; Testimony of Appellant)
4. In January 2017, the Department decided to close the case. The Department sent the Appellant a case closing letter that indicated their case, was closing. (Testimony of CT; Testimony of Appellant)
5. The Department's ongoing social worker reported the Appellant's concern for wanting the case to remain open was to acquire a cleaning service, to provide him with the names and numbers of the children's caregivers; and with finances. (Testimony of CT; Testimony BC)

6. At the Fair Hearing, the Appellant testified he believed "there was more to be done". He was concerned regarding the overall condition of the house; the state of his relationship with EE; and that EE refused to provide him with contact information for some caregivers who supervised the children while she was at work. (Exhibit 2; Testimony of Appellant)
7. At the Fair Hearing, the Appellant testified the residence was recently denied insurance due to the condition of the interior of the home. (Exhibit 1, Testimony of Appellant) I do not find the determination made by an insurance company to deny coverage suggestive of a home posing risky conditions to a child. This is not persuasive.
8. The Department's ongoing social worker testified although the home was cluttered, there were no apparent safety risks to the children. The Department spoke with the Appellant regarding cleaning the home but neither the Appellant nor EE wanted to clean the house and expected the Department to get someone to do it. (Testimony of CT; Testimony of BC)
9. The Department contacted the children's providers and schools. None of the collateral contacts working with the family expressed any protective concerns regarding the children. (Testimony of CT; Testimony of BC)
10. At the Fair Hearing, the Appellant testified that the case should not be closed until the Department provided him with the names and addresses of the individuals EE brings the children to for care while she is at work. The Appellant testified that EE refused to provide him with the contact information for these individuals. (Testimony of Appellant) The Department testified they met with these same individuals, and found no concern regarding the care they provided to the children. (Testimony of CT; Testimony of BC).
11. The Appellant was present when EE provided the Department with information regarding the caregivers for the children while she was at work. EE chose not to give this information to the Appellant. (Testimony of CT; Testimony of BC)
12. The Department's ongoing social worker offered to make referrals for marital counseling and in-home therapy; however the Appellant and EE were not interested. (Testimony of CT)
13. At the Fair Hearing, the Appellant testified regarding financial issues between himself and EE. (Testimony of Appellant). This was not appropriate for the Department and is not applicable for keeping a case open.
14. I find that the Department had a reasonable basis to close case for the family for the following reasons:
  - a. The Department followed regulations and policies appropriately.
  - b. The Department had not protective concerns for the children.

- c. Collaterals involved with the children did not express any protective concerns to the Department.
- d. The financial status of the family was not issue for the Department or grounds to keep the case open.
- e. There is no evidence that the condition of the home posed a safety risk to the children.

### **Applicable Standards**

A recipient of services from the Department has the right to appeal, through the Fair Hearing process, the suspension, reduction or termination of a service. 110 CMR 10.06

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 stated 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. 110 CMR 9.03

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, or (b) that 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 Appellant, or (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 Appellant; 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 closing the case. The Appellant argued three issues in his appeal as to why the case should not closed. The first issue was EE refused to provide him with contact information for the individuals who cared for their children. He argued the Department needed to provide him with this contact information. The Appellant was present when EE provided this information to the Department. The Department was under no obligation or duty to provide him with this information. The Appellant's argument failed. The Department assessed these individuals and found they posed no safety risk to the children.

The second issue was the condition of the home. The Appellant argued the condition of the home was such that it posed a safety risk to the children. However, as the court held in Arnone v. Dep't of Soc. Servs., 43 Mass. App. Ct. 33, 34 (1997), due weight must be given to the experience and specialized competence of the agency. The Department

ongoing social worker made regular visits to the home, and found no issues that would led her to keep the case open. The Appellant submitted photographs and a letter from an insurance company to support his contention. However, while the pictures do show a fair amount of clutter; it was not determined to be unsafe or pose a risk to the well-being or safety of the children. The insurance letter appeared to be a form letter and did not provide details as to how the denial decision was made; thus did not demonstrate that the home posed a risk to the children.

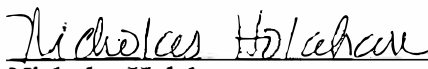
The third issue the Appellant raised was the family's financial status. However, the Appellant was not able to indicate a specific service the Department failed to provide in this manner. Nor did he detail whether the family's financial status posed any risk to the children. Moreover, the family's financial status did not bar the Department from closing the case.

I do not find that the Appellant offered any compelling evidence to demonstrate that the Department acted unreasonably, and/or abused its discretion, in making its decision to close his case.


#### Conclusion and Order

Based upon a review of the evidence presented at the Fair Hearing, I find the Department's decision to close the Appellant's case was made in conformity with its policies and regulations and with a reasonable basis and is **AFFIRMED**.

This is the final administrative decision of the Department. If 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 this decision. See, M.G.L. c.30A, §14. In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

  
Nicholas Holahan  
Administrative Hearing Officer

1/31/18  
Date

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