


**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
Fax: 617-261-7428**

IN THE MATTER OF

 #2017- 0214

FAIR HEARING DECISION

Appellants, Ms. HW (HW) and Mr. DW (DW or collectively as Appellants) appeal the Department's decision to terminate their license as a child-specific foster care resource and remove two children, hereinafter J and N, in kinship placement from their care pursuant to 110 CMR § 7.104; 110 CMR §10.06 (4)(a) *et seq.*

Procedural History

Appellants were the child-specific kinship resource for J and N, who were placed in their care in February, 2014. The Appellants have worked collaboratively with the Department while J and N have lived with them, although there are concerns for the continuity of their care and capacity to provide a safe, stable and permanent placement for J and N. After numerous reports of concern regarding the Appellants' care of J and N and after continued evaluation of Appellants' lack of compliance with the foster care agreement, the Department determined that the Appellants' foster care license would be revoked and, consequently, that J and N would be removed from their home.

On February 24, 2017, the Appellants were notified by the Department that their child-specific foster care license was revoked. J and A were removed from their care on October 27, 2016. Upon receiving notification, Appellants made a timely request for a Fair Hearing under 110 CMR 10.06(8).

A hearing was held at the Worcester West Area Office on May 4, 2017. In attendance were the following:

Anna L. Joseph
HW
SR

Hearing Officer
Appellant
Witness

BB
MJ

Department Social Worker
Department Supervisor

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 compact disc. The witnesses were sworn in to testify under oath.

The following evidence was entered into the record:

For the Department:

- Exhibit 1: Family resource License Renewal dated February 8, 2017
- Exhibit 2: Family Resource Dictation dated February 21, 2014 to April 21, 2017
- Exhibit 3: 51A dated December 2, 2015 and 51B dated December 22, 2015
- Exhibit 4: 51A dated February 25, 2016 and 51B dated April 8, 2016
- Exhibit 5: Revocation Letter to Appellants dated February 24, 2017

For the Appellant:

- Exhibit A: E-mail exchange between Department Social Worker and Appellant dated March 22, 2016-March 25, 2016
- Exhibit B: E-mail exchange between Appellant and Department Social Worker dated February 25, 2016
- Exhibit C: E-mail exchange between Department Social Worker and Appellant dated March 4, 2016-March 5, 2016
- Exhibit D: E mail exchange between department Social Worker and Appellant dated February 24, 2016
- Exhibit E: E mail exchange between Department Social Worker and Appellant dated August 17, 2016

Issue to be Decided

The issue to be decided is whether, based on the information available at the time of and/or subsequent to the Child-Specific Pre-adoptive Resource Assessment/Adoption Home Study, the Department's decision to revoke Appellants' license and remove a child in their care was in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party. 110 CMR §10.06(5) (a) *et seq.*

Findings of Fact

1. Appellants, HW and DW are a child-specific kinship foster care resource for J, age eight (8) and N, age seven (7). J and N were placed with Appellants on February 21, 2014. J and N were removed from their biological mother's care due to chronic neglect (Exhibit 1, p.3; Testimony of Appellant).
2. Both J and N have specific special needs, including psychiatric diagnoses which require consistent care and attention. J and N's early childhood trauma render them vulnerable to social and behavioral issues, especially N, who has struggled to maintain stability since placement. (Exhibit 2, p.2, Testimony of Appellant, Exhibit 2, p. 5 & 6, Exhibit 2, p.29).
3. Appellants are J and N's God parents, and have known them since birth. Both Appellants have personal history of both medical and mental health issues, requiring therapeutic intervention including psychotropic medication and therapy. (Testimony of Witness, Testimony of Appellant)
4. In September, 2014, the Department's social worker for the Appellants completed a home visit wherein she noted concerns about the condition of the home and that J and N were calling the Appellants "Mommy" and "Daddy" contrary to the clinical recommendation of the Department. Absent these concerns, the Appellants were regarded as cooperative (Exhibit 2, p.2, Exhibit 2, p. 7)
5. Between September 2014 and November 2015, the Appellants made a number of complaints to the Department and to J and N's court appointed attorney regarding the biological parents. As a result of these complaints, visitation between the children and their biological parents was suspended. (Exhibit 2, p 2-p.5)
6. In a three (3) month period between December of 2016 and February of 2016, two separate mandated 51A reports were filed regarding the Appellant's care of J and A. Both reports were referred to the Unit for Special Investigations (SIU) , where they were unsupported after investigation. Concerns were noted however, including the Appellant's inconsistent compliance with therapy for the children and discrepancies between their accounts of the children's behavior with that of their school (Exhibit 3, Exhibit 4, Exhibit 2, p. 14, Exhibit 2, p.16)
7. In April, 2016, the Department addressed additional concerns regarding the personal hygiene of the Appellants' which had been reported and observed by providers involved with the family. (Exhibit 2. P.19)
8. In September 2016, after a number of concerns regarding the Appellants were reported to the juvenile Court by the children's attorney, a Guardian ad Litem (GAL) was appointed.

9. On October 27, 2016, the GAL recommended that J and N be removed from the Appellants care. The basis for this recommendation was the conclusion that the Appellants were sabotaging the relationship between the children and their birth parents, failing to consistently supervise the children, and were non-compliant with the services required to maintain the children's well-being. (Exhibit 2, p.32)

10. Upon hearing the GAL's recommendation, and upon questioning from the Juvenile Court Judge, HW stated that she would voluntarily surrender the children, who were subsequently removed that afternoon of October 27, 2016. (Exhibit 2, p.32, Exhibit 1, p.4)

11. On the day of the Hearing, HW appeared disheveled and unclear. After stating that she would surrender the children voluntarily, she left only to return hours later to the Department's Area Office stating that she wanted the children returned. (Exhibit 1, p.4)

12. The Appellants contend that they did not coach or coerce the children in any way, and that they were compliant with the Department throughout. The evidence does not support this contention. (Testimony of Appellant, see analysis)

13. The Department's concerns for the children's overall care by the Appellants was documented within six (6) months of their placement, and protective issues continued to arise for the duration of the placement. (Testimony of Department Social Worker)

14. That the Department failed to act to remove J and N notwithstanding these complaints is unexplained by the Department, and compounded by the fact that another child, an infant was placed into this home whilst these concerns were noted. (Testimony of Appellant, See analysis)

15. HW's denial on non-compliance is not credible. While HW did make efforts to keep communication open with the Department (Exhibit A, Exhibit B, Exhibit C, Exhibit D), these were often confusing to the Department itself. The evidence shows a pattern wherein concerns were addressed with the Appellants, agreements made to mitigate those concerns and then non-compliance with the agreements followed. (Fair Hearing record, Testimony of Department Social Worker)

16. The fragility of HW's mental health was evident at Fair Hearing, and may well have limited her capacity to understand the legal proceedings on the day the court ordered the removal. This does not however, vitiate the Appellant's responsibility to maintain a safe home for these children, nor does it explain the pattern of non-compliance with services essential for J and N's care. (See analysis, Fair Hearing Record)

17. J and N did achieve some gains in their development during their placement with the Appellants. (Testimony of Witness)

18. The loss of J and N remains acute and painful to HW, who hopes to maintain a

relationship with them, and have her license re-instated to care for foster children through another agency. (Fair Hearing Record, Testimony of Appellant)

19. In light of the totality of evidence in this case, I find the Department's decision to revoke the Appellants' child-specific kinship foster care license and remove J and N from the home is reasonable and in accordance with Department regulations (see Analysis).

Analysis

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to him. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner which resulted in substantial prejudice to him. 110 CMR §10.23

In order to be licensed as a foster or pre-adoptive resource, an applicant must demonstrate, to the Department's satisfaction, the ability to assure a safe, supportive, nurturing and stable environment for a child they wish to foster or adopt. 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

In the instant matter, Appellants' child specific kinship foster care license was revoked following lengthy consideration and continual efforts by the Department to maintain J and N's placement with Appellants. In the instant matter, the Department's decision is based upon the need for a more suitable setting within which J and N's specific needs can be met.

This Hearing Officer acknowledges the unique circumstances and challenges of kinship foster care and appreciates that Appellants may feel they are being held to a different standard than biological parents of a child. But the Hearing Officer also appreciates the unique needs of children who are placed in foster care and the Department's obligation to ensure safety, stability and permanency for children. In this case, the Department repeatedly evaluated Appellants' capacity to care for J and N, particularly when concerns arose, by conducting multiple investigations and more informal assessment in the form of home visits, where patterns of concerns were addressed. The Department extended services and supports to Appellants in an effort to bolster their weaknesses and capitalize on the strength of their bond with J and N yet Appellants continued to struggle to uphold their end of the agreement. 110 CMR § 1.02; 110 CMR § 7.113 (4)

It is undisputed that Appellants share a strong, loving bond with J and N and view them

as their own children. No party to this complex and fraught story is unscathed. The Appellants must bear the brunt of the responsibility for the children's disruption. The Appellants agreed to abide by Department standards for foster parents and they did not. 110 CMR §7.111; § 7.113(4)

Conclusion and Order

Appellants have failed to show by a preponderance of the evidence that the decision of the Department to revoke their child specific kinship foster care license was not made in accordance with Department regulations or without a reasonable basis, therefore the decision of the Department 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 Suffolk County, or in the Superior Court for the county in which they live, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, § 14).

1-19-18
Date

Anna L. Joseph
Anna L. Joseph
Administrative Hearing Officer

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor