

**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**

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Commissioner

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IN THE MATTER OF)
)
 CR) **FAIR HEARING DECISION**
)
 FH # 20170324)
)

Appellant, CR, appeals the decision of the Department of Children and Families (“Department”), to revoke her license to provide Kinship foster care pursuant to 110 C.M.R. §7.104.

Procedural History

In 2015 the Department approved CR to become a Kinship foster parent for her great¹ grandchildren, Ja and Jo. CR had adopted Ja and Jo’s sibling in 2012, who at the time of the license study, was the only child residing with CR. A Pre-Adoptive License Study was conducted regarding CR, as the goal for her great grandchildren was changed to Permanency through Adoption. The study was placed on hold after it began, but was eventually finished in April of 2017, and did not recommend the approval of CR as the adoptive resource for the children. In March of 2017 the Department had held a Clinical Review Team meeting and a decision was made to revoke her license and to remove the children from the home. The Department sent written notice to Appellant of its decisions and of Appellant’s right to appeal the license revocation.

Appellant made a timely request for a fair hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing was held on May 17, 2017 at the Taunton DCF office. All witnesses were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Laureen Decas	Fair Hearing Officer
CR	Appellant
RR	Witness
LP	DCF Adoption Social Worker

¹ CR has four biological children and two adopted children, who were her grandchildren.

PCB	DCF Family Resource Social Worker
NW	DCF Adoption Supervisor
JZ	DCF Family Resource Staff
NB	DCF Family Resource Staff

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 one (1) compact disc.

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

For the Department:

Exhibit A	Family Resource License Renewal dated 4/20/17
Exhibit B	Family Resource Pre-Adoptive License Study dated 4/11/17
Exhibit C	Family Resource License Study dated 2/10/15
Exhibit D	Family Resource Dictation

Appellants

Exhibit 1	Letter from Appellant
Exhibit 2	Attendance Letter from CAC

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 the decisions made did said decision violate 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 CMR 10.05

Findings of Fact

1. At the time of the subject decision, Ja was five (5) years old and Jo was four (4) years old. The children were in the custody of the Department of Children and Families and were freed for adoption. (Fair Hearing Record)
2. Ja and Jo were placed with CR in September of 2014 when the Department was granted custody of them via a Care and Protection Petition filed on their behalf. CR had been the kinship resource for their older sister (who was at the time of the subject decision six years old), and who she adopted in 2012. (Testimony of PCB)

3. CR did not drive, and relied on her adult children, R and H, as well as her grandchildren Y and C, to assist her with transportation. H was the approved emergency contact/pick up person with the children's schools; however in 2015 the Department became aware that he had a lengthy criminal record. CR was advised of this, and was insistent she did not know where he was residing, had no contact with H, and was aware he should not be around the children given his history. (Exhibit B)

4. The Department became concerned when CR's family resource worker ran into CR at a gas station in December of 2014, and she was driving H's car with her adopted great granddaughter in the car. The Department's concerns were addressed with CR. (Testimony of PCB)

5. In May of 2015, additional concerns relative to supervision issues were addressed with CR when the family resource social worker and Early Intervention worker discovered Jo climbing out of a bedroom window where he was found by a neighbor. CR was unaware Jo was in the bedroom and reported the windows were usually locked. (Exhibit B, Testimony of PCB)

6. H's car was often observed at CR's home and in February of 2016, CR was asked if he was residing there. CR denied he was. H had a long history of sexual related crimes and had spent time in jail. (Testimony of PCB)

7. CR asked the Department to pursue a waiver to allow H to help her with the children. On February 9, 2016, CR was told H could not be at her home or caring for the children due to his criminal history. CR said that was fine as he was in jail, she did not know why. (Testimony of PCB)

8. In December of 2016, a 51A was filed by CR's adopted great granddaughter's school alleging the sexual abuse of her by C, CR's grandson. This report was screened out and a DA referral made. At the time of the report, H was still listed as the emergency contact for the children. (Exhibit B, Testimony of PCB)

9. A SAIN² team meeting was conducted regarding the alleged sexual abuse by C. The child did not make a disclosure, however she did say she was told if she said the wrong thing then CR would go to jail. CR asked the child why she was lying about the abuse, as she did not believe it occurred. Counseling was referred for the child, and it was not put in place. (Testimony of LP)

10. Ja and Jo spoke about [REDACTED], who was C's pet [REDACTED]. The children reported he bit. When CR was asked about this, she reported she was only babysitting the dog for C. (Testimony of PCB)

11. In January of 2017, a 51A report was filed alleging the neglect of Ja and Jo by CR. The report was unsupported. (Fair Hearing Record)

² "SAIN" is an acronym for Sexual Abuse Intervention Network. Through a joint effort by the Department of Children and Families and the District Attorney's office, the interview of the alleged victim is conducted with members of a team to eliminate the need for several interviews.

12. On January 27, 2017, CR was again observed by Department staff driving a vehicle, this time it was R, her daughter's car. CR had her adopted great granddaughter in the front seat with her. (Fair Hearing Record)

13. A license renewal was conducted and completed on April 20, 2017 in compliance with Departmental regulations, with a recommendation to revoke the Appellant's license to provide foster care. The Department concluded that the Appellant had exhibited a pattern of not being forthcoming regarding visitors to the home, which the children were exposed to, as well as a pet in the home for which she did not seek approval. Further, she encouraged the children in the home not to discuss these matters. Finally, she did not have a driver's license, yet was seen driving a car with one of her children. The decisions of the Appellant violated the foster parent agreement, and placed the children in her care at risk.

14. I find that the Department's decision to revoke CR's license to provide kinship foster care was made in conformity with Departmental policies and regulations and with a sound, reasonable clinical basis.

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;

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 will experience a safe, supportive, nurturing and stable family environment which is free from abuse or neglect;
 - (b) to assure that a child placed in his or her care will be provided with adequate food, clothing, shelter, supervision and other essential care at all times;
 - (d) to promote the physical, mental, and emotional well-being of a child placed in his or her care;
 - (k) to work with the Department and the foster child's parents in implementing the child's service plan in order to meet development goals and outcomes;
 - (m) to draw upon community and professional resources as needed;
 - (p) to have reasonable expectations of a child's behavior and potential growth

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.

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

To prevail, the Appellant must show by a preponderance of the evidence that DCF's decision to revoke her license to provide kinship foster care was not in conformity with its/DCF's policies and/or regulations and resulted in substantial prejudice to the Appellant. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that DCF acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. 110 CMR 10.23.

Amongst other qualifications, in order to be licensed as a foster 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 In the instant matter, the Appellant is appealing the Department's decision to revoke her license to provide kinship foster care to her great grandchildren. The Department found a pattern of CR not being forthcoming with the Department regarding frequent visitors and pets to her home, and the children were encouraged to not talk about these things. The Department determined, after several years of attempting to work with CR, that she was not capable of following through with Department policies and expectations and her poor decision making was placing the children at risk.

A key element in the success of a foster child thriving in an identified home is the ability of the foster 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. The evidence in the subject matter reflects that was not the case between the Department and CR, and the trusting relationship broke down after numerous infractions by CR.

The Department makes it a priority to place children with kin/extended family where it is appropriate to do so. Several significant observations as to the Appellant's ability to parent Ja and Jo were made by the Department, giving rise to the decision to revoke the Appellants license to provide kinship foster care. The Department's regulations mandate that the Department take into consideration the individual needs of the children in question including those needs relating to their mental, physical, and emotional well being *and the capacity of the prospective adoptive parents* to meet those needs. (Emphasis added) 110 CMR §7.101 (1) (d). The decision to revoke the license of the Appellant to provide foster care was not based on an isolated incident; rather it was based on a review of the home and an assessment of the caregiver charged with ensuring the whole health of the children, in conjunction with the children's needs, over years. The Department considered many factors but ultimately the Department must make licensure decisions based on the totality of the circumstances, which was done in this matter.

This Fair Hearing Officer has no reason to doubt the clinical experience and judgment of the Department staff involved in the instant matter. I do not find any information offered by the Appellant to be compelling to the degree to find that the Department acted unreasonably and/or abused its discretion in making the decision to revoke the Appellants license. Based upon a review of the evidence presented at the Fair Hearing, including testimony from all witnesses and documents submitted by both parties, I find the Department's decision to revoke the Appellants license to provide foster care was made in conformity with its policies and regulations and was supported by sound clinical judgment.

Conclusion

The Department's decision to revoke the Appellants' license to provide kinship foster 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 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 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.



Laureen Decas
Administrative Hearing Officer

9-28-17

Date



Cristina Tedstone
Deputy General Counsel