

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

Linda S. Spears
Commissioner

Voice: (617) 748-2000
FAX: (617) 261-7428

IN THE MATTER OF

ZR #2017-0413

FAIR HEARING DECISION

ZR appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to change his permanency planning goal from adoption to reunification with his parents.

Procedural History

The Department became involved with ZR's mother (BR) in November 2011, after a 51A report was supported for physical abuse and neglect of BR and her siblings by their parents. The Department obtained custody of BR in December 2011. While BR was still a minor in the Department's custody, she gave birth to ZR on March 7, 2013.

The Department obtained custody of ZR in July 2014, due to neglect by BR after she ran away from the foster home where she and ZR were living. In March 2015, the Department changed the permanency planning goal for ZR from reunification with his parents to permanency through adoption.

A foster care review meeting was held on February 21, 2017. As a result of that meeting, the foster care reviewer recommended that the permanency planning goal for ZR be changed from adoption to reunification with BR and his father, DH. On March 8, 2017, the Department convened a permanency planning conference and the recommended goal of reunification was accepted.

On April 7, 2017, ZR's attorney made a request to appeal the Department's decision to change the goal to reunification. A hearing was held on June 8, 2017, at the DCF Central Office. The foster care review manager, ZR's adoption social worker and ZR's on-going social worker testified at the hearing. ZR was represented by his attorney.

The matter was continued for further hearing and a second hearing was held on July 6, 2017. The foster care reviewer, a foster care review manager, the Department on-going social work supervisor, the intensive foster care program service coordinator and ZR's foster mother testified at the hearing. ZR's attorney was also present.

The following exhibits were submitted by the Department

- Exhibit A: Foster Care Review report, approved March 8, 2017.
- Exhibit B: Service Plan, September 26, 2016 to March 26, 2017, with reviewer's notes.
- Exhibit C: Service Plan, November 21, 2016 to May 21, 2017, with reviewer's notes.
- Exhibit D: Foster care reviewer's notes dated February 21, 2017.

The following exhibits were submitted by ZR.

- Exhibit 1: Fair hearing request and argument with the following attachments.
 - a. Foster care review report, approved March 8, 2017.
 - b. Case Dictation excerpts. (citations are to the page numbers printed on the pages referenced, not all pages were submitted).
- Exhibit 2: Foster care review participant attendance.
- Exhibit 3: Memo from foster care reviewer to area clinical manager, dated February 21, 2017.
- Exhibit 4: E-mail from ZR's attorney to Department staff, dated February 8, 2017.
- Exhibit 5: E-mail exchange between foster care review supervisor and other Department staff, dated May 9, 2017.
- Exhibit 6: Foster care reviewer's notes, dated February 21, 2017.
- Exhibit 7: Service plan September 26, 2016 to March 26, 2017, with reviewer's notes.
- Exhibit 8: Service plan (Outcomes/Indicators), with reviewer's notes.
- Exhibit 9: Treatment plan and notes by BR's psychologist.
- Exhibit 10: E-mail exchanges between ZR's attorney and Department staff dated from April 5, 2017, through June 21, 2017.
- Exhibit 11: Case Dictation excerpts from July 2016 to May 2017. (Citations are to the page numbers printed on the pages referenced, not all pages were submitted).

ZR submitted copies of confidential and/or privileged documents filed with the juvenile court in the care and protection of ZR including stipulations, psychological evaluations and substance abuse evaluation/testing without proper releases or court authorization and, therefore, those documents are excluded from the hearing record.

The hearing was digitally recorded and transferred to compact disc.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

Issue to be Decided

The issue presented in this Hearing is whether the Department's decision or procedural action(s) 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, the issue is 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. ZR (d.o.b. [REDACTED]) is a child in the Department's custody. (Exhibit C, p. 1).
2. The Department became involved with ZR's mother, BR (d.o.b. [REDACTED]), after a 51A report alleging physical abuse and neglect of BR and her siblings by their parents was supported in November 2011. (Exhibit C, p. 1).
3. The Department obtained custody of BR in December 2011. (Exhibit C, p. 1).
4. BR was 15 years old and in the Department's custody when ZR was born. (Exhibit C, p. 1).
5. ZR's father is DH (d.o.b. [REDACTED]). DH was not identified as his father at the time of his birth. (Exhibit C, p. 1; Exhibit B, p. 1).
6. BR and DH are no longer involved in a relationship with each other. (Exhibit C, p. 1).
7. After ZR was born, the Department placed BR and ZR in an IFC home specializing in adolescent mothers and their children. (Exhibit B, p. 1).
8. At the time of ZR's birth and continuing until she turned 18, the only things BR cared about was hanging out with friends and smoking marijuana. (Exhibit 11, p. 46).
9. On April 12, 2013, a 51A report was filed and subsequently supported after BR overdosed and was hospitalized. (Exhibit B, p. 1).

10. The Department obtained custody of ZR in July 2014, after BR ran away from the foster home where she and ZR were living. (Exhibit B, p. 1).
11. BR returned in September 2014, and the Department placed her in a separate foster home. (Exhibit B, p. 1).
12. BR ran away again in January 2015. (Exhibit B, p. 1).
13. In March 2015, the Department changed ZR's permanency planning goal from reunification with BR to permanency through adoption. (Exhibit A, pp. 2-3).
14. BR returned to care in May 2015. The Department placed her in an adolescent STARR program, however, BR ran repeatedly for the next several months until she turned 18 in September 2015. (Exhibit B, p. 1).
15. DH established paternity in June 2015. Initially, DH wanted to visit with ZR, but he did not feel that he could parent ZR. At some point, he indicated that he would like to work towards reunification and he began engaging in services. (Exhibit B, p. 1).
16. At some point BR became involved in a relationship with her current boyfriend, JT. JT has a significant substance abuse history (heroin). JT began substance abuse treatment (counseling, methadone and random drug screens) in September 2015. (Exhibit C, p. 1; Exhibit 11, pp. 40, 44, 58, 88).
17. BR became pregnant by JT in 2015. BR stopped using marijuana after she learned she was pregnant. (Exhibit A, p. 2; Exhibit 11, p. 49).
18. BR and JT secured a 3 bedroom apartment in February 2016, where they continue to reside. The apartment has been observed to be clean and well furnished with no hazards noted. (Exhibit 11, pp. 58, 61).
19. In March 2016, BR participated in a psychiatric evaluation. She was not forthcoming about her prior hospitalizations during the evaluation. In any case, it was recommended that she continue to engage in therapy and that the appropriateness of medication should be evaluated after the baby is born. (Testimony of the Department supervisor).
20. BR gave birth to a son, J, in May 2016. J has remained in BR and JT's custody since birth. (Exhibit A, p. 2).
21. BR was prescribed Prozac after J was born. (Exhibit 11, p. 41).
22. JT completed a drug screen on June 30, 2016, which was negative for all substances including his prescribed methadone. (Exhibit 11, p. 43).
23. JT smoked marijuana in the summer of 2016. JT completed a drug screen on July 25, 2016, which was positive for cannabinoids and methadone. JT talked to his

substance abuse counselor about "slipping" and they were addressing this in therapy. (Exhibit 11, pp. 43, 44, 52, 58).

24. JT completed a drug screen on August 4, 2016, which was negative for all substances including his prescribed methadone. (Exhibit 11, p. 43).
25. Despite JT's two negative drug screens and one positive for cannabinoids, his substance abuse treatment provider felt that he was motivated to maintain his recovery and she had no concerns or further treatment recommendations. (Exhibit 11, p. 44).
26. In July 2016, the Department requested that J's pediatrician refer J for an early intervention screening. Based upon his observations, J's pediatrician felt he was developing normally and he did not require early intervention and he did not refer him for early intervention services. (Exhibit 1(b), p. 37).
27. During the six month period leading up to the February 21, 2017, foster care review, DH completed a psychological evaluation which recommended he engage in therapy to address circumstantial depression. He had difficulty securing a therapist he could meet with regularly so the Department referred him to an in-home therapist. He began seeing the in-home therapist in early October 2016. He completed a Nurturing Father's group. He secured his own apartment which he kept clean, organized and free of any hazards. He was working. He attended scheduled supervised visits with ZR. He signed releases so that the Department social worker could contact his providers. (Exhibit 11, p. 40, 46, 47, 51, 55, 58-59, 60, 61, 69, 81).
28. BR continued engaging in individual therapy and her treatment provider had no concerns. Her therapist, who has known BR for years, felt she had really "grown up" and she was doing well taking care of J, her relationship with JT was good and stable and she was not feeling depressed. BR stopped taking medication for depression in January 2017. BR completed a Parenting Group and continued to attend parenting classes. She participated in a substance abuse evaluation that found no concerns and no need for substance abuse treatment. She was not exhibiting or experiencing any symptoms of depression. She completed several drug screens which were negative. She was working and attending GED classes. She attended scheduled supervised visits with ZR. (Exhibit 9; Exhibit 11, pp. , 39, 44, 45, 46, 47, 48-50, 51, 52, 54, 57, 58, 60, 61, 62, 67, 73, 81).
29. JT continued to engage in substance abuse treatment. He signed a release to allow the Department social worker to speak with his provider. His provider felt he was doing well and had no concerns. He completed a substance abuse evaluation which he provided to the Department. He was placed on a waiting list for a Parenting Group. He completed a Nurturing Father's Group. He was working. (Exhibit 11, pp. 40, 42, 47, 50, 52, 57, 61, 62, 67, 68, 73).

30. A foster care review meeting was held on February 21, 2017. In attendance were the foster care reviewer, ZR's foster mother, the Department adoption worker, DH, ZR's Department on-going social worker, the Department social work supervisor and Mentor Program Service Coordinator. (Exhibit A; Exhibit 2).
31. The attendees discussed the family's service plan tasks. The foster care reviewer (hereinafter "the reviewer") determined that the Department was in partial compliance with service plan tasks citing a delay in increasing visitation with the parents. The reviewer determined that BR, DH and JT fully achieved their service plan tasks. The reviewer found that there has been insufficient progress toward the goal of permanency through adoption. The reviewer noted that both parents are fully engaged in recommended services, BR is successfully parenting an infant in her home with no protective concerns and the parents are having monthly supervised visits with ZR and the visits are going well. Based upon the information provided to the reviewer during the course of the review, the reviewer found that there was no evidence to indicate that the parents presented any imminent safety risk to ZR's well being. (Exhibit A, pp. 1-3; Exhibit C, pp. 3, 5, 7; Testimony of the foster care reviewer).
32. The reviewer recommended that the Department change ZR's permanency planning goal to permanency through reunification. (Exhibit A, p. 3).
33. On February 21, 2017, the Department was informed that JT had a drug screen on January 30, 2017, which was positive for marijuana and his prescribed methadone. Despite this, his treatment provider felt he was doing well in treatment, he is focused and committed to recovery and she has no concerns about him relapsing, apparently in reference to his use of heroin. (Exhibit 11, p. 88).
34. It is not clear from the evidence in the hearing record whether the Department was informed of the positive drug screen before or after the foster care review held that day or whether it was brought up and discussed at the review. In any case, the Department on-going social worker as well as JT's treatment provider were not particularly concerned about his sporadic marijuana use. The on-going social worker noted that her concern was with his heroin use and he had not tested positive for heroin. (Testimony of the Department on-going social worker; Testimony of the Department adoption social worker).
35. On March 8, 2017, the Department held a Permanency Planning Conference and the Department accepted the reviewer's recommendation to change the permanency planning goal to reunification. (Testimony of the Department on-going social worker for the family).

Analysis

Department regulations require that the Department conduct a review (Foster Care Review) every 6 months when a child is in the Department's custody and placed out of his or her home. 110 CMR 6.10(1).

The Foster Care Review shall include consideration of the necessity and appropriateness of services, a review of the past 6 months activities, the parties compliance with and/or fulfillment of tasks, the safety of the child and necessity and appropriateness of continued placement, the extent of progress made toward alleviating the cause(s) of placement and the goal and projected date of permanency whether through stabilization, reunification, adoption, guardianship, or other permanent living arrangement. 110 CM 6.10(2) and 6.10(10).

Whenever the Foster Care Review panel determines, under 110 CMR 6.10(10)(d), that the goal for the child should be changed, the Department must schedule the case for a permanency planning conference. The goal does not change until a permanency planning conference is held. If the permanency planning conference goal determination differs with the foster care review goal determination, the case will be referred to the Regional Director who will determine the goal. 110 CMR 6.10(13).

Neither ZR's attorney nor the Department cited any particular regulation or policy which sets forth any more specific guidelines addressing under what circumstances the foster care reviewer may recommend that a goal be changed from adoption to reunification.

ZR argues that the foster care reviewer failed to consider pertinent information including 3 supported 51A reports listing JT as the alleged perpetrator, JT's failure to remain drug free (as evidenced by JT's two drug screens positive for marijuana (July 25, 2016 and January 30, 2016) and JT's two drug screens negative for all substances (June 30, 2016 and August 4, 2016) including methadone suggesting he tampered with the samples to hide drug use), BR's failure to provide accurate information during a psychiatric evaluation in March 2016, BR's failure to continue to take her prescribed medication and BR's failure to address her depression and PTSD in therapy (as evidenced by her therapists lack of a treatment plan), BR's failure to provide healthy food during visits with ZR, BR's failure to follow through with early intervention services for J and the lack of verification that DH is attending therapy.

ZR also contends that it was unreasonable for the reviewer to presume that BR is capable of caring for ZR simply because she is adequately parenting J and that the reviewer failed to consider a bonding study which states that ZR will suffer irreparable harm if he is removed from the foster home where he has lived his entire life.

According to the foster care reviewer, most of the information ZR asserts was not considered was never presented at the review. There was discussion about JT's marijuana use, however there was no evidence that he used marijuana while in a caretaking role or that it effected his parenting. The concern about his drug use history was focused on


opiate use. His clinician reported that he was meeting expectations in treatment. She was not informed of January 2017, drug test that was positive for marijuana. She was informed that BR was attending therapy and that her provider took her off medication and she was mentally stable. There was no discussion regarding any food BR provided to ZR during visits. She was informed that J had been screened for early intervention and it was determined that he did not need early intervention services. She was informed that there were no concerns regarding BR and JT's housing. She was informed that DH had been participating in therapy, he had his own apartment and he was referred for a parenting group. The Department reported no concerns regarding DH. (Testimony of the foster care reviewer).

Obviously, the foster care reviewer can only base her decision on information provided to her at the review. Although there was some discussion at the hearing regarding whether the fair hearing officer may consider information not known or available at the time of the review, upon review of the relevant regulations, I find that the provision allowing consideration of "new" information is limited to fair hearings challenging a Department decision to support a report of abuse or neglect or to list a person's name on the Registry of Alleged Perpetrators. See 110 CMR 10.21(6). Therefore, a review of the Department's decision to change a permanency planning goal must be limited to whether the decision was made in conformity with Department regulations, policies and procedures and with a reasonable basis based solely upon the information presented to the foster care reviewer.

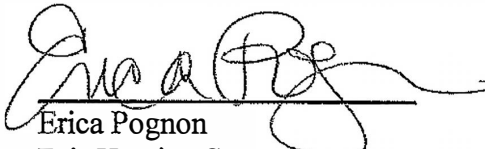
Considering all of the relevant evidence provided to the foster care reviewer on February 21, 2017, I find that the Department's decision to change ZR's permanency planning goal from adoption to reunification was made in conformity with Department regulations, policy and procedure and with a reasonable basis.

Conclusion and Order

The Department's decision to change the permanency planning goal for ZR from adoption to reunification was made in conformity with Department regulations, policy and procedure and with a reasonable basis and, therefore, the Department's decision is **AFFIRMED**.


Anne L. Dale Nialetz
Administrative Hearing Officer

11/10/17
Date


Erica Pogon
Fair Hearing Supervisor