

**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

JDS

#2017-0464

FAIR HEARING DECISION

JDS appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to terminate services to him and close his case.

Procedural History

JDS is a young adult who was placed in the Department's custody through a Care and Protection petition at the age of 17. When JDS turned 18 years old, he and the Department entered into a Voluntary Placement Agreement so that he would continue to receive services from the Department.

On March 29, 2017, the Department sent JDS notice that his case would close in 90 days on June 29, 2017, due to non-compliance with service plan tasks. The notice also informed JDS of his right to appeal the decision to close his case.

On April 19, 2017, JDS requested a fair hearing to appeal the Department's decision. A hearing was held on June 21, 2017, at the DCF Lawrence Area Office. JDS, the Department social worker for JDS and the Department supervisor testified at the hearing.

At the hearing, the parties agreed to continue the matter until September 30, 2017, to allow JDS to demonstrate compliance with the placement agreement and service plan.

The hearing was digitally recorded and transferred to compact disc.

On September 18, 2017, the Department supervisor notified the hearing officer of his continued intent to close JDS's case and he submitted supporting documentation.

The Department's correspondence and supporting documentation was sent to JDS with notice of the Department's continued intent to close his case. He was allowed until October 10, 2017, to submit a response. JDS submitted no response by that date and the hearing record was closed.

The Department submitted the following exhibits at and after the hearing.

- Exhibit 1: Letter to JDS from the Department social work supervisor dated June 8, 2016.
- Exhibit 2: DJS' request to continue receiving services from the Department dated August 5, 2016.
- Exhibit 3: Department memo dated August 5, 2016.
- Exhibit 4: Voluntary Placement Agreement, dated August 5, 2016.
- Exhibit 5: Service Plan, August 10, 2016 to February 10, 2017.
- Exhibit 6: Family Action Plan, Effective date March 30, 2017.
- Exhibit 7: E-mail correspondence between the Department supervisor and the hearing officer.
- Exhibit 8: Earnings Statement, September 2017
- Exhibit 9: Course enrollment
- Exhibit 10: Financial Aid ineligibility notice
- Exhibit 11: Student Bill Summary

JDS submitted the following exhibits:

- Exhibit A: 90 day notice of case closing dated March 29, 2017.
- Exhibit B: Earnings Statement
- Exhibit C: ██████████ Community College, Student Schedule, Summer 2017.

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 Fair Hearing is whether 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; 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. JDS was placed in the Department's custody through a Care and Protection Petition approximately one year before his 18th birthday. (Testimony of the Department supervisor).
2. The Department placed JDS in a foster home where he remained throughout the time he was in foster care. (Testimony of the Department supervisor).

3. Over the next year, JDS exhibited no behavior problems and his compliance with Department expectations was excellent. (Exhibit 1; Testimony of the Department supervisor).
4. JDS graduated from high school in May 2016. (Exhibit 5).
5. On June 8, 2016, JDS met with the Department staff for a "90 day meeting" during which the Department offered JDS the opportunity to sign a voluntary placement agreement with the Department so that he could continue to receive services and support from the Department after he turned 18. (Exhibit 1).
6. On August 5, 2016, JDS gave the Department written notice that he wished to sign a voluntary placement agreement to continue services with the Department. He indicated that he planned on attending ██████████ Community College for two years and then transfer to a state college. He also planned on working through college and moving into his own apartment. (Exhibit 2).
7. The Department and JDS signed a voluntary placement agreement on August 5, 2016. (Exhibit 4).
8. The Department initiated a service plan for JDS on August 10, 2016. It was noted on the plan that JDS is a mature young adult who is able to identify goals for himself and follow through with them. JDS's service plan tasks included attending school and passing all classes, obtaining a part time job, meeting with his PAYA worker, meeting with his Department social worker and scheduling medical appointments. (Exhibit 5).
9. JDS registered for 6 classes at ██████████ Community College in ██████████ for the fall semester. He commuted by bus from ██████████ to ██████████. He did not have a job. By the end of the semester, he was placed on academic probation for failing all of his classes. He did not receive any college credit for the fall semester. (Exhibit 6; Testimony of the Department supervisor).
10. JDS did not register for the spring 2017, semester, he continued to be unemployed and he was falling behind on his rent. (Testimony of the Department supervisor).
11. On March 30, 2017, the Department asked JDS to register for two summer classes and obtain a part time job to remain in compliance with his voluntary placement agreement. (Exhibit 6).
12. On March 30, 2017, the Department sent JDS a "90 day letter" giving him notice that his case would close on June 29, 2017. (Exhibit A).
13. Following his receipt of the "90 day letter," JDS completed a course necessary to be removed from academic probation and he enrolled in 2 summer classes. He also applied for several jobs and scheduled a doctor's appointment. (Exhibit A; Exhibit C; Testimony of the Department supervisor).

14. On April 19, 2017, JDS made a request to appeal the Department's decision to close his case. (Exhibit A).
15. JDS obtained a part time job and began working in late April or early May 2017. (Exhibit B).
16. JDS enrolled in two classes for the summer, however, the school dropped him from one of the classes. (Testimony of the Department supervisor).
17. A fair hearing was held on June 21, 2017. JDS had just begun his summer course. He was working at [REDACTED]. He had moved to [REDACTED] to be closer to his job and school. He was involved with a youth group. He was meeting with his outreach worker and working on budgeting skills. (Exhibit C; Testimony of the Department supervisor; Testimony of the Department supervisor).
18. Due to JDS's recent improvement, JDS and the Department agreed to continue the appeal until September 30, 2017, to allow JDS an opportunity to continue to be in compliance with his service plan and the Department agreed to reconsider its decision to close his case. The parties were asked to submit an update of JDS's status in mid-late September. (Testimony of the Department supervisor; Testimony of JDS).
19. A few days after the fair hearing, JDS was in a car accident and he injured his leg. He was a passenger in the vehicle and the accident not at fault. He was unable to work through the summer or attend his class due to his disability. (Exhibit 7).
20. By September 2017, JDS was well enough to return to work and his former employer put him back on the schedule. He enrolled in three classes for the fall 2017, semester. He was not eligible for financial aid due to his poor academic progress to date. The Department's expectations for JDS going forward were that he performed well academically and he continued to make payments toward his tuition which would allow him to be eligible for financial aid again. The Department continued to expect that he earn 6-9 credits per semester and that he continue to work part-time. (Exhibits 7-11).

Analysis

Department regulations provide that the Department is committed to assisting older adolescents and young adults in their transition to independence and self sufficiency. Towards that end, the Department may elect, on a case by case basis, to continue to serve children as they turn 18 years of age until their 22nd birthday. The decision to continue to serve individuals beyond age 18 is based upon their educational and/or rehabilitative needs, their willingness to enter into an agreement with the Department, and the availability of resources. Such decisions require the approval of the Area Director. 110 CMR 8.02.

The Department's Permanency Planning Policy sets forth guidelines for continuing to provide services to youth in the Department's care and custody beyond their 18th birthday

until they turn 22 or the age of 23 under certain circumstances. The purpose of the "sustained connection" policy is to support the young adult in preparing to achieve success in living interdependently in the community.

Permanency Planning Policy 2013-01, eff. July 1, 2013

In general, the guidelines assume a collaborative relationship between the Department and a young adult who is motivated to be successful and engaged in activities geared toward that end. The Department is allowed some flexibility in creating specific plans to meet an individual's needs and abilities, however, the priority is that the young adult will engage in a full time schedule of education/vocational programming or employment or a combination of the two that equals a full time schedule. The Department expects young adults to refrain from all criminal activity and to comply with the expectations set forth in service plan as well as those of any placement. Youth seeking a sustained connection with the Department must agree to a plan that meets those criteria.

If, at any time, the young adult fails to comply with the requirements set forth by the Department for sustained connection, the Department may elect to terminate the voluntary placement agreement (if applicable) and service provision. The Department must complete a 90 day transitional plan before terminating services and provide at least 30 calendar days of notice of the date services will be terminated and the case closed.

JDS was placed in Department custody through a Care and Protection petition when he was 17 years old. The Department placed him in foster care where he remained until he was able to move into his own apartment. JDS had never had behavioral issues while in Department custody and he had always been known to be a mature and motivated youth and young adult.

The Department entered into a voluntary placement agreement with JDS just before his 18th birthday in September 2016. He set goals for himself including attending community college, obtaining employment and moving into his own apartment. He enrolled in 6 classes for the fall 2016, semester even though the Department's expectation was that he take 2-3 classes per semester. His decision to take a heavy course load was likely too ambitious and it apparently cost him as he failed all of his classes. He did not register for the spring semester and he was still not employed.

By March 2017, the Department gave JDS notice that his case would close in 90 days. Simultaneously, the Department developed an action plan for JDS that would secure his compliance with his voluntary placement agreement and service plan. It was expected that he would enroll in 2 summer classes (a more reasonable schedule) and obtain a part time job. Thereafter, JDS took a course required to remove him from academic probation, he enrolled in two classes and he was applying for jobs. He obtained employment by late April or early May. He was on track to be back in compliance with Department expectations which led to a continuance of his appeal of the case closing decision through September. Unfortunately and through no fault of his own, he sustained an injury in a car accident which prevented him from continuing to work or attend school over the summer.


Nevertheless, he returned to work when he was able to and he enrolled in three classes for the fall 2017, semester.

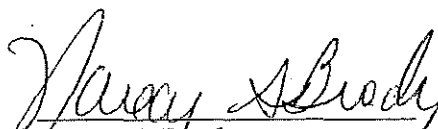
Clearly, JDS struggled to move forward toward his goals and independence over the past year; however, this was not a case of a young adult sabotaging his success through irresponsibility, negative or self destructive behaviors or consistently demonstrating an unwillingness or inability to meet the Department's expectations. In the interest of fulfilling the Department's commitment to support youth during the transition to independence, it would be unreasonable to not allow an otherwise motivated and capable, but struggling adolescent a certain amount of leeway when assessing compliance. Given his history, I find that JDS has the motivation and ability to be successful and remain in compliance with his voluntary placement agreement.

Considering all of the evidence, I find that, as of September 30, 2017, JDS was in compliance with his voluntary placement agreement. He was enrolled in 3 classes and he was working part time and the Department cited no particular requirement or service plan task JDS was not fulfilling. I find that the Department's decision to close JDS's case at that time was without a reasonable basis.

Conclusion and Order

As of September 30, 2017, the Department's decision to close JDS' case and terminate services is without a reasonable basis and, therefore, the Department's decision is REVERSED.


Anne L. Dale Nialetz,
Administrative Hearing Officer


Nancy S. Brody
Supervisor, Fair Hearing Unit

11-22-17
Date

Date

Linda S. Spears
Commissioner