

**The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
Office of the General Counsel
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**IN THE MATTER OF:
W.W.**

FH# 2017-0525

FAIR HEARING DECISION

Mr. W.W., the Appellant in this case, appealed the Department of Children and Families' [hereinafter "DCF" or "the Department"] [REDACTED] Area Office decision to terminate his voluntary placement agreement [VPA] and closed his case, pursuant to 110 CMR 10.06 (10).

Procedural History

The Appellant is a nineteen year-old adult who, following his 18th birthday in 2016, entered into a voluntary placement agreement ["VPA"] with the Department to continue receiving services. On March 27, 2017, the Department officially informed the Appellant that his case would be closed on April 26, 2017 because he had failed to comply with the tasks requested of him in order to continue services and supports from the Department. On April 26, 2017, the Appellant filed a request for Fair Hearing ["Hearing"], which was granted. On June 21, 2017, the Appellant's Hearing was held at the Department's [REDACTED] Area Office in [REDACTED], MA. Present were the Appellant's DCF On-Going Supervisor, T.D; the Appellant's DCF On-Going Social Worker, A.P.; and the Appellant. All parties were sworn in and testified at Hearing. The proceeding was digitally recorded, pursuant to 110 CMR 10.29, and downloaded to compact disc. Admitted into evidence for the Department was the Department's Case Dictation Report on the Appellant's Involvement [Exhibit A] and the Department's March 27, 2017 Case Closing Letter to the Appellant [Exhibit B]. Admitted into evidence for the Appellant was the Appellant's Request for Appeal [Exhibit 1]. The Hearing Record was closed on July 7, 2017 after receipt of Exhibit A but without further response from the Appellant.

In accordance with 110 C.M.R. 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement, or bias in this case.

Pursuant to 110 C.M.R. 10.21 (1), the Hearing officer need not strictly adhere to the rules of evidence. The Massachusetts Rules of Evidence do not apply but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and attorney client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Standard of Review

The issue presented in this Hearing is whether, based on the evidence and the Hearing record as a whole, the Department's decision or procedural action, in terminating the Appellant's VPA and closing his case, 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 question 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. The Appellant was born on September 14, 1997. He turned eighteen in 2016 and signed a Voluntary Placement Agreement [VPA] to continue services with the Department. At the age of nineteen, he received a letter from the Department, dated March 27, 2017, informing him that his case was closing on April 26, 2017. On April 26, 2017, one day shy of his case closing, the Appellant requested an appeal of the decision. [Exhibit B; Exhibit 1; Testimony of Supervisor]
2. The Department made a decision to close the Appellant's case because the Appellant failed to comply with tasks requested of him. He was and is not in school, provided no proof of employment, misused EVT funds, picked up criminal charges and a civil charge last year, and did not consistently meet with his DCF social worker, lead agency personnel, or his IFC case manager. He declined to provide a current address; instead, providing his pastor's address for the purpose of receiving his Hearing decision. In addition, the record raises concerns about the Appellant's questionable credibility relative to his reports about his schooling and employment, and about his lack of follow through. [Exhibit A; Exhibit B; Testimony of Supervisor; Testimony of Social Worker; Testimony of the Appellant]
3. The Appellant graduated from high school in 2016 and enrolled in freshman classes at ██████████ Community College the following September, but did not attend and did not withdraw from classes on time. He had been working with an outreach adolescent social worker out of DCF Central Office since July 2016 and was in DCF foster placement at this time. [Administrative Record]
4. Because the Appellant did not attend class or withdraw in time, his financial aide was partially denied, causing him to owe the school \$1400. The Appellant's outreach adolescent social worker issued an ETV [Education and Training Voucher] check for

\$1,000 to the Appellant, told him to sign it over to the school for payment, and informed him he would have to pay the remaining balance himself. The Appellant did not follow through on signing over the check; instead, he used the money to obtain a hotel room and party with his friends, which resulted in criminal charges being brought against him -disorderly conduct and persons with liquor under twenty one- and a civil charge for a rejection sticker on his car. Because of this, the Appellant's adolescent outreach social worker closed his case, but otherwise agreed to maintain contact with him.

5. The Appellant did not dispute paying for a hotel room, though claims it was not with the ETV money. He said that someone else gave him the money to put on his debit card. The Appellant did not dispute there was a party. He said there was smoking, but he was not there at that time, and they were kicking everyone one out. The Appellant reported that he was fined \$250 for smoking and \$70 for violating, and had to pay that the next day. He was pulled over and arrested and charged with violating, was bailed out, and had to take money out to get his car out, because it had been towed. [Exhibit A; Testimony of the Appellant]
6. Although the Appellant expressed an interest in signing up for college classes for the fall of 2017 [Testimony of the Appellant], the Appellant is not eligible for ETV funds for future semesters, until his school bill is paid, nor is it likely that the adolescent outreach social worker will re-open his case given his misuse of funds. [Administrative Record]
7. The Appellant had been placed in an IFC [Intensive Foster Care} home with a provider, who was a pastor. He was placed in 2016. While there, he did not follow the house rules, to include curfews and smoking marijuana. [Administrative Record]
8. The Appellant had been given a \$1290 housing voucher to fund his stay in an apartment so he could become his own vendor. He initially found one, but it was sold before he could meet about it. The voucher thereafter expired, but the Appellant was given an extension. [Administrative Record]
9. On December 22, 2016, the Department wrote a closing summary on the Appellant's case, because he was not in school. In lieu of this, the Appellant was [reportedly] working two jobs to finance his automobile. In addition, the Appellant had misused his ETV and sustained related criminal charges and a civil charge. Nor had he found an apartment, though he had a voucher. [Administrative Record]
10. The Department met with the Appellant and informed him that his VPA would be terminated. The Department exercised considerable efforts to assist the Appellant in finding alternative housing, before closing his case. The pastor was approached, but declined to let the Appellant rent a space in his home, if the VPA was terminated. The Appellant was also provided with a list of housing resources. [Administrative Record]

11. On or about April 27, 2017, the Appellant was transitioned from the pastor's home to another IFC home, where he had previously stayed for respite. However, the Appellant only stayed there for one night thereafter. The IFC referral was closed in May 2017. [Administrative Record]
12. The Appellant reports staying at various Airbnb apartments now, declined to provide an address, and reported that it is too costly to obtain a post office box to receive mail. [Exhibit A; Testimony of the Appellant]
13. Although the Appellant reported being employed, then and now, [Exhibit A; Testimony of the Appellant], he did not provide the Department nor the Hearing Officer with proof. [Administrative Hearing]
14. During his involvement with the Department, the Appellant was not always *consistent* in meeting with his DCF social worker, lead agency personnel, or his IFC case manager. [Administrative Record]

Analysis

A young adult may appeal the denial of a request to continue to receive services, including placement services, from the Department, 18 years of age or older. [110 CMR 10.06 (10)]. At age nineteen, the Appellant requested an appeal of the decision made by the DCF Hyde Park Area Office, to terminate his VPA and close his case. This request was granted and the Appellant's Hearing held on June 21, 2017e.

Applicable statutes, regulations and policies pertaining to the instant case include, but are not limited to, the following.

The Department is committed to assisting older adolescents and young adults in their transition to independence and self-sufficiency." As such, the Department continues ...to serve children as they turn 18 years of age and up until their 22nd birthday, to the extent that other departments (for example, ...DMH,...DMR, etc.) are not primarily responsible for such persons. The decision to continue to serve individuals beyond age 18 years of age is based on 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

Pursuant to M.G.L. C.119, §23(f),¹ the Department has a mandate that it "...shall offer to continue its responsibility to any young adult² who is under the custody, care, or responsibility of the department including, but not limited to, those persons who meet any of the criteria set forth in 42 USC §675(8)(B)(iv): (i) for the purposes of specific educational or rehabilitative programs, or (ii) to promote and support that person in fully developing and fulfilling that person's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the department and that person.

¹ As amended by 2010, 359, Sec. 19, effective January 3, 2011.

² "Young adult" is defined as a person between the ages of 18 and 22. (M.G.L. c.119, s.21.)

As per 42 USC §675(5)(H), “during the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under paragraph (8)(B)(iii),³ ... a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.” Id.

The Department's case closing policy dictates that the reasons for case closing may include, but not be limited to: the social worker and client agree that Department services are no longer necessary; the child[ren] has reached eighteen and is living independently; the child[ren] has reached age eighteen and the family is no longer in need of DSS services; a CHINS petition is dismissed or a child is committed to another state agency [e.g. DYS] and the family is no longer in need of DSS services; a voluntary applicant withdraws the application, requests case closing or refuses to participate in assessment, services planning or case review; a family who was the subject of a supported 51A Report refuses further DSS services despite reasonable casework efforts, and there are no grounds for legal action, as determined by the social worker and supervisor, in consultation with a DSS attorney; the child[ren] has been adopted or placed with a guardian, and the family is no longer in need of services [other than adoption or guardianship subsidies]; and, the family has moved and, despite reasonable casework efforts, their whereabouts are unknown. A case cannot be closed as long as DSS has court-ordered custody of the child[ren]. [DCF Policy #86-007, Revised 7/8/08]

The Department's mandate with respect to its policy and procedures for Permanency Planning for Youth in Department Placements is provided in the Department's Permanency Planning Policy – Section 1 - pp. 52-63 (Effective 7/1/13):

Young Adult: A young adult is a person between the ages of 18 and 23.

Referral for Adolescent Outreach Services. Youth/young adults in placement who are between the ages of 16 and 21, who are likely to remain or have remained in Department care or custody until at least 18 are eligible for Adolescent Outreach services in accordance with established federal guidelines. ... Department Social Workers ... may refer the youth/young adult to the Adolescent Outreach Program or the Adolescent Services Unit in Central Office when they determine that a youth/young adult needs additional support in developing life skills and/or educational or vocational planning.

Support for Continuing Education. The Department expects youth/young adults in placement to attend school regularly, to do their best in school, to graduate from high school or obtain a GED, and whenever possible, to continue their education in college or a vocational program after high school. Youth/young adults who remained in Department custody until age 18 or reconnect with the Department after turning age 18, ... may be

³ A young adult “who has not attained 19, 20, or 21 years of age...” (42 USC §675(8) (B) (iii)).

eligible for various educational supports up to the age of 25, including: Foster Child Grant Program; Education and Training Voucher Program; Tuition and Fee Waiver Program; and, the William Warren Scholarship Program.

Planning Sustained Department Connection. The Department continues the provision of services beyond age 18 to young adults who remain in Department care or custody until their 18th birthday. The Department will offer each young adult the opportunity to continue with Department services beyond the age of 18. ...

Criteria for Sustained Connection. For a young adult to continue receiving services from the Department beyond the age of 18, the young adult must meet one of the following criteria: (a) completing secondary education or a program leading to a GED; or (b) be enrolled in a post-secondary or vocational education program or trade school, full or part time; or (c) participate in a program or activity designed to promote, or remove barriers to employment; or (d) be employed for at least 80 hours per month; or (e) be incapable of doing any of the above education or employment activities due to a medical condition; or (f) participate in a program or plan which promotes specific educational or rehabilitative skills; or (g) participate in a program which promotes and supports the young adult in fully developing and fulfilling the young adult's potential to be a participating citizen of the Commonwealth under conditions agreed upon by both the Department and the young adult.

Voluntary Placement Agreement (VPA). In order to continue in placement (or reenter placement), the youth/young adult signs a VPA for Young Adult Over 18 during the month prior to turning 18, or at the time they reenter placement. (Note: The six month limit on VPA's does not apply in cases involving youth over age 18; however, the VPA must be reviewed at least every six months and revised, if necessary.) A new VPA must be completed every 12 months.

Termination of a Young Adult's VPA. If, at any time, the young adult fails to comply with the requirements for sustained connection, the Department may elect to terminate the VPA and service provision. The Department must provide at least 30 calendar days' notice of termination of the VPA to the young adult, along with notice of the young adult's right to challenge the termination through the Department's fair hearing process. The young adult has the right to request a fair hearing to appeal the termination of services. The Department must also complete the 90 day transitional planning with the young adult prior to termination of the VPA.

90 Day Notice and Discharge/Case Closing Plan. Planning for discharge and case closing can begin at many different points, but the Department must, beginning 90 calendar days prior to discharge and case closing, provide a transition planning process in collaboration with the youth/young adult, based on an assessment of her/his readiness for living interdependently in the community, age and follow up supports. ... The Department must provide written notice to the youth/young adult at least 30 calendar days prior to the anticipated date of discharge from placement and case closing (which may occur later).

Department regulation dictates that the filing of a request for fair hearing shall stay or otherwise affect the implementation of the challenged decision, when a request is made to deny services or to reduce the quantity of services and to close a recipient's case 110 CMR 10.09.

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; 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.

Upon review of the parties' evidence, the Hearing Officer finds for the Department in the matter under appeal. See Findings #1-#14 and the below discussion.

Based on the record as a whole and giving due weight to the clinical judgment of Department social workers, the Hearing Officer finds this nineteen year-old Appellant signed a voluntary placement agreement in 2016, when he turned eighteen, in order to continue receiving services from the Department. The Appellant had completed high school in 2016, and subsequently enrolled in freshman college classes, but elected not to attend and did not withdraw from his classes on a timely basis, despite reminders from the Department to do so. The Department provided the Appellant with a \$1,000 ETV to pay the school's bill related to this matter; yet, the Appellant used the money to obtain a hotel room to party with his friends and/or to pay his bail and fees related to his arrest and the charges brought against him in connection with this incident. As a consequence, the Appellant's adolescent outreach social worker, who provided educational support, closed his case. Secondly, during his involvement with the Department, the Appellant consistently told his DCF ongoing social worker and other agency personnel about the various jobs he was holding and about pending interviews with employers, yet, provided no proof of actual employment or bank statements. Nor did the Hearing Officer receive such evidence at Hearing. Third, the Department provided the Appellant with housing assistance. The Appellant was placed in two separate IFC homes. During his first IFC placement, he did not comply with curfews and smoked marijuana in the home and/or property. Following his placement in the second home, the Appellant only stayed over one night. As a result, his IFC referral was closed. The Appellant was also given a housing voucher to help pay for an apartment. The voucher expired and then was extended. To date, there is no evidence that the Appellant actually used the voucher to obtain an apartment so he could become his own vendor. At the present time, the Appellant has declined to provide an address for his present living situation. Although the Appellant should be applauded for requesting this appeal and showing up to argue his case, the history of his involvement with the Department does not convince this Hearing

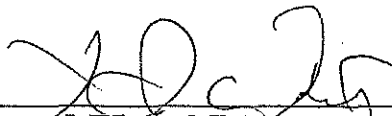
Officer that the Appellant's behavior has changed, i.e., that he will follow up, that he will not misuse Department funds, that he will attend college classes and consistently connect with his social workers and other agency personnel, and that he will be honest and forthright with his social workers about what he is actually doing and where he is living.

The Hearing Officer has not found any information offered by the Appellant to be substantial or compelling to such an extent that the Department acted unreasonably and/or abused its discretion in making its decision in this matter. Based upon a review of the evidence presented at the Hearing, including testimony from the parties and documents submitted, the Hearing Officer finds that the decision was made in conformity with its regulations, supported by sound clinical judgment, and that there was a reasonable basis for the decision. The Appellant failed to meet his burden of proof. [110 CMR 10.23]

Order


1. The Department's decision of March 27, 2017, to Terminate the Appellant's Voluntary Placement Agreement and Close his Case, is AFFIRMED.

8-29-17
Date



Frances I. Wheat, MPA
Administrative Hearing Officer
Office of the General Counsel

8-29-17
Date



Cristina Tedstone
Deputy General Counsel
Office of the General Counsel