

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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LINDA S. SPEARS
Commissioner

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(IN THE MATTER OF)
(SG)
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(FH # 2017-0670)
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HEARING DECISION

Procedural History

The Appellant in this Fair Hearing is SG. The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") close the ongoing case affiliated with his family. Other family members include ME, and D. ME is the Appellant's former wife. D is the Appellant's daughter, with whom he shares custody with ME.

The Department had opened up an ongoing case with this family as a result of a substantiated concern decision through a 51B Response for physical abuse of D, by ME. The Department decided to close the ongoing case after completing a Family Assessment and Action Plan (FAAP). The Department informed the Appellant of its decision and of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on August 3, 2017 at the Department of Children and Families' Hyde Park Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
SG	Appellant
HB	DCF Area Program Manager
FB	DCF Supervisor
LA	DCF Area Program Manager

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 a digital voice recorder, pursuant to 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing. The record was left open and the Appellant submitted additional documents. The record closed on August 10, 2017.

For the Department:

Exhibit A: Family Assessment

For the Appellant:

Exhibit 1: Photos of D's leg and arms, dated 1/20/17 (submitted after the Fair Hearing)

The Hearing Officer need not strictly follow the rules of evidence... Only evidence which is relevant and material may be admitted and form the basis of the decision. (110 CMR 10.21)

Statement of the Issue

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole: (a) 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; or (b) 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. The Appellant and ME are the biological parents of D. At the time of the FAAP, D was ten (10) years old. (Exhibit A p.9; Testimony of FB; Testimony of Appellant)
2. There has been an ongoing probate dispute between the Appellant and ME regarding D. At the time of the Fair Hearing, ME had physical custody and both parents shared legal custody. D resided with ME, and visited the Appellant every other weekend. The Appellant did not believe D was safe with ME and pursued full custody of D. (Exhibit A p.2; Testimony of FB; Testimony of Appellant)

3. In February, 2017 an ongoing DCF case opened as a result of a substantiated concern of physical abuse of D by ME. ME had spanked D because she was frustrated with D's behaviors. (Exhibit A p. 4; Testimony of FB)
4. During the FAAP process, the Department contacted various collateral contacts regarding D; which included D's school and pediatrician. None of the collateral contacts expressed any protective concerns regarding ME's care for D. During the FAAP, ME was obtaining additional therapeutic services for D, including a group therapy session at her school. (Testimony of FB; Exhibit A p.12)
5. At the time of the case closing, neither ME nor the Appellant had requested additional further services from the Department. (Testimony of FB; Exhibit A p.12)
6. The Appellant testified his only interaction with the Department was a single home visit with the FAAP worker. During that visit, the Appellant was informed the DCF case would be closing. The Appellant stated he had not been provided with any other documentation or information from the Department. (Testimony of Appellant)
7. The Appellant testified that ME had repeatedly beat D and left her with scars. The Appellant elaborated by stating ME made D get naked and beat her and covered her with grease; that ME forced D to sleep in the living room. (Testimony of Appellant) I do not find the Appellant's testimony persuasive. There was no evidence to corroborate the Appellant's testimony. There have been no other 51A's or other information obtained that corroborates the Appellant's testimony.
8. The Appellant wanted the case to remain open in order to have ongoing assessments of D's safety. (Testimony of Appellant)
9. After the Fair Hearing, the Appellant submitted photos to corroborate his testimony regarding ME leaving scars on D's body as a result of physical abuse. Upon examination of the photos, it is indeterminable whether slight discolorations, if any, are scar tissue, or are the result of any physical abuse or discipline. (Exhibit 1)
10. I find that the Department followed its regulations and policies in its decision to close this case for the following reasons:
 - a. There was never a supported 51B of physical abuse in this case.
 - b. The Department contacted collaterals involved with the family and none of them had any protective concerns.
 - c. Neither the Appellant nor ME requested any specific services from the Department.

Applicable Standards

A recipient of services from the Department has the right to appeal, through the Fair Hearing process, the suspension, reduction or termination of a service. 110 CMR 10.06

DCF Policy #86-007, Case Closing Policy **POLICY**

To the fullest extent possible, the decision to close a case is a joint one, agreed upon by the Social Worker and the family. All case closings must be approved by the Supervisor and by the Area Director/designee. The Area Director is responsible for ensuring that cases which no longer require Department services are closed in a timely manner in accordance with these policy and procedures.

Reasons for case closing may include but are not limited to:

- the Social Worker and client agree that Department services are no longer necessary.

110 CMR 9.03 Case Closure **Procedures:**

(1) The Social Worker And His/Her Supervisor Make The Case Closing Decision. Case closing is a clinical decision between a social worker and his/her supervisor, which decision is thereafter discussed with the client family. Case closing takes into consideration the slated goals of the case, the individual's or family's participation in services, the reduction of risk to the child, legal issues, and the Department's responsibility to provide services. When a family which is the subject of a supported 51A report refuses further Department services, and if the social worker and/or supervisor wish to seek court-ordered custody of the children in question, then a consultation with a Department attorney shall be conducted to determine if there are grounds for legal action. The social worker documents in writing in the case record the outcome of this consultation. If legal action is not warranted and despite reasonable casework efforts, the family persists in refusing Department services, the social worker documents this in the case record and proceeds to close the case, by following the procedures set forth in 110 CMR 9.00.

(2) A Plan Is Developed For Case Closure. The social worker and his/her supervisor determine what activities are necessary to prepare the case for closing, and complete these activities.

110 CMR 1.02 Principles of Service

In delivering service to children and families the Department shall:

- (1) seek to ensure the safety of children;

- (2) recognize that, consistent with the need to ensure the safety of children, the family is the best source of child rearing, and so require that state intervention into a family unit be used only when it is clearly needed to protect a child . . .

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, or (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, or (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 and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

Analysis

The Department's principle is to ensure the safety of children and intervene when needed to protect a child. 110 CMR 1.02. In this case the Appellant contested the Department's closing of the ongoing DCF case. Initially, the case was opened due to a substantiated concern of physical abuse of D by her mother ME in February, 2017. The Department completed a FAAP and during this process, they met with the family members and contacted collaterals associated with the family. The Department determined the case could close as there were no expressed protective concerns regarding ME's care for D. ME was procuring services outside of the Department for additional counseling for D. Additionally, no additional services were requested by either ME or the Appellant.

At the Fair Hearing, the Appellant argued that more needed to be done to ensure D's safety. However, he provided ~~no persuasive evidence to support~~ his position. Photos he submitted after the hearing show some slight discolorations on some areas of D's legs and arm. In spite of this, there was no evidence to show that these discolorations are scar tissue resulting from physical abuse, as the Appellant contends. It is indeterminable as what these photographs are depicting. Moreover, there have not been additional 51A's filed on behalf of D. Further, the Appellant and ME are in the midst of a probate custody dispute regarding their daughter.

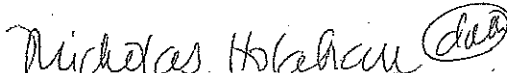
I do not find that the Appellant offered any compelling evidence to demonstrate that the Department acted unreasonably, and/or abused its discretion, in making its decision to close this case. I find that the Department has correctly adhered to the applicable policies

and regulations regarding a Family Assessment and Action Plan (FAAP) and subsequent case closing.

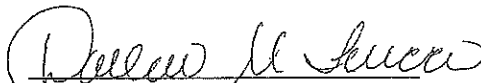
Conclusion and Order

Based upon a review of the evidence, I find the Department's decision to close the Appellant's case was made in conformity with its policies and regulations and with a reasonable basis and is **AFFIRMED**.

This is the final administrative decision of the Department. If 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, or in Suffolk County, within thirty (30) days of the receipt of this decision. *See*, M.G.L. c.30A, §14. In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Nicholas Holahan
Administrative Hearing Officer

4/19/18
Date


Darlene M. Tonucci, Esq.
Supervisor, Fair Hearing Unit