

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
BOSTON, MASSACHUSETTS 02111

LINDA S. SPEARS
COMMISSIONER

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

IN THE MATTER OF)
)
M. S.)
)
FH # 2017 0698)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Mr. M. S. (hereinafter "MS" or "the Appellant"). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to close the Appellant's case with the Department pursuant to 110 CMR 8.00.

The Appellant had been a client of the Department of Children and Families as both a child consumer and as a young adult. On May 16, 2017, the Appellant was sent a 90 day written notice that the Department would be terminating services and closing his clinical case. A 30 day written notice was also sent to the Appellant on July 18, 2017, notifying him that DCF services and the closing of his clinical case would occur on August 17, 2017. The Department informed the Appellant of his right to appeal the Department's determination. The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06.

The Fair Hearing was held on August 10, 2017, at the Department of Children and Families' Worcester West Area Office. All witnesses were sworn in to testify under oath. The record remained open until August 17, 2017, to allow for the submission of additional documents to be entered into the record.¹

The following persons appeared at the Fair Hearing:

Anastasia King
Mr. M.S.

Administrative Hearing Officer
Appellant

¹ Exhibits:

For the Department: #2 - #5
For the Appellant: #H

Mr. J.F.
Mr. R.V.
Ms. V.K.

DCF Supervisor
DCF Social Worker
Witness – Appellant’s Clinician

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

For the Department:

- Exhibit 1: DCF Family Action Plan
- Exhibit 2: 90 Day Written Notice to the Appellant from the Department
- Exhibit 3: 30 Day Written Notice to the Appellant from the Department
- Exhibit 4: DCF Case Dictation Reports
- Exhibit 5: Numerous E-mail Correspondences

For the Appellant:

- Exhibit A: Appellant’s Request for a Fair Hearing
- Exhibit B: Neuropsychological Evaluation
- Exhibit C: Treatment Plan Summary
- Exhibit D: Letter of Support
- Exhibit E: Statement of Appellant and Statement by [REDACTED] Service
- Exhibit F: DCF Youth Assessment Tool
- Exhibit G: Residential Adult Comprehensive Assessment
- Exhibit H: E-mail Correspondence – 136 Attachments (See, Enclosed CD)

Issue To Be Decided

The issue presented in this Fair Hearing is whether the Department’s decision to decline the Appellant continuation of services was made in conformity with its policies and/or regulations and if not, whether the violation(s) resulted in substantial prejudice to the Appellant 110 CMR 10.09(2); 110 C.M.R. §10.06(8) (c).

Findings of Fact

1. The Appellant of this Fair Hearing is Mr. M.S. (“MS” or “the Appellant”), a 20-year old male at the time the Fair Hearing held on August 10, 2017. (Testimony of Appellant)
2. The Appellant had been involved with the Department since 1998, and was placed in the custody of the Department in 2001, when the Appellant was approximately four years old. (Exhibit 1, p.1; Exhibit B, p.2)

3. The Social Worker assigned to the Appellant's case, Mr. R.V. ("RV" or "Social Worker") and had been working with the Appellant for approximately one year. (Testimony of SW)
4. The Appellant had numerous foster care placements, and a disruption of a pre-adoptive home in 2009, at which time the Appellant was placed in an Intensive Foster Care ("IFC") home. Due to the Appellant's difficult and challenging behaviors in 2012, the Appellant was placed in a therapeutic residential program for approximately five months, before placement in another IFC home. The Appellant threatened the foster parents and was moved from the IFC home after one week. He remained in a respite IFC home until being placed at [REDACTED] a pre-independent group home in January, 2014. However, as a result of the negative behaviors the Appellant displayed, as well as the lack of progress made at the program, the Appellant was placed in the [REDACTED] program ([REDACTED] or "the program") in November, 2016. [REDACTED] was an intensive group home that provided the Appellant a higher level of care and structure. (Exhibit 1, p.1; Exhibit D, p.1; Testimony of Appellant; Testimony of Witness)
5. The Appellant was diagnosed with Attention Deficit/Hyperactivity Disorder, Mood Disorder NOS, Post-Traumatic Stress Disorder, and Oppositional Defiant Disorder. Although prescribed medication in the past, the Appellant was not taking any medications, by his choice, at the time of the Fair Hearing. (Exhibit B, p.1; Testimony of Appellant)
6. At the time of the Fair Hearing, the Appellant remained at the [REDACTED] program under DCF voluntary services. (Exhibit D, p.1; Testimony of Appellant)
7. According to a written statement from the program submitted by the Appellant, the Appellant regularly accessed the following treatment options at [REDACTED]. (Exhibit E, p.1)
 - Structured weekly therapy
 - Ongoing coaching
 - Daily skill building with milieu interventionists
 - Weekly Life Skills coaching
 - Trauma-sensitive yoga
 - Crisis support in the moment
8. The Appellant did not graduate from high school and had made no serious attempts to attain his General Equivalency Diploma ("GED"). (Testimony of Appellant)
9. At the time of the Fair Hearing, the Appellant was unemployed. The Appellant was last employed in June, 2017. The Appellant quit this employment after four days. (Testimony of Appellant)
10. The Appellant had no job interviews since his last employment. (Testimony of Appellant)

² [REDACTED] is an acronym for [REDACTED] (Testimony of Witness)

11. When asked by this Hearing Officer what the Appellant did with his time during the day, the Appellant replied, "I walk around with my friend, sometimes we look for jobs, sometimes we just hang out". (Testimony of Appellant)
12. The Appellant continuously failed to follow the program rules and the Department's Family Action Plan. The Appellant frequently left the [REDACTED] program without permission, returned to the program at times smelling of marijuana and appearing to be under the influence of marijuana. The Appellant was unable to sustain the minimal expectations of either being employed or actively working towards attaining his GED. (Exhibit 1; Testimony of Supervisor)
13. The Appellant met with the SW regularly. The Appellant reviewed and was familiar with the contents of the most recent Family Action Plan between himself and the Department. (Testimony of SW; Testimony of Appellant)
14. The Appellant attended quarterly treatment team meetings held in December of 2016, and February of 2017, which included his clinician and SW. The Appellant was fully aware of what was expected of him and that the behaviors he had been displaying were not acceptable. The Appellant was aware that he risked having his services and clinical case with the Department terminated as a result of his non-compliance. (Testimony of SW; Testimony of Appellant)
15. On or about May 16, 2017, as a result of the Appellant's failure to comply with programmatic rules, his use of illegal substances, and his failure to follow Family Action Plan tasks, the Department provided the Appellant with a written 90 day notice of the termination of DCF services and the closure of the Appellant's DCF clinical case. (Exhibit 2; Testimony of Supervisor)
16. One week prior to the Appellant's scheduled May quarterly treatment team meeting, the SW, at the request of the Appellant's clinician, spoke to the Appellant and clinician, via conference call, and informed the Appellant of the 90 day notice to terminate DCF services and the closing of his DCF clinical case. (Testimony of SW; Testimony of Witness)
17. The Appellant remained at the program after receiving the 90 notice to terminate his DCF services. The Appellant was able to continue to utilize the services available to him at the program. The SW ensured that the Appellant had his birth certificate, social security card, and had obtained his state identification card. During a placement visit with the Appellant on July 18, 2017, the SW ensured that the Appellant was aware of the support services in the area and also provided the Appellant with a guide to community services. (Exhibit 4, p.3; Testimony of SW)
18. On or about July 18, 2017, as a result of the Appellant's continued failure to comply with the programmatic rules, Family Action Plan tasks, and his continued use of illegal substances, the Department provided the Appellant with a written 30 day notice of the termination of DCF services and the closure of the Appellant's DCF clinical case on August 17, 2017. (Exhibit 3; Testimony of Supervisor)

19. As of August 11, 2017, the Appellant had 43 incidences of leaving the program's property without permission during a three month period. Twelve of the incidences were considered "critical" incidences, meaning the Appellant was missing for over two hours or the incident involved the police. (Exhibit 4, p.2; Testimony of Witness)
20. The Department's decision was made in conformity with its policies and with a reasonable basis. (110 CMR 2.00, 4.32)

Applicable Standards and Analysis

To prevail, an Appellant must show by a preponderance of the evidence that the Department's decision or procedural action was not in conformity with the Department'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 the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. (110 CMR 10.23)

Among the applicable standard in this case is 110 CMR § 8.02, which states, in part: "The Department is committed to assisting older adolescents and young adults in their transition to independence and self-sufficiency. Towards this end the Department may elect, on a case by case basis, to continue to serve children as they turn 18 and up until their 22nd birthday, to the extent that other departments (for example, DMH, DDS, etc.) are not primarily responsible for such persons. The decision to continue to serve individuals beyond age 18 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."

The provision of support for older adolescents and young adults is codified within the General Laws, which in part state: "The Department *shall* offer to continue its responsibility to *any* young adult³ who is under the custody, care, or responsibility of the department ... (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" (emphasis added). (MGL c. 119, § 23 (f)) [Effective on January 3, 2011 as amended]

The basis for the Department's decision to terminate the Appellant's services and close his clinical case was based on its determination that the Appellant no longer met the criteria for continued support by the Department. This determination was based on the Appellant's failure to comply with programmatic rules, as well as the Appellant's use of illegal substances, and failure to follow Family Action Plan tasks. (110 CMR § 8.02; MGL c. 119, § 23 (f)) [Effective on January 3, 2011 as amended]

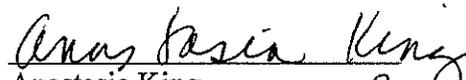
³ Young adult is defined as a person between the ages of eighteen and twenty two.

The evidence presented supported the Department's conclusion that the Appellant failed to make sufficient progress toward the goal of independent living through no fault of the Department or lack of specific services, but due to the Appellant's continued non-compliance which ultimately resulted in his failure to meet the criteria necessary for the Department's assistance to continue.

Conclusion

The Department's decision to close the Appellant's clinical case 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, he may do so by filing a complaint in the Superior Court for the County in which he lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)


Anastasia King
Administrative Hearing Officer

Date: October 2, 2017


Barbara Curley, Supervisor