

**The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Children and Families  
Central Administrative Office  
600 Washington Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02111**

**Linda S. Spears, Commissioner**

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**IN THE MATTER OF: CD**

**Fair Hearing #20170712**

**FAIR HEARING DECISION**

Appellant, CD, appeals the decision of the Department of Children and Families (“Department”) to terminate his voluntary placement agreement and close his case.

**Procedural History**

Appellant and the Department entered into a Voluntary Placement Agreement at or about Appellant’s turning eighteen years old. On or about July 13, 2017, the Department decided to close Appellant’s case and terminate his voluntary services in ninety days. The Department notified Appellant in writing of its decision and of Appellant’s right to appeal. Appellant made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing took place on August 2, 2017 at the Department’s Area Office in Lawrence, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

JM	Department Supervisor
WD	Department Area Program Manager
KB	Department Family Networks Service Coordinator
CD	Appellant
CF	Residential Director
MG	Clinician

In accordance with 110 C.M.R. §10.03, the Hearing Officer attests to impartiality in this matter, having no direct or indirect interest, personal involvement, or bias in this case. The hearing was digitally recorded. All witnesses were sworn in to testify under oath. The record remained open until August 11, 2017 to afford the parties the opportunity to submit additional documentary evidence.

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

For the Department:

Exhibit A Voluntary Placement Agreement  
Exhibit B Family Action Plan  
Exhibit C Missing from Care forms  
Exhibit D E-mails  
Exhibit E Dictation  
Exhibit F Release rescission  
Exhibit G Closing letter  
Exhibit H Fair Hearing request

For Appellant:

Exhibit 1 Fair Hearing request/Department closing letter

The Hearing Officer need not strictly follow the rules of evidence.... Only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 C.M.R. § 10.21

**Statement of the Issues**

The issue for resolution is whether the Department's decision to terminate services and close Appellant's case is in conformity with Department regulations and/or policies and, if not, whether any regulatory violation resulted in substantial prejudice to Appellant. 110 CMR §10.05.

**Findings of Fact**

On the basis of my assessment of all the evidence presented, I make the following findings:

1. As a teenager, Appellant was in the care and custody of the Department initially through a CRA and then through a care and protection proceeding. [Testimony of Department Supervisor]

2. On June 21, 2016, Appellant turned eighteen years of age and entered into a Voluntary Placement Agreement with the Department. At that time, Appellant was residing at the [REDACTED] group home. [Exhibit A; Testimony of Department Supervisor]
3. Appellant had a "spotty" time at [REDACTED]. He would have periods of time when he would do well and periods of time when he would not. Between April 21, 2017 and June 8, 2017, Appellant would: leave the program without permission; physically fight with other residents; and not attend high school consistently. Appellant would not work on budgeting with the Department and offered no proof of a bank account or proof of employment.<sup>1</sup> He rescinded a release for the Department to speak with school staff in order to confirm his contention that he was scheduled to graduate from high school in August 2017.<sup>2</sup> [Testimony of Department Supervisor; Exhibit D]
4. On or about June 8, 2017, the Department provided Appellant with written notice that, due to noncompliance with the basic criteria for sustained connections with the Department, it was closing his case and terminating Department services effective in ninety (90) days. The notice stated that the Department would work with Appellant to develop a plan on obtaining alternative living arrangements and would continue to visit him once monthly until the case closing. [Exhibit 1]
5. On or about June 8, 2017, Appellant filed a request for a Fair Hearing relative to the Department's decision to close his case and terminate services. [Exhibit 1]
6. In June 2017, Appellant began meeting on a consistent weekly basis with the [REDACTED] clinician. Prior to this, the clinical work done with Appellant had not been consistent. Appellant had a positive relationship with the clinician and used him as a sounding board at times. [Testimony of Clinician]
7. On June 18, 2017, Appellant was involved in a physical altercation with a peer at [REDACTED]. The peer accidentally elbowed Appellant while they were playing basketball. Although the peer apologized several times, Appellant became verbally and physically aggressive and punched the peer in the back of the head as he was walking away. When staff intervened, Appellant threw the basketball at staff's face. The peer went to the police station to file a complaint against Appellant. The status of the complaint was unclear as of the date of the Fair Hearing. [Exhibit E, p.33; Testimony of Department Supervisor]
8. On June 26, 2017, Appellant broke off a metal rod from a chair in the group home dumpster and destroyed furniture (which was also in the trash) by hitting it with the rod. When staff prompted him to stop, Appellant called a female staff a "b-tch" several times. [Exhibit E, p.34]
9. On June 28, 2017, Appellant and his roommate began to simulate having sex. Staff attempted to redirect them. Appellant pulled his pants halfway down so part of his

<sup>1</sup> He reported that he worked for a landscaping company.

<sup>2</sup> The school offered Appellant the opportunity to attend "make up" missed school work during April vacation so that he could graduate in June 2017. Appellant did not avail himself of this opportunity.

buttocks were exposed. He then sat on the windowsill and began to make inappropriate comments and moaning noises towards female peers. Later in the day, Appellant walked around in his boxers and refused to put on pants when asked to do so by staff. [Exhibit E, p.36]

10. On July 4, 2017, Appellant pulled his pants down and exposed his buttocks to staff and peers. [Exhibit E, p.40]
11. On July 6, 2017, Appellant left the [REDACTED] group home on an unauthorized leave from 11:00 p.m. until 11:20 p.m. [Exhibit E, p.43]
12. Appellant had a trauma history and had difficulty in trusting other individuals. He put up a lot of defenses when asked to explain or prove himself. Appellant also did not like to be touched. [Testimony of Appellant; Testimony of Department Area Program Manager]
13. As of the date of the Fair Hearing, Appellant had gone with the [REDACTED] clinician to meet an outpatient therapist. [Testimony of Clinician]
14. Appellant had obtained his learner's permit and was taking a driver's education course. [Testimony of Appellant]
15. Appellant made use of the Life Skills coach at the [REDACTED] program. [Testimony of Appellant]
16. Appellant planned to attend [REDACTED] Community College for the Fall 2017 semester. [Testimony of Appellant]
17. Aside from a few hours on the weekends, Appellant was not working at the time of the Fair Hearing. [Testimony of Appellant]

#### Applicable Standards

The department shall offer to continue its responsibility to any young adult<sup>3</sup> 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.... If after termination the person requests that the department renew its responsibility therefor, the department shall make every reasonable attempt to provide a program of support which is acceptable to the person and which permits the department to renew its responsibility; provided, however, that the department may require the person to meet 1 of the criteria set forth in 42 USC § 675 (8) (B) (iv). M.G.L. ch.119, §21 [effective on January 3, 2011 as amended]

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

At the option of a State, the term shall include an individual - ...who is -

- (I) completing secondary education or a program leading to an equivalent credential;
- (II) enrolled in an institution which provides post-secondary or vocational education;
- (III) participating in a program or activity designed to promote, or remove barriers to, employment;
- (IV) employed at least 80 hours per month; or
- (V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child. 42 USC § 675 (8) (B) (iv).

**110 CMR 8.02 Service Continuation for Ages 18 through 22:**

The Department is committed to assisting older adolescent 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 years of age and up until their 22nd birthday, to the extent that other departments (for example, Department of Mental Health (DMH), Department of Mental Retardation (DMR), etc. are not primarily responsible for the such persons. The decision to continue to serve individuals beyond 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.

**Policy #2013-01 Permanency Planning Policy for Youth in Department Placement:  
Criteria for Sustained Connection, p. 55:**

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) Enrolled in a post-secondary or vocational education program or trade school, full or part time; or
- c) Participating in a program or activity designed to promote, or remove barriers to employment; or
- d) Employed for at least 80 hours per month; or
- e) Incapable of doing any of the above education or employment activities due to a medical condition; or
- f) Participating in a program or plan which promotes specific educational or rehabilitative skills; or
- g) Participating 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;

The Department places priority on young adult education and/or vocational training, preferably on a full-time basis, although discretion is exercised with regard to therapeutic demands on the young adult, special needs and/or learning disabilities. Most young adults will be expected to either work or participate in an educational/vocational program full time, or a combination of the 2 that equals a full-time schedule. Participation in

work/study programs is encouraged. Young adults who are attending educational/vocational training programs are required to sign releases of information and arrange for their grades, attendance records and GPA (when applicable) to be sent to the Department so that their progress toward living interdependently can be assessed. Young adults will also be required to provide documentation of their work hours.

**Termination of a Young Adult's VPA, p. 58:**

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. Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults p. 59-60

During the 90 calendar days prior to the case closing, the Department Social Worker, and the Adolescent Outreach Worker if applicable, collaborate with the youth/young adult to plan specific tasks/activities necessary to address identified needs and achieve targeted goals, as well as the person responsible to assist in the process. The discharge and transition planning should include a description of the resources that will be available to the youth/young adult and documents to be provided to the youth/young adult prior to case closing, including:

Appropriate and stable housing arrangements:

**"Appropriate Housing"** is defined as all housing except shelters, hotel/motels and dwellings that fail to meet governmental health and building code standards. Appropriate housing can include apartments, shared apartments, boarding homes, room and board arrangements and housing with biological parents, relatives, friends and former foster parents.

**"Stable Housing"** is defined as housing in which there would be reasonable expectation that the residence will remain accessible for the first 12 months after discharge.

Employment/source of income.

Appropriate community resources such as health insurance; medical, mental health and dental providers; recreational, educational, vocational, child care and legal services.

Consistent, caring adult(s) with whom the youth/young adult is anticipated to maintain a life long relationship.

The medical, dental and educational information from records held by the Department that will be provided to the youth/young adult, including but not limited to:

the names and addresses of the youth/young adult health and educational providers;

the youth/young adult grade level performance;

the youth/young adult school record;

- a record of the youth/young adult's immunizations;
- the youth/young adult's medications;
- information about the importance of having a health care proxy and a health care proxy form; and

- any other relevant health and education information concerning the youth/young adult determined to be appropriate by the Department.
  - Original Social Security card, birth certificate and Immigration documents that will be provided to the youth/young adult by the Department
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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

A Fair Hearing shall address (1) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party;.... In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision. 110 C.M.R. §10.05.

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department's or provider's decision was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party; (2) that the Department's or provider's procedural actions were not in conformity with the department's policies, regulations, or procedures and resulted in substantial prejudice to the aggrieved party; .... 110 C.M.R. §10.23.

### Analysis and Order

To prevail in this appeal, the Appellant must demonstrate, by a preponderance of the evidence, that the Department's decision to close its case and terminate services to Appellant was not in conformity with the Department's policies or regulations. Upon review of the record in light of applicable Department regulations and policy, I uphold the Department's decision.

Appellant needs support in order to reach his potential as a participating citizen of the Commonwealth. However, he has not shown the capacity to work with the Department in a consistent manner towards the goals of independent living. Prior to the date of the Fair Hearing, Appellant was not willing to provide the Department with releases to corroborate his progress in high school or his ability to manage his money and maintain a savings account. Prior to the Fair Hearing, Appellant did make some positive

changes in that he was able to work towards graduating from high school and he had developed a positive relationship with the [REDACTED] clinician. However, even after receiving the Department's 90 day closing letter, Appellant continued to engage in physical altercations with peers, engaged in sexually inappropriate behavior, and had at least one unapproved absence from the group home. There was no evidence of how many hours, if any, he was working. Although given time to do so, he did not provide proof of his high school graduation to the Hearing Officer.

In making determinations, a Fair Hearing Officer must defer to the clinical judgment of a trained social worker if there is a reasonable basis for the questioned decision. *See* 110 C.M.R. §10.05. Given the information provided, I do not find that the Department acted unreasonably and/or abused its discretion in making its decision to close Appellant's case and terminate services. Based upon a review of the evidence, I find the Department's decision to close Appellant's case and terminate services was made with a reasonable basis.<sup>4</sup> Therefore, the Department's decision is **AFFIRMED**. However, despite finding that the decision to terminate services is reasonable, the evidence is insufficient to conclude that the Department has completed appropriate transition planning with Appellant, i.e. as to where he will live, how he will support himself, how he will meet his medical and emotional needs. Therefore, in accordance with 110 C.M.R. §10.29(2), this matter is being **REMANDED** to the Lawrence Area Office for the following actions:

- Appellant's case shall remain open for a period of ninety (90) days from the date of this decision during which the Area Office shall work in collaboration with Appellant to develop a transition plan, pursuant to Department Permanency Planning Policy. The transition planning process must include a discussion of the youth/young adult's education, employment or work skills development, housing, health insurance including the importance of a medical health care proxy, local opportunities for mentoring and other specific support services. *See* Permanency Planning Policy, effective 07/01/2013.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county of Suffolk or for the county in which Appellant lives within thirty (30) days of the receipt of this decision. (See, M.G.L. c.30A, §14).

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<sup>4</sup> Even upon case closing, there may be Department support services available to Appellant through age twenty one through the Adolescent and Support Services Unit at the Department's Central Office. (This Hearing Officer notes that these services are limited and their availability is not guaranteed). The Area Office is strongly encouraged to refer Appellant to any such services in which he may be entitled and interested.



*Antonia Chronis* (SC)

Antonia Chronis, Esq.  
Administrative Hearing Officer

11/22/2017  
Date

*Sophia Cho*

Sophia Cho, LICSW  
Supervisor, Fair Hearings