

THE COMMONWEALTH OF MASSACHUSETTS
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:

J

FH # 2017-0721

FAIR HEARING DECISION

The Appellant, J¹ (hereinafter "J" or "Appellant"), appealed the Department of Children and Families (hereinafter "DCF" or "the Department") decision to terminate voluntary services/close his case pursuant to 110 CMR 10.06(3)(a).

Procedural History

J is an adult who was formerly a child in the Department's custody. On or about May 11, 2017, the Department entered into a Voluntary Placement Agreement with the Appellant, who turned 18 on May 13, 2017. On May 13, 2017, the Department provided the Appellant with a case closing letter and informed him that his case would close on July 13, 2017. The Department also notified the Appellant of his right to appeal.

The Appellant made a timely request for a fair hearing to appeal the Department's decision.

The Fair Hearing was held on August 1, 2017, at the Department of Children and Families' Arlington Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

Nicholas Holahan
MD
J

Administrative Hearing Officer
[REDACTED] Clinician
Appellant

¹ Per the Department's notes, J prefers to be referred to using male pronouns. (Exhibit 2)

SR
IP

DCF Supervisor
DCF Area Program Manager

In accordance with 110 CMR 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:

For the Department:

- Exhibit 1: Dictation Report printout from 12/30/2016 through 8/1/2017
- Exhibit 2: Service Plan, 1/22/17 – 7/22/17
- Exhibit 3: Notice of case closing, dated 5/13/17
- Exhibit 4: Voluntary Placement Agreement, executed 5/11/17
- Exhibit 5: Transfer Summary
- Exhibit 6: Case Closing Summary

For the Appellant:

- Exhibit A: Fair Hearing Statement by MD

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

Issue to be Decided

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. Appellant is J. (redacted). At the time of the Fair Hearing, J was eighteen (18) year old. (Exhibit 4; Exhibit 5; Exhibit 6; Testimony of SR)
2. Since April 18, 2012, J had been in the Department's custody through a Care and Protection petition due to physical and emotional abuse of J by his father, IM. (Exhibit 5, pp. 1-2; Exhibit 6; Testimony of SR)

3. On January 19, 2017, the Appellant executed the Department's Service Plan (hereinafter "Plan") and agreed to the tasks set out in the plan. (Exhibit 1 p. 6; Exhibit 2). The Plan set forth various actions for the Appellant to accomplish towards his goal of independence, including but not limited to the following:
 - a. Following the rules of his placement; including not running away from the program;
 - b. Attending school daily;
 - c. Abstaining from alcohol and drug use;
 - d. Engaging in outpatient program to address substance abuse;
 - e. Obtain and maintain part-time employment and provide paystubs to your worker.(Exhibit 2)
4. In May, 2017, upon his 18th birthday, J signed a Voluntary Placement Agreement (hereinafter "VPA") to continue to receive various services, including placement in a group home. (Exhibit 4; Testimony of SR; Testimony of Appellant)
5. At the time of the VPA, the Appellant's placement was at the [REDACTED] group home in [REDACTED], MA. (Testimony of SR)
6. From December 2016 through June 2017, the Appellant left the group home without permission ("AWOL") over 20 times. (Exhibit 1; Testimony of SR) The Appellant's frequency of AWOL's increased once he turned 18 years old. (Exhibit 1) The Appellant left as he wanted to "drink and get high" or when he was upset and his behavior escalated. (Exhibit 1) Upon return to [REDACTED], the Appellant was either high or smelled of alcohol; he refused to be drug tested or submit to a medical clearance at the emergency room. (Exhibit 1)
7. The Appellant returned from one AWOL with a bike that he was not able to provide a receipt for; another with a TV that he was not able to provide a receipt for; and another with a DVD player and another resident's debit card. The Appellant was also found with other contraband: a pocket knife, and multiple times with marijuana and liquor, on his person after searches once he returned to [REDACTED]. The Appellant hid liquor in his room under his mattress and in a water bottle while at [REDACTED]. (Exhibit 1; Testimony of SR)
8. The Appellant was involved in violent outbursts at [REDACTED]. He threatened staff and other residents as well as engaged in several altercations with staff and other residents; threw water on one staff member and engaged in a physical altercation with a female resident; threatened staff and other resident he would "f—k them up." (Exhibit 1; Testimony of SR)
9. In March 2017, staff meeting notes indicated the Appellant was: "struggling at school; refused to go to his classes; being disrespectful to teachers"; "not completing chores and not doing well at [REDACTED]; the Appellant wanted to focus on his music and rap skills. He was drinking and smoking marijuana on the [REDACTED] program grounds because he "wants to get drunk and high"; breaking curfew and reported to be

missing overnight and not taking medication without extra efforts by staff. (Exhibit 1, p. 15)

10. On February 27, 2017, at the Foster Care Review (hereinafter "FCR") the Appellant voiced frustration residing at the [REDACTED] Program and felt that DCF was not being supportive. The Appellant wanted to be moved to the [REDACTED] another placement that was "more LGBTQ friendly." (Exhibit 1, p. 16)
11. On May 11, 2017, the Appellant met with his attorney, social worker, life skills coach among others to discuss the VPA and a 90 day notice to explain the probationary period. The Appellant was frustrated and stated he did not want to live there [GRIP] anymore. The Appellant escalated and left the room with his attorney.² (Exhibit 1, p.17)
12. On May 13, 2017, the Department notified the Appellant that his case was closing for his "failure to comply with /are refusing to comply the tasks requested of you to continue services and supports from the Department." (Exhibit 3).
13. At the time of the case closure letter, the Appellant was enrolled in high school and was scheduled to graduate in June 2017. I find that the Appellant was in compliance with his service plan task that related to graduating from high school. (Exhibit 1, p. 46)
14. On May 31, 2017, the Appellant advised the Department that he wanted to move to Atlanta to live with his family and pursue a music career. The Appellant was reminded of what he needed to do to remain with services and meet the requirements of the Department, and to attend school and obtain part-time employment. (Exhibit 1, p. 28)
15. The Appellant did not provide the Department with proof of his employment; he did not submit paystubs to the Department. (Testimony of SR)
16. In June 2017, the Appellant failed to attend a meeting with staff team. The Appellant was felt to be struggling and there were concerns about his impulsivity and inability to focus; refusal to take medications other than hormonal medications; he had become more aggressive at [REDACTED] and aggressive towards staff and other residents; was smoking marijuana and drinking alcohol. The Appellant was attending therapy and in groups. (Exhibit 1, p. 39)
17. On July 21, 2017, the Appellant met with his social worker and advised them that he did not want to stay at the [REDACTED] program and because "it's whack, disorganized and I did better at [REDACTED] Group Home." The Appellant wanted to wait until his fair hearing and then sign out of the program and live with his father. He reported working "full time" at [REDACTED] Center, Monday through Friday 10-2p.m. as a camp counselor; however, pay stubs were not provided. The Appellant wanted to apply to

² The Appellant executed the VPA and his attorney sent it back to the program. (Exhibit 1, p. 21)

after the summer. The Appellant agreed to become more independent in order to be a candidate for [REDACTED] or [REDACTED] Programs. (Exhibit 1, p. 76)

18. Late July, 2017, the Appellant's ex-girlfriend obtained a restraining order against him. The Appellant was moved out of [REDACTED] program and moved in with a friend. (Testimony SR; Testimony Appellant; Exhibit 1, pp. 82; 85)
19. At the Fair Hearing, the Appellant attributed his leaving the program without permission to his "removing myself from situations – I don't like drama." (Testimony of Appellant)
20. At the Fair Hearing, the Appellant contributed his problematic behaviors to a lack of LGBTQ support at his placement. He acknowledged smoking marijuana and drinking alcohol while he was at his placement. (Testimony of Appellant) I do not find this persuasive as the Appellant minimized his substance use and denied doing so on the grounds of his placement when he was found multiple times with drug paraphernalia and alcohol in his room and on his person at the program.
21. At the Fair Hearing, the Appellant testified no one worked with him in regards to finding short or long-term housing if his DCF case were to close. That he was working "full time" 20 hours a week as a [REDACTED] "and they all knew about it". (Testimony of Appellant)
22. At the Fair Hearing, MD, J's clinician at [REDACTED], testified she provided the Appellant with a binder that included housing applications; a list of shelters; and Respite information, but these Respite and alternative placements were contingent upon the Appellant adhering to the program rules and continued placement through the Department. (Testimony of MD)³
23. The Department did submit documentation of their attempts to engage the Appellant in discharge and transition planning and the placement process that included finding appropriate housing and stable housing, community resources such as health insurance; medical, mental health and dental providers for the Appellant after his DCF case was to be closed. (Exhibit 1; Testimony of Appellant)
24. In her letter for the Fair Hearing, J's [REDACTED] Clinician, MD, stated that, "All of this is related to continuous childhood and adolescent developmental trauma which has impacted his ability to form healthy attachments, establish a positive and cohesive sense of self, effectively regulate and modulate emotions, and build independent living skills. Effectively, [J] has been involved with the Department of Children and Families since the age of five years old and continues to need support from the department to progress in these four domains." (Exhibit A; Testimony of MD) I find this testimony and evidence to be indicative of the Appellant needing supportive services from the Department.

³ The Appellant denied receiving this book or knowing what it was. (Testimony of Appellant)

25. In light of all the available evidence, including testimony at the Hearing, I find that the Department's decision to close the Appellant's case and terminate his VPA reasonable and in accordance with Department regulations.
- a. The Appellant did not abide by the rules of the [REDACTED] Program before and after he entered into VPA.
 - b. The Appellant had been non-compliant as was evidenced by his leaving the premises without permission over 20 times.
 - c. The Appellant used alcohol and drugs while at the [REDACTED] program and brought these substances back to the program against the rules of the program and tried to hide them from the administrators.

26. I find that while the Department may have had grounds to close the Appellant's case due to non-compliance with his service plan tasks; however, they may not close the case until it has engaged the Appellant in a planning for discharge process as outlined in the Permanency Planning Policy #2013-01. The Department did not submit evidence of the Appellant engaged in the transitional case closing process as outlined in the Permanency Planning Policy that would include, but would not be limited to, working with J on such issues as obtaining appropriate and stable housing, employment and sources of income, health insurance and community resources.

Applicable Standards

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 discretionary and 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 policy regarding continuing services for youth over 18 outlines certain eligibility requirements. 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

~~Additionally, the Department expects any youth/young adults in its care to avoid criminal activity.~~

Policy #2013-01

If the Department decides to close a case with a Young Adult and withdraw the Voluntary Placement Agreement, it must engage the Young Adult in a transition process as outlined in the Permanency Planning Policy #2013-01. The relevant passages are quoted below:

Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults

90 Day Notice and Discharge/Case Closing Plan

Planning for discharge and transition from placement 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 discharge and 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. The plan should be reflected in the Service Plan and/or dictation and must be reported in any Permanency Hearing Report filed with a court after the youth/young adult turns age 17 years and 9 months old. Any outstanding life skills needs are prioritized and addressed prior to discharge from placement and case closing. The Department must also 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). The scheduling of both steps should be planned.

- For the youth who intend to leave Department care or custody on her/his 18th birthday, the discharge and transition planning must begin 90 calendar days prior to discharge and the closing of the case. The written notice of discharge from placement and case closing should be sent within 90 calendar days and at least 30 calendar days prior to her/his 18th birthday. The notice must contain notice of the right of the youth to challenge the discharge from placement and the closing of her/his case through the fair hearing process.
- For the young adults who have continued sustained connections with the Department beyond age 18, the discharge and transition planning is completed within 90 days prior to the closing date. The dates for discharge from placement and case closing should be reflected in youth readiness assessment tool if being utilized and the current Service Plan. Written notice of the discharge from placement and/or case closing is sent at least 30 calendar days prior to the date of the discharge from placement or case closing accordingly.

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

The decisions regarding the discharge and transition planning should be reflected in the youth/young adult's case record. The discharge from placement/case closing notice identifies the anticipated date of case closing which may be set for up to 12 months after the date the youth/young adult is discharged from placement, based on a joint assessment of the youth/young adult's need for post-placement follow-up. The discharge from placement/case closing notice states that the youth/young adult may request, within 30

calendar days after receipt of the notice, a fair hearing to appeal the termination of services, unless the young adult has reached the age of 22. If the discharge from placement and/or the case closing is earlier than requested by the youth/young adult, the notice should include the reasons the youth/young adult is being discharged from placement and/or the case is being closed. Copies of the notice must be included in the youth/young adult's case record and forwarded to the youth/young adult's placement provider.

IMPORTANT: The youth/young adult should not be discharged from Department placement until appropriate and stable housing is found. However, the Department understands that at times, a youth/young adult may sign themselves out of care, terminate the VPA, etc., or take other actions beyond the Department Social Worker's control which result in a discharge before appropriate and stable housing is found.

Analysis

The Department's decision to close the Appellant's case and terminate VPA was based upon the Appellant's failure to comply with the terms of his placement agreement/service plan; specifically that he did not comply with the rules of the program; was aggressive to peers and staff; ran from the program multiple times; abused alcohol and drugs; drug paraphernalia and alcohol was found on the program property; restraining order filed against the Appellant by another resident; and was found with property on him that he could not provide proof of ownership.

The Appellant disputed the Department's decision to close his case. The Appellant argued that he was working "full time" albeit 20 hours a week as a [REDACTED] and the staff knew about although he admitted to not providing proof when asked. The Appellant argued he followed the rules "to a certain extent" (Testimony of Appellant) but that he got mixed up because it was a group home with rules but they were telling him to be independent. He attributed his leaving the program, AWOL, due to his not wanting to be involved in drama and needing to separate himself from "situations" in the program. The Appellant denied he was aggressive towards any residents and reasoned the restraining order was due to an ex-girlfriend accusing him of "stuff" he denied. While the Appellant had explanations for why he did not comply with the program rules, I do not find them persuasive. The Appellant was involved in meetings with the staff and was aware there were consequences to his actions.

Closing a young adult's case requires a collaborative transition process with the young adult. The Department must fulfill requirements for 90 day notice and discharge planning as described by Department Permanency Planning Policy (DCF Permanency Planning Policy #2013-01), which include: collaboration with the young adult to address identified needs and achieve targeted goals; identify who will assist the young adult in the process; and among other things a description of available resources, including Appropriate and Stable housing. Up to and at the time of the Fair Hearing it was unclear if the Appellant wanted to keep his DCF case open and remain in the state or move to Atlanta to pursue a music career. The Appellant appeared to vacillate from wanting to remain in DCF care or leaving its care. While J's [REDACTED] clinician, MD, identified

continuing supportive needs for J these would have been discussed in the transition planning process.

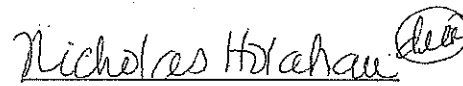
In this case, while it was apparent the Appellant struggled to adhere to the terms of his service plan and voluntary placement agreement, this did not abrogate the Department's responsibilities to engage the Appellant in the Case Closing and Transitional Process as outlined in the Department's Permanency Planning Policy #2013-01. There is no evidence that the Department or its staff did so short of the GRIP program providing the Appellant with a binder of information regarding shelters and housing applications. Therefore the Appellant's case cannot close until the Department has adhered to the pertinent areas of the applicable policy, including the timeframes outlined therein.

Conclusion and Order


Based upon a review of the evidence, the Department's decision to close Appellant's case and terminate services was made with a reasonable basis. Therefore, the Department's decision is **AFFIRMED**. However, in accordance with 110 CMR §10.29(2), this matter is being **REMANDED** to the Arlington Area Office for the following actions:

- Appellant's case shall remain open for a period of ninety (90) days from the receipt 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. See Permanency Planning Policy, effective 07/01/2013.

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, or within Suffolk County, within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.


Nicholas Holahan
Fair Hearing Officer

2/5/10
Date


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