

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)
(JP)
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(FH # 2017-0892)
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HEARING DECISION

Procedural History

This is an appeal of the decision of the Department of Children and Families (“Department”) through its contracted agency, ~~XXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXX~~ (“Family Services”) to remove a Department foster child (“Je”) from the home of an approved pre-adoptive parent, JP.

On July 12, 2017 the Family Services gave written notice to JP (“Appellant”) of its decision to remove Je from her home and of her right to appeal said decision. Appellant made a timely request for a Fair Hearing regarding the Family Services’ decision, pursuant to 110 C.M.R. 10.06. The Fair Hearing took place at the Family Services’ Office in Lawrence, Massachusetts on September 7, 2017.

The following persons appeared at the Fair Hearing:

NH	Administrative Hearing Officer
MO	Adoption Supervisor
NG	Adoption Worker
JP	Appellant

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. All witnesses were sworn in to testify under oath. 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 A: Placement setting printout for Je
- Exhibit B: Placement setting printout for Ye
- Exhibit C: Child Permanency Assessment and Adoption Information Disclosure Form for Je date completed 10/31/2013
- Exhibit D: Child Permanency Assessment and Adoption Information Disclosure Form for Ye date completed 10/31/2013
- Exhibit E: Child Permanency Assessment and Adoption Information Disclosure Form for Je date completed 10/31/2016
- Exhibit F: Child Permanency Assessment and Adoption Information Disclosure Form for Ye date completed 10/31/2016
- Exhibit G: Independent Trauma Evaluation for Je
- Exhibit H: TCU Treatment Plan for Ye
- Exhibit I: [REDACTED] Discharge Summary for Ye
- Exhibit J: Printout of email exchange between Appellant and Family Services representatives regarding placement of Je and Ye.

For the Appellant:

- Exhibit 1: Letter from In-Home therapist regarding Je
- Exhibit 2: Printout of email exchange between Appellant and Family Services representatives regarding therapeutic services
- Exhibit 3: Appellant's letter requesting 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 Hearing is whether, based upon the evidence and the Hearing record as a whole, the Family Services' decision or procedural action, to remove Je from the Appellant's pre-adoptive foster home, violated applicable statutory or regulatory requirements, or the Department's polices or procedures, and resulted in substantial prejudice to the Appellants; 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 Appellants. 110 CMR 10.05

Findings of Fact

1. The Appellant was licensed and approved as a pre-adoptive parent. (Exhibit A, Exhibit J, Testimony of NG, Testimony of MO, Testimony of Appellant)
2. The Department's Permanency Plan for Je is Adoption. (Exhibit C, Exhibit E, Testimony of MO, Testimony of NG, Testimony of Appellant)
3. Je has five siblings total and shared placement history with his sister Ye and brother Jl. The three children were placed together in a foster home after being removed from their mother's care. At this particular foster home, Jl and Ye had engaged in some form of sexual contact. The children were removed from that foster home, and Ye and Jl were not placed together again. (Exhibit C, Exhibit E, Testimony of NG, Testimony of MO, Testimony of Appellant)
4. Previous to his placement with the Appellant, both Je and Ye were placed at the U foster home. Ye was placed at the U foster home from August of 2016 until she was placed with the Appellant. Je was placed at the U foster home from November of 2015 until he was placed with the Appellant. Both Je and Ye did well at the U foster home. (Exhibit A, Exhibit B, Testimony of MO, Testimony of NG)
5. While at the U foster home, there was some tension between Je and Ye. Je was also saddened because he had wanted to be placed in a pre-adoptive home with his brother, Jl. (Testimony of MO)
6. Previous to Je and Ye being placed with the Appellant, Family Services representatives discussed with the Appellant the background of both children and strategized on how to best address both of the children's needs. They also reviewed the children's Child Permanency and Information Disclosure Forms with the Appellant. (Exhibit C, Exhibit E, Exhibit J, Testimony of NG)
7. Je and his sister Ye were placed with the Appellant on March 11, 2017. At the time of their placement, Je was eight years old and Ye was eleven years old. At the time of their placement with the Appellant, the Je and Ye had a Permanency Plan of adoption. (Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Testimony of Appellant, Testimony of NG)
8. While at the Appellant's home, Ye received attention from the Appellant due to her various challenging behaviors. After the siblings had been placed with the Appellant for two months, these behaviors had abated and both children were doing well. (Testimony of NG, Testimony of MO)
9. On March 30, 2017, supportive therapeutic services were put in place to support the children in the Appellant's home. These services included in-home therapy and outpatient therapy. (Testimony of NG)

10. On May 9, 2017, Ye was screened for psychiatric evaluation. Ye was exhibiting aggressive tendencies in the home and towards the Appellant. Ye was screaming and threatening to run away from the home. Ye remained in the Appellant's home after this incident. (Exhibit 3, Testimony of NG, Testimony of Appellant)
11. On May 25, 2017 Ye was again screened for evaluation. Ye was being aggressive to the Appellant, and would not de-escalate. Ye was placed into a CBAT placement and then to a Transitional Care Unit placement in preparation for Ye to return to the Appellant's home. (Exhibit H, Exhibit I, Exhibit 3, Testimony of NG, Testimony of Appellant)
12. On June 30, 2017, Ye was transitioned back into the Appellant's home. Shortly thereafter, the Appellant gave notice that she wanted Ye removed from her home. On July 11, 2017 Ye was placed back with her previous foster family, the U family. Since that time, Ye has been doing well in the U foster home. (Exhibit B, Testimony of NG, Appellant)
13. During this time, there were three 51A reports filed against the Appellant in regards to the care she was providing the children. None of the allegations contained in these 51A reports were supported. (Testimony of NG)
14. At the Fair Hearing, the Family Services adoption worker and supervisor testified that the basis for their decision to remove Je from the Appellant's home was to be able to place him with his sister in the U foster home. They testified that Je and Ye had a good sibling bond. The Family Services adoption worker and supervisor testified that they have not talked with the U family about adopting Je. Je's recommend removal from the Appellant's pre-adoptive home was not consistent with the Department's stated Permanency Plan of Adoption for Je. (Exhibit 3, Testimony of NG, Testimony of MO, Testimony of Appellant)
15. At the Fair Hearing, the Family Services adoption worker testified that there were no present concerns with the Appellant's ability to care for Je. The adoption worker testified that she was concerned that if Je began to have problematic behaviors, the Appellant might not be able to handle these behaviors and access appropriate supports. There was no evidence that the Appellant was not able to provide for Je's safety and well-being. (Testimony of NG)
16. At the Fair Hearing, the Appellant testified that she saw the importance of Je's contact with his siblings. She testified that Je had expressed interest in contacting other siblings, and she had helped to enable that contact. However, she testified that Je had not asked to have any contact with Ye. She further testified that she would be supportive of any future contact or visits between Je and Ye. (Testimony of Appellant)
17. At the Fair Hearing, the Appellant submitted a letter from the in-home therapist. This therapist stated that Je was making gains in his placement with the Appellant. The therapist further stated that it would be detrimental to J's ability to trust and connect

to caregivers if he was removed from the Appellant's care. (Exhibit 1, Testimony of Appellant) Given the therapist's relationship to Je, I credit the therapist's assessment of the impact the proposed removal would have on Je.

18. I find that the Family Services decision to remove Je from the home was not in accordance with the Department's Regulations and Policies for the following reasons:
- a. Je's Permanency Plan was adoption.
 - b. The Appellant was Je's approved pre-adoptive home.
 - c. There was no evidence that the Appellant cannot provide for Je's safety and well-being.
 - d. The proposed removal is not into a pre-adoptive placement, and is therefore counter to the stated permanency plan of adoption.
 - e. Je's continued placement with the Appellant is not a barrier to maintaining the sibling bond between Je and Ye, since they can maintain contact through visits and other methods.
 - f. Notwithstanding previous recommendations that Je and his siblings should be placed together, current information from Je's therapist, who also worked with Ye and observed their placement progress, supported Je's placement with the Appellant; the therapist opined that it would be detrimental for Je to experience another disrupted attachment.
 - g. The decision to remove Je from his pre-adoptive placement was not made with a reasonable clinical basis.

Applicable Standards

110 CMR 7.101: Out of Home Placements

- (1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety, well-being and permanency of the child and the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:
- (a) the least restrictive setting for the child;
 - (b) close proximity to the home of the child's family and/or the child's school;
 - (c) ability for frequent visits between child and his/her family;
 - (d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or adoptive parents to meet those needs;
 - (e) a placement that can serve as the placement for any of the child's siblings in the department's care or custody; and
 - (f) a mature child's choice of residence.

- (2) The Department shall consider, consistent with the best interests of the child, the following placement resources in the following order:
- (a) placement with a kinship family;
 - (b) placement with a child-specific family;
 - (c) placement in a family foster care home where the child was previously placed;
 - (d) placement in family foster care;
 - (e) placement in a shelter/short term residential or group home;
 - (f) placement in community residential care.

Every reasonable effort should be made to place a child in accordance with 110 CMR 7.101 (1) and (2).

110 CMR 7.116: Removal of Foster Children from Foster/Pre-Adoptive Homes

(2) Whenever the Department determines that a foster child should be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety or well-being, and not because of a request made by the foster/pre-adoptive parent(s) for removal of the foster child nor because of the occurrence or threat of abuse or neglect of the child in the foster/pre-adoptive home, the Department shall do the following:

- (a) give written notice to the foster/pre-adoptive parent(s) as soon as the determination is made but absent an emergency at least 14 days prior to the intended removal of the foster child(ren). The written notice shall include at least the following:
 1. the fact that the Department intends to remove the foster child from the foster/pre-adoptive home;
 2. the reason(s) for the intended removal;
 3. the actual or estimated date when the foster child will be removed from the foster/pre-adoptive home;
 4. if the reason for the intended removal is to place the child with a prospective guardian or adoptive parent, notice that the foster/pre-adoptive parent(s) may apply to become the child's guardian(s) or adoptive parent(s) and the procedure for so applying; and
 5. notice of the foster/pre-adoptive parent's right to appeal the decision to remove the foster child from the foster/pre-adoptive home, under the fair hearing or grievance procedure, provided however that no right of appeal exists...

From Permanency Planning Policy #2013-01:
Achieving Permanency through Adoption

In recognition of the significant long-term impact of adoption on the individual child and family, the Department uses a team approach to govern adoption planning, with the family being an integral member of the team.

The values listed below form the foundation for the Department's delivery of adoption services:

- Kin are the first consideration for adoptive placement, when appropriate. The parents and legal guardians of siblings are to be regarded as kin and should be considered as potential resources when a child enters placement or is in need of a permanent home. The second consideration is individuals from the child's network of other significant adults who have been identified as potential, child-specific adoptive families.
- Adoption is focused on meeting the child's need to become a full and permanent legal member of a family.
- Neither age nor special placement needs should be a barrier to adoption.
- Siblings are placed together for adoption whenever possible and appropriate; when not placed together, plans are made to support their continuing contact and connection.
- Adoption is a life long experience that has a unique impact on all involved parties.
- Adoption should validate and assist children in developing their individual cultural, ethnic, and racial identity, and should enhance their self-esteem.
- Adoption provides permanent families but does not preclude maintaining valued, life long connections to birth parents, siblings and grandparents.
- As the adopted child matures, information regarding her/his birth family may be useful.
- The older child's views regarding adoption are valued and considered.

When Permanency through Adoption becomes the child's permanency plan, the Department seeks to carry out the adoption in a planful and timely manner that ensures:

- The child's placement needs, as indicated in documented assessments, are fully met.
- If the child is not already placed with a family who has made a permanent commitment to her/him, an appropriate adoptive family is found with the assistance of the Department's recruitment staff, state and national adoption recruitment and matching programs, as needed.
- Both the child and the adoptive family are as prepared as possible at time of placement, including any information regarding the child's legal risk status, when applicable.
- Services are provided prior to adoption and referrals for post-adoption services are made, as needed, when and where such services are available.
- Continuity of significant relationships is supported when in the child's best interests.

Before the child's adoption can be finalized, each parent must have consented to the adoption or have had her/his consent involuntarily terminated.

In making a determination, the Hearing Officer shall give due weight to the clinical decision made by the Department social worker. 110 CMR 10.29(2)

110 CMR 10.23

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.

Analysis

The importance the Department places on the permanency planning for a child is reflected in the above cited regulations and policies. Of particular note is 110 CMR 7.101 which states, "All out-of-home placement decisions shall be made in the best interests of the child, based upon safety, well-being and permanency of the child and the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting." Je's Permanency Plan was adoption. However, the Children and Family Services ██████████ suggested that removing Je from his pre-adoptive home and placing Je with Ye in the U family is in his best interests, due to the sibling bond between them. This argument fails to consider the stated adoption goal. As the Family Service representatives acknowledge, the U family was not considered a pre-adoptive home for Je. The Family Service representatives also acknowledged that there were no concerns with the Appellant's ability to provide care for Je's safety and well-being.

The Department's policies and regulations acknowledge the importance of a sibling bond; however, nowhere in those policies and regulations, does it expressly or impliedly indicate that a sibling bond, by itself, sets aside a Permanency Plan for a child. As expressed in the Permanency Planning Policy #2013-01, "Siblings are placed together for adoption whenever possible and appropriate; when not placed together, plans are made to support their continuing contact and connection." In this case, there is no stated barrier for Je and Ye to maintain their bond through continued contact and connection. Thus the sibling bond can remain, while not impeding Je's goal of adoption.

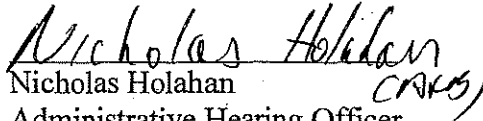
As cited above in 110 CMR 7.116, the grounds for the removal of a child from a foster/pre-adoptive home are when the Department is seeking a placement with more suitable permanency, safety or well-being. In this case, a removal of Je is actually counter

to the goal of permanency through adoption. Further, Family Services acknowledged there was no concern with the Appellant's ability to provide care for Je.

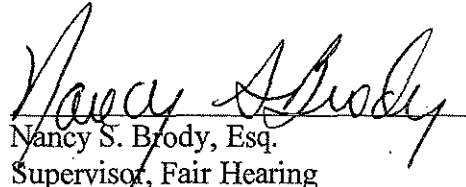
In conclusion, Family Services decision to remove Je for the sole purpose of placing him with his sister was disruptive to Je's permanency plan of adoption; there was no evidence that it was in his best interests.

Conclusion and Order

The decision to remove Je from the Appellant's pre-adoptive home is hereby REVERSED.


Nicholas Holahan
Administrative Hearing Officer

12-7-17
Date


Nancy S. Brody, Esq.
Supervisor, Fair Hearing

Date

Linda S. Spears
Commissioner