

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)
)
 JE)
)
 FH # 2017-1368)
)

FAIR HEARING DECISION

The Appellant in this Fair Hearing was JE (hereinafter "JE" or "Appellant"). The Appellant appealed the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to close his case pursuant to 110 CMR 8.00, 9.00.

Procedural History

The Appellant came to the Department's attention most recently on [REDACTED], 2015, when his child, B (hereinafter "B" or "the child"), was born. Both B and his mother, CAR (hereinafter "CAR"), were born testing positive for illicit substances and B was showing signs of withdrawals. Subsequently, the Department supported an allegation of neglect (Substance Expose Newborn - SEN) pursuant to M.G.L. c. 119, §§51A and B. On or about October 23, 2017, the Department made the decision to close the Appellant's case as there were no longer any protective concerns regarding B and CAR, as well as, the Appellant was not cooperating with services. The Department sent written notice to the Appellant of its decision and of his right to appeal.

The Appellant made a timely request for a Fair Hearing pursuant to 110 CMR 10.06. The Fair Hearing took place on January 11, 2018, at the DCF Taunton/Attleboro Area Office in Taunton, Massachusetts. Upon request of the Appellant, the record remained open until January 26, 2018, for submission of additional documentary evidence. The evidence closed on January 26, 2018.

The following persons appeared at the Fair Hearing:

Jorge F. Ferreira
JD
DW
JE

Fair Hearing Officer
DCF Social Worker
DCF Area Program Manager
Appellant

LE
JM

Witness
Appellant's Support

In accordance with 110 CMR 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 Fair Hearing was digitally recorded, pursuant to 110 CMR 10.26.

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

For the Department:

Exhibit A: Case Dictation Report, dated 05/03/2017-10/23/2017
Exhibit B: [REDACTED] Toxicology Report, dated 08/22/2017
Exhibit C: [REDACTED] Toxicology Report, dated 05/25/2017
Exhibit D: Letter from [REDACTED]'s Clinical Therapist

For the Appellant:

Exhibit 1: Appellant's Letter Requesting Hearing
Exhibit 2: DCF Case Closing Letter, dated 10/23/2017

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 Hearing is whether, based upon the evidence and the Hearing record as a whole, and on the information available at the time of the Department's decision or procedural action, in closing the case, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant. If there is no applicable statute, policy, regulation or procedure, the issue is whether the Department failed to act with a reasonable basis or in a reasonable manner, which resulted in substantial prejudice to the Appellant. Case Closing Policy #86-007, rev. 12/03/17; 110 CMR 10.05

Findings of Fact

1. On [REDACTED], 2015, the Appellant came to the Department's attention when his child, B was born. Both B and his mother, CAR, were born testing positive for illicit substances and B was showing signs of withdrawals. Previously, since 2000, the family had been intermittently involved with the Department. (Exhibit A, p. 17; Testimony of the DCF Social Worker)
2. Due to protective concerns at the time of B's birth, a Care and Protection petition was filed on behalf of B and his half-sister, L (hereinafter "L"). L was placed in group home and B was placed in foster home. On May 15, 2015, L was reunified with her family. On June 24, 2015, B was reunited with his family. The Care and Protection was closed on December 3, 2015. (Exhibit A, p. 17)

3. During the course of the life of the case, the Appellant ceased to become compliant with his service plan tasks. There were also concerns regarding domestic violence between the Appellant and CAR; which resulted in B returning to foster care for one (1) week. (Testimony of the DCF Social Worker)
4. In mid-2017, CAR left the home and reunified with B. CAR abided by treatment recommendations, including engaging in individual therapy, providing proof of sobriety and accepting support such as Early Intervention for B. (Exhibit A; Exhibit B; Exhibit C; Exhibit D; Testimony of the DCF Social Worker)
5. CAR was available to the Department on a monthly basis; the Appellant was often unavailable. The focus shifted on stabilizing B with his mother, CAR, and providing her with supportive services. CAR and the Appellant eventually separated and engaged in a custody dispute over B via ██████████ Probate Court. (Exhibit A, pp. 1-16; Testimony of the DCF Social Worker)
6. The Department did not have any concerns regarding B's safety based on their monthly visits with CAR. The Department assessed the safety of the home and found it to be appropriate for CAR and B. CAR was meeting B's essential needs and there were no safety concerns. Based on the latter and the lack of availability of the Appellant, the case was closed. (Testimony of the DCF Social Worker; Testimony of the DCF Area Program Manager)
7. Pursuant to Case Closing Policy #86-007 Rev. 12/03/17, the Department sent a closing letter to the Appellant informing him the case would be closed on October 23, 2017. (Exhibit 2)
8. The Appellant testified that the Department failed to do their due diligence because when CAR left their home with B, she left with a known drug dealer/user, SF. The Appellant denied that the Department attempted to make regular contact after CAR and alleged that she abused illicit substances when she separated from him. (Testimony of the Appellant)
9. The Appellant tried to request for a new social worker when the case was opened because he felt the assigned DCF social worker was not responsive and could not locate CAR when she initially left the home with their child, B. (Exhibit 1; Testimony of the Appellant)
10. LE testified that CAR abused pills when she resided in the home; would do drugs in front of B and L; would not bring B to his appointments when she was under the influence; and often screamed at B. LE expressed concerned that CAR was not able to provide B stability and struggled to function as a parent and disagreed with the case closing and the impact it could have on B. (Testimony of the Witness)
11. LE testified the Appellant was the one who took care of B and met his needs, including cooking, bathing and playing with him as CAR was often sleeping due to her substance abuse. (Testimony of the Witness)
12. The Appellant testified when he last saw CAR she appeared as if she was losing weight and did not look sober. Reportedly, the Appellant saw her in court over custody of their child, B

in May 2017 and concerned over the safety of his child. (Testimony of the Appellant)

13. Based on the evidence at the time of the case closing, I find that it was reasonable for the Department to make a clinical decision to close the case based on the absence of protective concerns. DCF Case Closing Policy #86-007, Rev. 12/03/17
14. Therefore, the Department's decision to close the Appellant's case was made in conformity with its policies and regulations. 110 CMR 8.00; 110 CMR 9.00; DCF Case Closing Policy #86-007, Rev. 12/03/17

Applicable Standards

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

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 stated 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. 110 CMR 9.03

Case Closing Recommendations are based on:

- A clinical assessment that documents that the reason(s) for initial and ongoing Department involvement have been addressed and that the parent(s)/caregiver(s) is able to provide for the child(ren)'s safety and well-being now and in the future; and
- A determination that the child(ren) is now residing in a safe, stable, permanent setting; and
- Contacts with collaterals (including other agencies that will continue to work with the family) and others in the family's network of support to confirm the sufficient progress made by the family in establishing and maintaining child safety and well-being; or
- The child and/or family are no longer eligible for service from the Department.

DCF Case Closing Policy #86-007, Rev. 12/03/17

110 CMR 8.00: SERVICE DENIAL, REDUCTION, OR TERMINATION

Section 8.01: Notice of Action

(1) The Department or provider shall give written notice to a client if the Department intends to deny, reduce, or terminate services, or increase the cost thereof. The written notice shall contain: (a) a statement of what action the Department intends to take; (b) the reasons for the action; (c) the date on which the action shall become effective; (d) the address and telephone number of the Department office making the decision; (e) an explanation of the applicant's or recipient's right to request a fair hearing; (f) the process used to request a fair hearing; and (g) an explanation of the circumstances, if any, under which services will be continued pending the fair hearing.

110 CMR 9.00: CASE CLOSURE

9.01: Introduction : Case closing is the set of activities which leads to the termination of Department services to an individual or a family.

9.02: Required Closings: Case closing shall include, but is not limited to, the following events. (1) A case must be closed when a case opened with a 51A report subsequently is not supported and the family does not wish to make a voluntary application for services. (2) A case must be closed when the child(ren) have been adopted or placed with a legal guardian and the adoptive/guardian family no longer needs Department services. Adoption or guardianship subsidy can continue to be provided, regardless of case closure. (3) A case must be closed when the social worker and client jointly agree that Department services are no longer necessary. (4) A case must be closed when a voluntary applicant for Department services withdraws the application or refuses to participate in assessment, service planning or case review. (5) A case must be closed when, after reasonable social work efforts and offers of service, a family which is the subject of a supported 51A report refuses further Departmental services and there are no grounds for either legal action or a new 51 A report. (6) A case must be closed when a CHINS petition is dismissed and no family members are requesting or receiving Departmental services.

“Substantial evidence” is defined as such evidence as a reasonable mind might accept as adequate to support a conclusion. DCF Protective Intake Policy #86-015, rev. 2/28/16

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. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

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 CMR 10.05

Analysis

The Appellant disputed the Department’s decision to close his case. The Appellant argued the Department prematurely closed his case and was often unavailable to him; that the Department failed to do their due diligence to assure the safety and well-being of the child, B pursuant to DCF Case Closing Policy #86-007, Rev. 12/03/17. The Appellant further argued that by failing to do their due diligence, they placed the child at risk by leaving him in the care of CAR with no

case involvement with the Department. The Appellant reported that CAR abused illicit substances while they were still case involved with the Department and when she left the home with B and separated from the Appellant, she resided with a known drug dealer, which created greater risk to the child as the case was now closed. Finally, the Appellant argued that due to the case closing he had been unable to see his child or have regular visitations due to a contested dispute with CAR over the custody of B. I do not find the Appellant's argument to be persuasive.


The Department showed through a preponderance of evidence that they made a sound reasonable judgement to close the Appellant's case based on clinical factors. The substantial evidence showed that CAR for over six (6) months abided by her service plan tasks; engaged in treatment to address her addiction; remained sober and provided for the needs of her B. The Department also showed that CAR left the home where the Appellant resided due to domestic violence concerns, showing good judgment by keeping the child safe and unexposed to further possible harm. (Fair Hearing Record) Subsequently, the Department did not have any safety concerns for the child at the time of case closure. Further the Appellant was inconsistent with his involvement with Department. 110 CMR 9.02 (5)

In making a determination on the matter under appeal, the Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker, if there was a reasonable basis for the decision. 110 CMR 10.05 After review of the testimonial and documentary evidence presented, the Appellant had not demonstrated any failure by the Department to follow its regulations, policies, or procedures with respect to the decision to close his case. 110 CMR 8.00; 110 CMR 9.00; DCF Case Closing Policy #86-007, Rev. 12/03/17

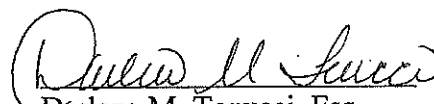
Conclusion and Order

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**.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, they 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.


Jorge F. Ferreira, MSW
Fair Hearing Officer

Date: 6/19/10


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