

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

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IN THE MATTER OF)
)
 SAV) FAIR HEARING DECISION
)
 FH # 20180010)
)

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

Procedural History

The Appellant came to the Department's attention on December 10, 2007, due to allegations of neglect of I, [REDACTED] (hereinafter "I" or "the child"), by her father, GM (hereinafter "GM"). The Appellant and GM had a contentious battle in Probate Court over I; resulting in sixteen (16) 51A reports alleging neglect and sexual abuse being filed against each other since December 2007, of which were either screened out or unsupported. In August, 2017, the Department supported an allegation of neglect of I by the Appellant pursuant to M.G.L. c. 119, §§51A and B. The case was open for a forty-five (45) day assessment. On or about December 21, 2017, the Department made the decision to close the Appellant's case at the conclusion of the family assessment as it was determined that no further services were required for family from the Department. The Department sent written notice to the Appellant of its decision and of her 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 30, 2018, at the DCF South Central Area Office in Whitinsville, Massachusetts. Upon request of the Appellant, the record remained open until February 16, 2018 for submission of additional documentary evidence. Additional documentary evidence was submitted by the Appellant and reviewed. The record closed on February 16, 2018.

The following persons appeared at the Fair Hearing:
Jorge F. Ferreira Fair Hearing Officer

ECJ	DCF Social Worker
LH	DCF Area Program Manager
AG	DCF Supervisor
SB	DCF Supervisor
MA	Witness
RA	Witness
SAV	Appellant

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:	DCF Case History (Summary)
Exhibit B:	DCF Case Dictation Report (09/21/17-01/25/17)

For the Appellant:

Exhibit 1:	Appellant's Written Argument
Exhibit 2:	Letter Excluding Appellant from School Information Regarding I
Exhibit 3:	DCF Family Assessment
Exhibit 4:	Child's Letter
Exhibit 5:	In-School Counseling Agreement
Exhibit 6:	E-mail Tech. Alert
Exhibit 7:	E-mail Exchange – ER Incidents Involving I
Exhibit 8:	E-mail Exchange w/School Principal
Exhibit 9:	E-mail with Field Trip Permission
Exhibit 10:	E-mail Daughter's (I) Notes
Exhibit 11:	E-mail Field Trip Form
Exhibit 12:	E-mail Field Trip Form Signed
Exhibit 13:	E-mail with Pediatrician Letter/Form
Exhibit 14:	DCF Case Closing Letter

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. DCF Case Closing Policy #86-007, rev. 12/03/17; 110 CMR 10.05

Findings of Fact

1. On August 1, 2017, following an allegation of sexual abuse of I by her stepbrothers and physical abuse by GM, the Appellant became involved with the Department. The allegations were screened out by the Department; however a referral was made to the District Attorney due to the allegations of sexual abuse. On August 9, 2017, an allegation of neglect of I by the Appellant pursuant to M.G.L. c. 119, §§ 51A and B was supported. It was reported that I was interviewed by an "array" of professionals and they have all disputed the allegations of sexual abuse since 2007 and stated that the Appellant was the reason for I to make these disclosures as well as disclosures against GM. As a result, I displayed maladaptive behaviors over the past two (2) years. (Exhibit A; Testimony of ECJ)
2. The Department conducted and completed a family assessment. At the conclusion of the family assessment, the case was submitted for case closure due to no protective concerns. Additionally, the legal custodian and father, GM, was not willing to engage in any services, outside the engagement of the child's psychologist. While the Appellant was in agreement with all recommended services, she had no legal rights to the child and was unable to consent to any treatment for I. Counseling was also recommended for both parents but the Appellant was not in agreement with that recommendation because the identified professional was linked to a Guardian Ad Litem report that stated that the Appellant had a personality disorder. (Exhibit 3, p. 18; Testimony of ECJ)
3. The Appellant and GM had poor communication due to an ongoing probate court feud regarding the child. They would often not share information, which led to conflicts and false allegations. (Exhibit B; Testimony of ECJ; Testimony of SB)
4. The Department convened an Area Clinical Review and concluded there was no imminent risk to the child, save the contentious legal battle in probate court between the parents. Since the Department did not have custody and no concerns, they submitted a case closing letter on December 21, 2017, to the Appellant pursuant to DCF Case Closing Policy #86-007, rev. 12/03/17 informing her of their decision. (Exhibit 14; Testimony of SB; Testimony of LH)
5. The Appellant testified she was not involved in the decision making regarding the child and services; that she was excluded by the Department and providers. (Testimony of the Appellant; Exhibit 1; Exhibit 2; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 11; Exhibit 12; Exhibit 13)
6. The Appellant testified GM threatened I and made her life miserable if the Appellant had any communication with I. Additionally, the Appellant reported GM tried to portray I as a liar and prevented her from talking to social workers whom she felt comfortable with regarding the abuse and neglect that I had suffered under GM's care. (Exhibit 1; Testimony of Appellant)

7. The Appellant testified the child had been suicidal due to GM's interference in the child's true communication with collaterals and the Appellant in her attempt to get help for I. (Exhibit 1; Exhibit 2; Exhibits 5-13; Testimony of the Appellant)
8. The Appellant testified the Department failed to do their due diligence in keeping the case open because the evidence suggested that GM was unable to care for I appropriately and I was at risk for suicide and neglect. (Testimony of Appellant)
9. MA testified that GM manipulated I and violated the Appellant's civil rights by not sharing information and perpetuating falsehoods; that the Appellant had a right to input despite the legal status. (Testimony of MA)
10. RA testified that I was suppressed by GM. I acted differently in front of GM and other family members; and that I was at risk of being molested again because GM was unable to supervise her. The child had "flashbacks" regarding the trauma she has experienced and I's suicidal ideation was the result of this trauma. The Department's decision to close the case was "reckless." (Exhibit 10; Testimony of RA)
11. The Appellant testified that she and I were in danger because of GM and I wanted to be with the Appellant. Closing the case had been detrimental and the Department failed them because they sided with GM. (Exhibit 4; Testimony of Appellant)
12. According to the Department, the discord between the Appellant and GM and their ongoing battle in Probate Court was not a reason to keep the case open. The Appellant and GM were unable to put their differences aside. There were providers involved to address their issues if they were utilized. There was no clinical justification to keep the case open and the Department "is not going to sit on this case" for something to happen. (Testimony of LH)
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 #86-015, 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 her case. The Appellant argued that the Department prematurely closed her DCF case and placed I in danger as a result. The Appellant argued the Department failed to do their due diligence to assure the safety and well-being of the child pursuant to DCF Case Closing Policy #86-007, rev. 12/03/17. The Appellant further argued GM created an environment of risk for the child by spreading falsehoods about the Appellant and portraying her and I as liars. The Appellant argued that closing the case demonstrated the Department’s lack of understanding of the family dynamics because they have allowed I to continue to reside with GM and that the DCF Family Assessment ignored her and did not portray the whole picture. The Appellant argued she was never properly and timely informed about I and her issues of suicide; that I will continue to be in danger as long as she lived with GM and DCF did not interfere because GM was controlling the child and violating her civil rights by not allowing any input as a mother, which she felt was detrimental to the child’s welfare. Subsequently, the Appellant argued that she was substantially prejudiced by the Department’s decision in closing her case. 110 CMR 10.05 I do not find that the Appellant’s argument to be persuasive.

The Department provided substantial evidence that the Appellant and GM had a long contentious battle in Probate Court over the custody of the child as well as over who made decisions regarding her welfare. The Department provided further evidence that the Appellant and her immediate family attempted to utilize DCF to intervene in the probate matter; i.e. both the Appellant and GM have had a total of sixteen (16) 51A reports filed on them on behalf of I. All of them, with the exception of one (1) were either screened out or unsupported following a 51B Response. (Fair Hearing Record) The Department closed the case following the DCF Assessment because neither parent agreed with supportive services for them and the Appellant


was unable to consent to the services for I as she was not custodial parent. While the Appellant and GM were unable to mediate and co-parent, the DCF Family Assessment was able to show that there were no concerns, outside of the probate issues and the child received treatment from a psychologist and a school adjustment counselor. Despite numerous reports, all concerns regarding alleged physical abuse, neglect and sexual abuse of I by GM and/or by her older brother were not substantiated. Subsequently, the Department did not have any safety concerns for the child at the time of case closure and the Appellant was unable to show any clinical reason to reverse the Department's decision. 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 her case. 110 CMR 8.00; 110 CMR 9.00; DCF Case Closing Policy #86-007, rev. 12/03/17

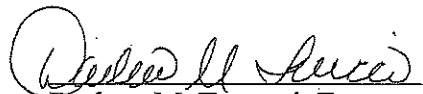
Conclusion and Order

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 she 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: 6/20/19


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