

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6th Floor
BOSTON, MASSACHUSETTS 02111**

**LINDA S. SPEARS,
COMMISSIONER**

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IN THE MATTER OF)
)
)
K-W. J.)
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)
FH #2018 0033)
)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Mr. JK-W ("the Appellant"). The Appellant appeals the Department of Children and Families' ("the Department" or "DCF") decision to terminate DCF services pursuant to 110 CMR 10.06(3). Notice of the Department's decision was sent to the Appellant on January 5, 2018, and the Appellant filed a timely appeal on January 8, 2018.

The Fair Hearing was held on February 22, 2018, at the DCF Greenfield Area Office. The following persons appeared at the Fair Hearing:

Linda A. Horvath, Esquire	Administrative Hearing Officer
JK-W	Appellant/Biological Father
MC	DCF Social Worker
SS	DCF Supervisor

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 pursuant to DCF regulations. 110 CMR 10.26.

The following documents were submitted into the record at the Fair Hearing:

For the Department:

Exhibit 1: 1/5/18 DCF Case Closing Letter

For the Appellant:

Exhibit A: 1/8/18 Appeal Letter (Email)

Statement of the Issue

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, 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; 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. The Appellant in this matter is the biological father of the female child "A" (or "the child"). (Exhibit A.)
2. The child's mother and custodial parent is Ms. SK ("the mother"). (Exhibit A.) The parents are not together as a couple. (See, hearing record.)
3. In April, 2014, the mother was hospitalized as a result of an incident of domestic violence between the couple and the mother tested positive for heroin; she has a history of heroin abuse. The Department's Cape Cod Area Office first became involved with the family in June, 2014, when a mandated reporter filed allegations of neglect with respect to the Appellant and the mother when the child was two days old. The mother did not test positive for heroin at the child's birth but test results were pending for the child at that time. The family was found to be living in a trailer on the side of the paternal grandparents' house, which was in foreclosure. (Testimony of MC.)
4. Thereafter, the mother and child lived in [REDACTED], a residential treatment program/shelter for mothers in early recovery where they can live with their children; the mother eventually graduated from that program. (Testimony of MC.)
5. In December, 2016, the mother initiated a rape examination for the child alleging the Appellant sexually abused the child. (Testimony of Appellant.) There is nothing in evidence regarding a 51A filing or a criminal investigation for this allegation of sexual abuse, or any outcome therefrom. (See, hearing record.)
6. In 2016, the mother took the child from Cape Cod and moved to Western Massachusetts. The mother's/child's DCF case was transferred to the Springfield Area Office. (Testimony of MC.)

7. In 2017, the mother and child moved again to another part of Western Massachusetts and the DCF Greenfield Area Office took over management of the clinical case. As of the date of the fair hearing, the Department had provided shelter services to the mother/child (where they continued to live as of the fair hearing date), as well as individual therapy for the mother, therapy for the child, and daycare services. (Testimony of MC.)
8. The Department was not providing services for the Appellant at the time of the fair hearing. (Testimony of MC.)
9. The only 51A reports that Greenfield DCF was aware of was two reports filed in June, 2017, regarding sexual abuse and physical abuse of the child by an unknown perpetrator. These were screened-out. (Testimony of MC.) In October, 2017, there was a SAIN (forensic) interview with the child on Cape Cod; DCF was not made aware of that interview. (Testimony of SS.)
10. Although the Department has had custody of the child in the past, at the time of the fair hearing, the mother had full physical and legal custody of the child. (Testimony of MC.)
11. Since the mother obtained full custody, the mother allows only an in-home therapist into her current residence but does not allow the DCF social worker to know her address or to make home visits as she believes DCF had given the Appellant her previous shelter address. DCF denies they gave the Appellant this information. The mother also refused to sign releases for the Department. The mother meets with the DCF social worker monthly in the community, and the in-home therapist gives the social worker regular updates about the mother/child in the home.¹ (Testimony of MC.)
12. At the time of the fair hearing, the Appellant and mother were embroiled in a custody matter through the Probate Court where the Appellant was seeking full physical and legal custody of the child. A trial had already occurred with dates on December 28, 2017, and January 26, 2018, and the Appellant had court-ordered visitation with the child every other weekend (Testimony of MC); trial results were pending. (Testimony of Appellant.)
13. The current DCF social worker made three home visits to the Appellant's residence, though this fell short of the DCF monthly home-visit task as found in the Appellant's service plan. The Appellant filed a grievance of this underperformance by the Department with the Greenfield Area Office, the result of which is not in evidence. (Testimony of Appellant.)

¹ This issue of mother's refusal to allow DCF into her home was discussed at a Clinical Review Team ("CRT") meeting. As the Department receives monthly status reports from the in-home therapist, the CRT found this arrangement satisfactory in lieu of monthly DCF visits. (Testimony of SS.)

14. The Appellant documented his concerns about the mother to DCF in an email,² and claimed to have filed 51A reports against the mother. (Testimony of Appellant.)
- a) The Appellant reported the mother's homelessness, and alleged loss of her license due to negligent operation of a motor vehicle after the mother allegedly drove over 100 mph with the child in the car. (Testimony of Appellant.) The Department denied it received a 51A report regarding such an incident. The Department was aware that the mother was in a car accident but the child was not in the car. The Department did not have any concerns regarding that incident. (Testimony of MC.)
 - b) The Appellant also alleged neglect by the mother of the child after allowing her former boyfriend back into her home after his incarceration for domestic violence perpetrated on the mother. (Testimony of Appellant.) The Department denied it ever received a 51A report regarding the ex-boyfriend's existence in the home or a second incident of domestic violence between the mother and her former boyfriend; the mother denied another incident occurred. To the Department's knowledge the mother and the former boyfriend were no longer a couple; DCF was aware that the former boyfriend had engaged in a batterers' program (the MOVE program). (Testimony of SS; Testimony of MC.)
15. The Appellant self-reported that he had never had a restraining order filed against him, and has never been arrested and/or charged with domestic violence or sexual abuse; there is no evidence to the contrary. (Testimony of Appellant.) The Department found the Appellant's home to be appropriate for the child, and opined that the pick-ups and drop-offs for the child's visitation with the Appellant have been appropriate. (Testimony of SS.)
16. None of the professionals involved with the parents/child had any concerns, and DCF did not have any protective concerns about the mother's *or* the Appellant's care of the child. (Testimony of SS; Testimony of MC.) However, DCF had concerns regarding the Appellant being the cause of exposing the child to conflict between him and the mother, potentially putting the child "in the middle of family conflict and strife...[which] could result in probate court giving DCF custody." (Exhibit 1.)
17. On January 5, 2018, the Department sent a case closing letter to the Appellant indicating its desire to close the clinical case with fourteen calendar days' notice (on January 19, 2018) as the agency "has no apparent concerns" regarding his or the mother's care of the child. (Testimony of MC; Exhibit 1.)
18. The Appellant's appeal letter specifically states that the DCF clinical case should remain open as, "Somebody that has exposed their children, willingly, to domestic violence and drug abuse, that has been documented by the department...does not

² The Appellant made DCF aware of all perceived "infractions" by the mother in December, 2017, via an email. (Testimony of Appellant.)

constitute a valid reason for why the Department of Children and Families would have 'no apparent concerns' at this time." (Exhibit A.)

19. Based upon the evidence and the hearing record as a whole, the Department's decision and procedural action in terminating services did not violate applicable statutory or regulatory requirements, or the Department's policies or procedures, and did not result in substantial prejudice to the Appellant. The Appellant was not receiving any services from the Department at the time DCF made its decision to close its case, and at the time, no noted protective concerns remained.

Applicable Standards

"The policy...of the Department of Children and Families (Department) is to strengthen and encourage family life so that every family can care for and protect its children. To that end, the Department will make every reasonable effort to encourage and assist families to use all available resources to maintain the family unit intact...[T]he Department will intervene to protect the right of children to sound health and normal physical and mental development...[T]his is the Department's mandate. 110 CMR 1.01.

In delivering services to children and families the Department shall, among other things..."seek to ensure the safety of children;...recognize that, consistent with the need to ensure the safety of children, the family is the best source of child rearing, and so require that state intervention into a family unit be used only when it is clearly needed to protect a child;... 110 CMR 1.02.

All services available through the Department, and access to such services, are set forth at 110 CMR 7.00. The Department's or Provider's mandate with respect to the termination of services is set forth at 110 CMR 8.00 et seq., and requires notice to the Appellant as set forth in the regulations. Any reduction in or termination of those services is an allowable ground for an appeal through the Fair Hearing process. 110 CMR 10.06(3)(a).

To prevail at a Fair Hearing on the issue of termination of services, an Appellant must show based upon all evidence presented at the hearing, by a preponderance of the evidence that the Department's decision or procedural action 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. If there is no applicable policy, regulation or procedure, the Appellant must show by a preponderance of the evidence that the Department acted without a reasonable basis or in an unreasonable manner, which resulted in substantial prejudice to the Appellant. 110 CMR 10.23;

Analysis

Based upon a review of the evidence and the hearing record as a whole, as discussed above and in the detailed Findings of Fact, I find that in terminating services, the Department did not violate applicable statutory or regulatory requirements, or the Department's policies or procedures, and its action in this regard did not result in substantial prejudice to the Appellant.

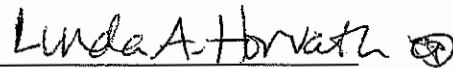
The Department has had long-standing involvement with this family since the birth of the child. As of the date of the Department's closing letter, the mother had full physical and legal custody of the child, and DCF did not have any protective concerns for the child in either the Appellant's or the mother's care. Furthermore, the Appellant was not receiving services from DCF. The mother and child were involved with therapeutic services, including in-home services, and no other services needed to be implemented by DCF. Although the Appellant brought up some concerns regarding the mother's actions involving an ex-boyfriend and motor vehicle violations, the Department had not received 51A reports regarding these issues, and the social worker had already discussed the concerns with the mother and found them not to be as portrayed by the Appellant. The parents' Probate Court custody trial had already ended and the parties were waiting for the results. All lingering concerns of the Appellant, regarding mother's ability to care for the child, were being addressed by the Probate Court. Additionally, the closing of the clinical case does not preclude re-opening at a later time, should protective concerns arise.

Evidence offered by the Appellant was not compelling to the degree to find that the Department violated applicable statutory or regulatory requirements, or the agency's policies or procedures, and its action in terminating services did not prejudice to the Appellant.

Conclusion

The Department's decision to terminate services in this matter is AFFIRMED.

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 the Appellant lives, or in Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the Findings of Fact.



Linda A. Horvath, Esquire
Administrative Hearing Officer

Dated: 6-18-18



Cristina Tedstone
Deputy General Counsel
Director, Fair Hearing Unit