

**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)
)
 BB)
)
 FH # 2018-0238)
)

FAIR HEARING DECISION

The Appellant, BB (hereinafter “BB” or “Appellant”), appealed the decision of the Department of Children and Families (hereinafter “DCF” or “Department”), to remove a foster child from her home pursuant to 110 CMR 7.116, and pursuant to 110 CMR 7.104, to revoke her license to provide unrestricted foster care.

Procedural History

On and off for the past eighteen (10) years, BB provided unrestricted foster care for the Department. In In 2017, BB moved from [REDACTED] to [REDACTED] and her family resource case transitioned to the Taunton Area Office from the Park St. Area Office. The Department began its license renewal of the Appellant’s foster home as required by regulation, and encountered a criminal charge for one of the adults who resided in BB’s home. The Department informed BB that the adult in the home needed to contact them as this open criminal charge needed to be discussed. The adult person never contacted the Department, and BB informed the Department the charge had nothing to do with the Department. The Department determined they were unable to re-license the home and a decision was made to remove the foster child that was placed in BB’s home.

On February 20, 2018, the Department sent written notice to the Appellant of its decision to remove a child from her home and of Appellant’s right to appeal. On March 5, 2018, the Department made the decision to revoke the license for the Appellant’s home to provide unrestrictive foster care. The Department sent written notice to the Appellant of its decision and of Appellant’s right to appeal on that date. The Appellant made a timely request for a fair hearing pursuant to 110 CMR 10.06 on both appealable issues.

The Fair Hearing was held on April 11, 2018, at the DCF Taunton Area Office. All witnesses

were sworn in to testify under oath. The record closed at the conclusion of the hearing.

The following persons appeared at the Fair Hearing:

Lauren Decas	Fair Hearing Officer
BB	Appellant
HM	Support
RF	Family Resource Social Worker (Taunton)
JR	Family Resource Supervisor (Taunton)
TA	DCF Ongoing Social Worker (Park St.)
KP	DCF Ongoing Supervisor (Park St.)

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 digitally recorded and transferred to one (1) compact disc in accordance with Departmental regulation. 110 CMR 10.36

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

For the Department:

Exhibit A: Removal letter, dated 2/20/18
Exhibit B: Revocation letter, dated 3/5/18
Exhibit C: Family Resource Dictation 10/17/17-2/26/18
Exhibit D: Family Resource License Renewal 3/5/18
Exhibit E: Family Resource License Renewal 9/28/17
Exhibit F: Family Resource License Renewal 5/4/16
Exhibit G: Family Resource Annual Re-Assessment 2/27/15
Exhibit H: Family Resource License Study 2/14/14

Appellant:

None

Issue to be Decided

The issues presented in this Fair Hearing are whether, based upon the evidence and the hearing record as a whole, and on the information available at the time of the decisions made did said decisions violate applicable statutory or regulatory requirements, or the Department's policies 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 Appellant. 110 CMR 10.05

Findings of Fact

1. At the time of the subject decisions, BB provided Departmental foster care for eighteen (18) years, on and off. From 1996 - 2002, the Appellant was ambivalent about providing foster

care. From 2002 – 2007, the Appellant’s home was open and active. BB considered re-opening her home on at least two occasions after 2007; however due to CORI issues of her significant other, this was not possible. In 2014, when the relationship terminated, BB underwent a license study through the Park St. Area Office and on February 14, 2014, the Appellant’s license to provide unrestricted foster care was granted. (Exhibit D; Exhibit H)

2. In October, 2017, the Park St. Office transferred the Appellant’s foster home to the Taunton DCF office, as BB had purchased a home in ██████████ and was residing there with her mother, adult son, cousin, and two (2) foster children, N (hereinafter “N”) who was almost three (3) years old and B (hereinafter “B”) who was seven (7) months old. (Testimony of RF)
3. N was reunified with her biological family. There was a plan for B to reunify with his/her biological father; however this did not occur. (Testimony of RF)
4. A Family Resource License Renewal became due for the Appellant’s foster home. The Department learned that one of the adult males living in the Appellant’s foster home had an open Category A criminal charge from months prior. BB was contacted and informed the Department needed to talk with the adult with the charge. BB informed the Department his charge had nothing to do with DCF or the foster child in her home, and he would not be discussing anything with the Department. (Exhibit C, Exhibit D, Testimony of RF)
5. On February 20, 2018, a removal letter was sent to BB informing her that B would be removed from her home on March 6, 2018; the reasons for the removal were listed as:
 - a. The resource was not willing to provide the information needed to submit the required standards review.
 - b. The Resource did not notify the Department of the arrest of the household member as required by the Foster Parent Agreement.
 - c. “The foster home may not have any household member, frequent visitor, or alternative caretaker, who would, in the judgement of the Department, pose a threat of abuse or neglect to foster children placed in the home.....”(Exhibit A)
6. BB requested B be removed from her home earlier than March 6, 2018. B was removed on February 27, 2018. (Testimony of RF)
7. On March 5, 2018, the Department notified BB in writing that a license renewal had been completed on her home and the Department was unable to relicense her home for foster care. The reasons for the revocation were the same as those found in Finding #5. (Exhibit B)
8. BB testified that, “Every rule should have wiggle room” and thought the Department’s decision making on these two matters was “harsh”. (Testimony of Appellant)
9. BB no longer wished to provide foster care for the Department. However, she did not want the Department to revoke her license but rather that her license be allowed to expire. (Testimony of Appellant)

10. Based upon the entirety of the evidence in this case, I find the Department's decision to revoke BB's license to provide Departmental foster care was made in conformity with Departmental policies and regulations and with a sound, reasonable clinical basis. (Fair Hearing Record)
11. Based upon the entirety of the evidence in this case, I find that the Department's decision to remove B from the Appellant's home was made in conformity with Departmental policies and regulations and with a sound, reasonable clinical basis. (Fair Hearing Record)

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 of 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:

- (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;

110 CMR 7.104: Standards for Approval as Foster/Pre-Adoptive Parent

In order to be approved as a foster/pre-adoptive parent, a foster/pre-adoptive parent applicant must meet the following requirements:

- (1) A foster/pre-adoptive parent applicant must demonstrate, to the satisfaction of the Department the ability:
 - (a) to assure that a child placed in his or her care will experience a safe, supportive, nurturing and stable family environment which is free from abuse or neglect;
 - (b) to assure that a child placed in his or her care will be provided with adequate food, clothing, shelter, supervision and other essential care at all times;
 - (d) to promote the physical, mental, and emotional well-being of a child placed in his or her care;
 - (k) to work with the Department and the foster child's parents in implementing the child's service plan in order to meet development goals and outcomes;
 - (m) to draw upon community and professional resources as needed;
 - (p) to have reasonable expectations of a child's behavior and potential growth

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

(5) Whenever the Department has revoked or not renewed a license for a licensed foster/pre-adoptive parent and foster/pre-adoptive home, as a result of an annual or limited re-assessment, the Department shall remove all children from the foster/pre-adoptive home, unless the Department determined that it is in the child's best interest to remain in the foster/pre-adoptive home. When a foster child is removed under this provision, the Department will provide the foster/pre-adoptive parent with 14 days notice in advance of the decision to remove the foster child, unless the Area Director has determined that the child's physical, mental, or emotional well-being would be endangered by remaining in the foster/pre-adoptive home, in which case the

Department will provide less than 14 days notice.

110 CMR 10.05

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.

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 Appellant contested the Department's decision to remove a child from her foster home and to revoke her license to provide DCF unrestricted foster care. The Appellant maintained she no longer wished to provide foster care through the Department, however did not want her license revoked; she rather wanted her license be allowed to expire. Aside from her wishes, the Appellant offered no other substantive reason why the Department should not have made the decisions that they made. I find the Appellants' argument was not persuasive.

Except as otherwise provided in its regulations at 110 CMR 7.100 et seq., whenever the Department makes the decision to revoke a license, it must give written notice to the foster/pre-adoptive parent as outlined in 110 CMR 7.113B. In the instant case, DCF sent the Appellant the requisite written notification outlining its concerns and relevant regulations as reasons for the revocation. The concerns noted in the Findings of Fact related to those regulations cited by the Department in its revocation letter; namely 110 CMR 7.104(1). As such, the Department's procedural action in closing the Appellants' foster home and sending written notice of intent to remove B from the foster/pre-adoptive home was done in conformity with its policies and/or regulations and did not result in substantial prejudice to the Appellants.

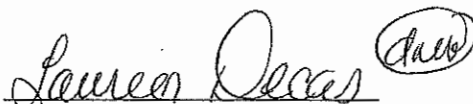
This Fair Hearing Officer had no reason to doubt the clinical experience and judgment of the Department staff involved in the instant matter. I do not find any information offered by the Appellant to be compelling to the degree to find that the Department acted unreasonably and/or abused its discretion in making the decision to revoke the Appellant's license or to remove B from the home. Based upon a review of the evidence presented at the Fair Hearing, including testimony from all witnesses and documents submitted, the Department's decisions were made in conformity with its policies and regulations and were supported by sound clinical judgment.

Conclusion

The Department's decision to revoke the Appellant's license to provide foster care was made in conformity with Department regulations and with a reasonable clinical basis. Therefore, the Department's decision is **AFFIRMED**.

The Department's decision to remove a child, B, from the Appellant's foster home was made in conformity with Department regulations and with a reasonable clinical basis. Therefore, the Department's decision is **AFFIRMED**.

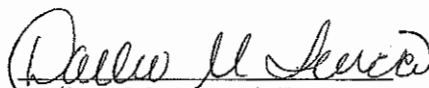
This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives within thirty (30) days of the receipt of the decision. (See, G.L., c. 30A, §14.) In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.

 (circled initials)

Laureen Decas
Administrative Hearing Officer

6/21/18

Date



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