

**Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
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Linda S. Spears, Commissioner

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IN THE MATTER OF: KM

Fair Hearing #20180398

FAIR HEARING DECISION

Appellant, KM, appeals the decision of the Department of Children and Families ("Department") to remove a foster child from her foster home.

Procedural History

On March 22, 2018, the Department notified KM, a Department approved foster parent, that it would be removing G, a foster child in the Department's custody, from her home. KM ("Appellant") made a timely request for a Fair Hearing relative to the Department's decision to remove G from her home. The Fair Hearing was held on May 1, 2018, at the Department's Area Office in Cambridge, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the hearing:

KM	Appellant/Foster Parent
CM	Department Ongoing Social Worker
AD	Department Ongoing Supervisor
AT	Witness/Mother of Child
TF	Attorney for Appellant
LL	Attorney for the Department

The Fair Hearing was digitally recorded. In accordance with 110 C.M.R. §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 record closed at the conclusion of the oral evidence. The following exhibits were entered into the record for this Fair Hearing:

For the Department:

None

For Appellant:

- Exhibit 1 Fair Hearing Request with attached Department removal letter
- Exhibit 2 Guardianship petition
- Exhibit 3 Consent to petition

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 C.M.R. §10.21.

Statement of the Issues

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, the decision or procedural action of the Department of Children and Families to remove a foster child from Appellant's home in order to place the child in a kinship home violated applicable statutory or regulatory requirements, or the Department of Children and Families' policies or procedures, and resulted in substantial prejudice to the Appellant; if there is no applicable statute, policy, regulation or procedure, whether the contracted agency failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant. 110 C.M.R. §10.05

Findings of Fact

On the basis of my assessment of all the evidence, I make the following factual findings:

1. G was born in February 2017. [Testimony of Ongoing Social Worker]
2. In or about April 2017, the Department licensed Appellant as an unrestricted family resource (foster parent) for the Department. Appellant is a thirty year old single woman who owns a two bedroom home. She is a former police officer. She left the police force approximately two years ago and currently works as an office aide at a daycare center. She also helps out in the daycare classrooms as needed. She is trained in CPR and First Aid. [Testimony of Ongoing Social Worker; Testimony of Appellant]
3. Appellant does not smoke. [Testimony of Ongoing Social Worker]
4. In April 2017, the Department obtained custody of G, removed G from his mother's care, and placed him in the home of Appellant. G was Appellant's first foster child placement. [Testimony of Ongoing Social Worker; Testimony of Appellant]
5. After placement with Appellant, G attended the daycare where Appellant worked. [Testimony of Ongoing Social Worker]

6. Appellant is not related to G. [Testimony of Ongoing Social Worker]
7. The Department prioritizes placement with a kinship family for the out-of-home placement of children in their custody. Appellant was informed of this priority during her participation in MAPP training for prospective foster parents. G's social worker and Appellant's family resource worker also discussed the Department's kinship priority with Appellant. After placing G with Appellant, the Department contacted its "Family Find" unit to locate possible kinship placement resources for G. The Family Find process took several months to complete. Several of G's family members expressed interest in fostering G. Of them, the W family had the required space and the continued expressed interest in fostering G. [Testimony of Ongoing Social Worker; Testimony of Appellant; 110 CMR 7.101]
8. Mr. and Mrs. W are the maternal great uncle and great aunt of G. They are in their 50s. They have a biological son, age fifteen. They have adopted the (half)siblings of G's mother: a ten year old boy, M, and a seven year old girl, D. [Testimony of Ongoing Social Worker]
9. G's mother and the W family have a tense relationship and a tenuous connection. G's mother has never met her ten year old half-brother. [Testimony of Ongoing Social Worker; Testimony of AT]
10. The relationship between G's mother and the W family is a factor to be considered in making a placement decision for G. [Testimony of Ongoing Worker]
11. G has respiratory issues and is diagnosed with asthma. In May 2017, G's asthma symptoms worsened. He was placed on a nebulizer two times a day and albuterol as needed. [Testimony of Appellant; Testimony of Ongoing Social Worker]
12. There are concerns relative to G's proposed placement with the W family as both Mr. and Mrs. W smoke. The concerns are around the impact exposure to smoking/second hand smoke may have on G's health. [Testimony of Ongoing Social Worker; Testimony of Appellant]
13. In October 2017, G had his first visit with the W family in the Department's offices. He had visits with them every couple of weeks thereafter. The Department developed a schedule of transition visits (of increasing length of time) and planned to remove G from Appellant's home and place him with the W family on January 2, 2018. During this time, Mr. and Mrs. W were an open and approved family resource for the Department as the adoption of D had not yet gone through. [Testimony of Ongoing Social Worker]
14. In or about December 2017, Appellant expressed interest in adopting G. The Department's family resource worker informed Appellant that the goal for G was still reunification and Appellant had to wait until there was a goal change to adoption. [Testimony of Appellant]

15. After G's first overnight visit with the W family in December 2017, the Department's ongoing social worker dropped off G at the daycare where Appellant worked. Appellant brought G to his pediatrician for a sick visit as G appeared to be extra phlegmy/congested sounding. G's clothes and belongings also smelled like smoke. [Testimony of Ongoing Social Worker; Testimony of Appellant]
16. In mid-December 2017, G's attorney filed an abuse of discretion motion in Juvenile Court relative to the Department's plan to remove G from Appellant's home and place him with the W family. Part of the reasoning behind the motion was concerns regarding Mr. and Mrs.' smoking and its impact on G. Pending a hearing on the abuse of discretion motion, the Department agreed to pause the transition of G to the W family's home. [Testimony of Ongoing Social Worker]
17. After the abuse of discretion motion was filed, the Department arranged for Mrs. W to attend G's annual physical in January 2018, along with G's ongoing social worker, in order to be more informed of G's health needs. [Testimony of Ongoing Social Worker]
18. In the opinion of G's pediatrician, it is best for G not to be exposed to smoke, for people not to smoke in the home where he lives, and for people not to smoke around him. The pediatrician discussed a plan with Mr. and Mrs. W and the ongoing social worker which consisted of: Mr. and Mrs. W's not smoking in their home; Mr. and Mrs. W's not smoking around G; Mr. and Mrs. W's not allowing smoke residue to remain on their clothes; Mr. and Mrs. W's washing their hands after smoking; and Mr. and Mrs. W's clearing out their home. [Testimony of Ongoing Social Worker]
19. Department staff had several conversations with Mr. and Mrs. W relative to the severity of the situation and the fact that exposure to smoke/smoking was a potential barrier to the placement of G in their home if he continued to have poor health symptoms in their care. [Testimony of Ongoing Social Worker]
20. On March 1, 2018, the Court found that the Department had not abused its discretion in wanting to place G with kin and allowed the transition of G to move forward. [Testimony of Ongoing Worker]
21. On or about March 9, 2018, Appellant petitioned the Juvenile Court for guardianship of G. G's mother assented to the petition for guardianship. The petition was pending as of the date of the Fair Hearing. [Exhibit 2; Exhibit 3]
22. If the Juvenile Court were to grant Appellant's petition for guardianship, the paternal rights of G's mother would not be terminated. The Department does not support Appellant's petition. [Testimony of AT]
23. On March 14, 2018, the permanency goal for G changed from reunification to adoption. [Testimony of Ongoing Social Worker]

24. On or about March 22, 2018, the Department informed Appellant that it would be removing G from her home on April 5, 2018 in order to place him with family. The decision to place G with the W family was a team decision made by the ongoing social worker, the supervisor, the manager, and the Department's attorney. [Exhibit 1; Testimony of Ongoing Social Worker]
25. On or about March 27, 2018, Appellant requested a Fair Hearing relative to the Department's decision to remove G from her home. [Exhibit 1; Testimony of Ongoing Social Worker]
26. The Department has not had any concerns relative to Appellant's home or Appellant's care of G. [Testimony of Ongoing Social Worker]
27. G's mother has no concerns relative to Appellant's care of G and feels that Appellant takes care of G as if he were her own child. G's mother wants G to remain with Appellant as Appellant has taken care of G since he was two and a half months old, Appellant is G's "family," and G is thriving, moving forward, and doing very well in Appellant's home. [Testimony of AT]
28. G's mother has concerns regarding the potential placement of G with the W family as follows: the serious negative impact that smoking by Mr. and Mrs. W may have on G's health; the amount of attention with which Mr. and Mrs. W would be able to provide G as they have three other children and a pet in their home;¹ G's mother's ability to retain/foster a relationship with G as her relationship with Mr. and Mrs. W is not good and as she has never met her ten year old half-brother; and the inability of Mr. and Mrs. W to maintain her other brother (now eighteen years old) in their home when he had been placed there.² [Testimony of AT]
29. On or about March 22, 2018, the Department informed Appellant in writing of its decision to remove G from her home and place him with family. [Exhibit 1]
30. Appellant filed a timely appeal of the Department's decision to remove G from her home. The filing of the request for a Fair Hearing stayed the transition of to the W family. [Exhibit 1; Testimony of Ongoing Social Worker]
31. The Department's ongoing social worker has been to the W family's home since the development of the plan with G's pediatrician. The worker has not had any indication that Mr. and Mrs. W are smoking in the home or not following the plan as laid out by G's pediatrician. After picking up G from his last two visits with the W family, the ongoing social worker noted no indications that G was not physically healthy after the visits. The most recent pickup occurred the day before the Fair

¹ The W family has a dog. Appellant has two dogs. There is no evidence as to what, if any, impact being around dogs may have on G's asthma. Appellant does have an air purifier in her home.

² According to G's mother, Mr. and Mrs. W "threw" her now eighteen year old brother out of their home. According to the Department, the brother was moved because he had been assaultive and threatening to his younger brother.

Hearing. The pickup before that was approximately two and a half weeks before the Fair Hearing. [Testimony of Ongoing Social Worker]

32. In or about mid-April 2018, G was sick and did not have his weekly visit with the W family as his pediatrician felt it was best for him not to visit while he was sick. [Testimony of Appellant]
33. G has had some behavioral changes after his transition visits with the W family, including not sleeping through the night, waking up screaming, and being clingy and crying at daycare drop offs. [Testimony of Appellant]
34. Appellant would like G to be placed ultimately with his birth mother, when/if she is ready, as G deserves to have his mother in his life as well. If adoption remains the goal for G, Appellant wants G to stay with and be adopted by Appellant. Appellant would love for G's birth mother to remain involved in G's life as a mother figure. [Testimony of Appellant]
35. Appellant has requested that she be studied as a prospective adoptive parent for G. [Testimony of Appellant]
36. Pursuant to Appellant's expression of interest in adopting G, the Department has referred her/her home to a contract agency for a pre-adoptive license study in accordance with Department regulations. *See* 110 CMR 7.116 (2)(a)5e(iv). [Testimony of Ongoing Social Worker; Testimony of Appellant]
37. The decision to remove G from Appellant's home in order to place him with family was made in conformity with Department policies and regulations and with a reasonable clinical basis. *See* 110 C.M.R. §7.104 (1); *See also* Analysis below.

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....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 pre-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 program 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).
- (3) Whenever the Department places a child in foster care, the Department shall seek from the child's parents the names of relatives or other kin who may be available to become a foster placement for the child(ren). The Department shall also begin a search for other relatives of the child or for other adult persons who have played a significant positive role in the child's life in order to determine whether the child may appropriately be placed with a relative or person if, in the judgment of the department, that placement would be in the best interests of the child.

110 C.M.R. §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;.... 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 C.M.R. §10.23

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department's or provider's decision was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party....

Analysis

On the basis of the factual findings and standards set forth above and for the reasons set forth below, I uphold the Department's decision.

It is clear that Appellant cares deeply for G, a child whom she has taken care of for the majority of his young life, and wants to continue to provide him with a safe and nurturing foster home. Even so, there is no reason to doubt that the W family also is sincere in its desire to foster G. It is unfortunate that the process to identify the W family as a prospective kinship resource for G took so long. Nevertheless, it is the Department's obligation, pursuant to 110 CMR 7.101(1) and (2)(a),(3), to consider the appropriateness of placing G with the W family. The Department gives priority to kinship families in making placement decisions as it is believed that such placement reinforces a child's racial, ethnic, linguistic, cultural, and religious heritage and strengthens and promotes

continuity of familial relationships. Permanency Planning Policy #2013-01, effective date: July 1, 2013, Section 1 – Policy and Procedures.

In making a placement decision, the Department must take into consideration the individual needs of G. At the Fair Hearing, valid concerns were raised as to the impact placement with the W family would have on G's physical health and on the extent of his birth mother's involvement in his life. Given G's respiratory issues, being exposed to smoke/smoking is particularly detrimental to G's health. Mr. and Mrs. W agreed to a plan developed with G's pediatrician in an effort to minimize the risk to G. The evidence suggests that Mr. and Mrs. W are abiding by the plan. Although the Department did not specifically address the concern raised by G's mother at the Fair Hearing regarding her ability to remain involved in G's life if G were to be placed with the W family, there was no evidence that G's mother would not continue to have her regularly scheduled visits with G if he were moved. Furthermore, there was no evidence as to whether more involvement by G's mother (aside from regularly scheduled visits) would be beneficial or detrimental to G. G's mother has an interest in supporting guardianship by Appellant as, in a guardianship, her parental rights would not be terminated.

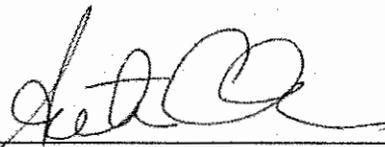
The burden is on Appellant to show, by a preponderance of the evidence, that the Department's decision to remove G from her foster home and place him with relatives was not in conformity with Department regulations and/or policy. A Fair Hearing officer must defer to the clinical judgment of a trained social worker if there is a reasonable basis for the questioned decision. 110 C.M.R. §10.05. This Fair Hearing Officer has no reason to doubt the clinical experience and judgment of the Department staff involved in the instant matter. Taking all of the concerns raised into consideration, the information offered by Appellant is insufficient to find that the Department acted unreasonably and/or abused its discretion in making its decision in this matter.³ Based upon a review of the evidence presented at the Fair Hearing, including testimony from witnesses and documents submitted by the parties, I find the Department's decision was made in conformity with its policies and regulations and with a reasonable basis. The decision falls within the Department's mandate to make placement decisions based upon criteria of safety, well-being and permanency of the child. See 110 C.M.R. §7.101.

Conclusion and Order

The decision of the Department to place G with a kinship family was made in conformity with Department policies and regulations and with a reasonable basis. Therefore, the decision of the Department is **AFFIRMED**.

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

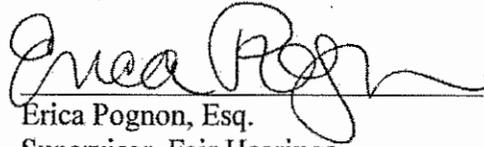
³ In fact, the Juvenile Court determined that the Department did not abuse its discretion.



Antonia Chronis, Esq.
Administrative Hearing Officer

6/26/18

Date



Erica Pognon, Esq.
Supervisor, Fair Hearings