

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF SOCIAL SERVICES
CENTRAL ADMINISTRATIVE OFFICE
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Linda S. Spears
Commissioner

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IN THE MATTER OF
BM #2018-0430

FAIR HEARING DECISION

BM appeals the Department and Children and Families' (hereinafter "the Department" or "DCF") decision to remove a foster child from her foster home.

Procedural History

The Department approved BM to be a kinship foster parent for her grandson, I, on December 12, 2015. On March 28, 2018, the Department provided BM written notice of its decision to remove her grandson from her foster home. The Department also notified BM of her right to appeal the removal decision.

BM made a timely request for a fair hearing to appeal the Department's decision. A hearing was held on May 10, 2018.

BM, the Department adoption worker, the Department adoption supervisor, the Department family resource worker, the Department family resource supervisor and the Department family resource manager testified at the hearing.

The Department submitted the following exhibits at the hearing.

Exhibit A: Family Resource License Renewal, dated April 26, 2018.

Exhibit B: Notice to BM of revocation of BM's license.

Exhibit C: Notice to BM of denial of her application to become a pre-adoptive parent.

Exhibit D: Notice to BM of the Department's decision to remove her grandson from her home.

Exhibit E: Family Resource Annual Reassessment, dated December 26, 2017.

Exhibit F: Family Resource Assessment - Adoption Homestudy

Exhibit G: Safety Plan, dated May 15, 2017.

Exhibit H: Agreement between BM and the Department, dated March 22, 2016.
Exhibit I: Agreement between BM and the Department, dated February 25, 2016.
Exhibit J: Agreement between the Department and Foster/Pre-Adoptive Parents, signed December 8, 2015.

BM submitted the following exhibit at the hearing.

Exhibit 1: Foster Care Review Report

The hearing was digitally recorded and transferred to compact disc.

The hearing officer attests to having no prior involvement, personal interest or bias in this matter.

Issue to be Decided

The issue to be decided is whether, based upon the evidence and the hearing record as a whole, the Department's decision or procedural actions violated applicable statutory or regulatory requirements or the Department's policies or procedures and resulted in substantial prejudice to the appellant(s). If there is no applicable statute, policy, regulation or procedure then the issue to be decided is whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the appellant(s). 110 CMR 10.05.

Findings of Fact

1. BM (hereinafter "foster mother") is the paternal grandmother of I (d.o.b. [REDACTED]). (Exhibit F, p. 2).
2. I's parents lived with foster mother at the time of I's birth. (Testimony of the Department family resource worker).
3. I's mother has 5 children. Three of her other children have been removed from her care. (Testimony of the Department family resource worker).
4. The Department removed I from his parents' care on November 6, 2015, due neglect by his parents related to their substance abuse and untreated mental health issues. (Testimony of the Department family resource worker).
5. The Department placed I with foster mother on November 16, 2015, on the condition that I's parents leave her home and pending the completion of a family resource assessment and approval as a kinship foster placement. (Testimony of the Department family resource worker).
6. On December 8, 2015, the Department approved foster mother as a kinship foster placement for I. (Testimony of the Department family resource worker).

7. A number of concerns arose after foster mother was approved. Foster mother was leaving I in the care of alternative caregivers that were not approved by the Department and not being truthful with Department staff. Foster mother was allowing her mother (paternal grandmother) who lived in the home, to be a caregiver even though she was specifically not approved by the Department due to her medical issues. Foster mother was traveling out of state and leaving I with unapproved caregivers without informing the Department. On one occasion, she told the Department she had only gone to New Hampshire for the weekend, when she actually went to California for at least two weeks. Foster mother was allowing her boyfriend, who was not allowed to be around I at all due to his significant criminal history¹, to live in the home, to be a caregiver for I and to transport him to daycare. (Testimony of the Department family resource worker; Exhibit H; Exhibit I).
8. The Department staff had numerous discussions with foster mother about the Department's expectations and requirements. Foster mother agreed to safety plans put in place by the Department. (Testimony of the Department family resource worker; Exhibit G; Exhibit H; Exhibit I).
9. By early 2017, I's parents' parental rights were terminated and I's goal was adoption. (Testimony of the Department family resource worker; Exhibit F, p. 10).
10. In early 2017, the Department referred foster mother to a contracted agency to complete an adoption homestudy. The homestudy was completed on April 28, 2017, with a recommendation to deny foster mother's application to become a pre-adoptive placement for I. The homestudy discussed numerous concerns about foster mother with regard to her care of her own biological children as well as I. The details will not be repeated here, however, the report summarizes the concerns as follows; "Throughout the home study process, concerns were raised due to lack of parenting skills, minimal parental involvement in school which impacted children, lack of insight into personal decisions that impacted the children, lack of following DCF guidelines regarding appropriate caretakers, and lack of medical compliance with biological children." A more detailed summary is provided in the "Recommendations" section of the report. (Exhibit F).
11. Following the denial recommendation, the Department arranged for in-home therapy services in an effort to work through and resolve the issues leading to the denial recommendation. In-home therapy services were in place through the fall 2017. Providers were reporting that things were going well and the Department scheduled a Regional Clinical Review Team (CRT) meeting to assess the current status and determine whether to pursue foster mother as an adoptive resource for I. (Testimony of the Department family resource worker).

¹ Foster mother's boyfriend has a criminal record which consists of convictions for charges deemed by the Department to be "Table A" charges, the most serious charges that pose the greatest risk to children. (Testimony of the Department family resource manager).

12. The CRT meeting was scheduled for March 23, 2018. (Testimony of the Department family resource worker).
13. Prior to the CRT meeting, the in-home services ended. Shortly thereafter, the problems involving foster mother's daughter's academic issues (attendance, homework, etc) resumed. (Testimony of the Department family resource worker).
14. On March 22, 2018, the Department learned that mother's boyfriend was again living in the home. (Testimony of the Department family resource worker).
15. On or about March 28, 2018, the Department made the decision to remove I from foster mother's home. The Department gave foster mother notice of its decision and her right to appeal. (Exhibit D; Testimony of the Department family resource worker).
16. The Department's notice states that the decision to remove I was based upon foster mother's failure to demonstrate the ability to assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents. 110 CMR 7.104(1)(q) and 7.111.
17. Following the Department's decision, the Department learned that I's father was released from prison and he moved in with foster mother even though the Department had expressly told foster mother that he could not be around I. (Testimony of the Department family resource worker).
18. Following the Department's decision, the Department learned that foster mother took a trip to Mexico without notifying the Department and that mother's boyfriend was still living in the home and in a caregiver role. (Testimony of the Department family resource worker).
19. Foster mother testified at the hearing. She stated that that I has been with her since his birth. She suggested that some of the concerns noted by the Department occurred because she was not aware of the Department's expectations. She minimized her boyfriend's criminal history as well as I's father's history. She acknowledged to some extent that she violated Department policy, but she feels that she should be allowed to care for her grandson anyway to keep him safe. She stated that I has been happy and healthy in her care. (Testimony of foster mother). To the extent that foster mother's testimony differs from the above findings, I do not credit foster mother's testimony.
20. Considering all of the evidence, I find that the Department's decision to remove I from foster mother's home was made in conformity with the Department's regulations and with a reasonable basis.

Analysis

Department regulations regarding removal of foster children from foster/pre-adoptive homes are set forth at 110 CMR 7.116.

Section 7.116(2) applies in this case. That section addresses required procedural actions when the Department determines that a foster child should be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety or well-being.

Specifically, the Department must give at least 14 days notice of the intended removal. The notice must include the fact that the Department intends to remove the child, the reason for the removal, that the foster parent may apply to become the child's guardian or adoptive parent (and procedures for doing so) if the removal is to place the child with a prospective guardian or adoptive parent and the foster parent's right to appeal if applicable.

I find that the Department complied with the procedural requirements. The Department's notice to foster mother dated March 28, 2018, states that it intends to remove I on April 11, 2018. It states that the reason for the removal is her failure to demonstrate her ability to assume and carry out foster parent responsibilities outlined in the agreement between the Department and foster parent. The notice also provides information regarding foster mother's right to appeal.

In relevant part, the agreement between the Department and the foster mother requires the foster mother to

- maintain a home that is safe, to promote the physical, mental, and emotional well-being of the foster child,
- ensure the child receives adequate supervision and protection appropriate to the age and needs of the child to ensure the child's safety and well-being,
- immediately report any change in circumstances such as the addition of a new household member,
- immediately report any new individual who will care on a regular basis for the child,
- notify the Department of any vacation or trip that would result in the foster parent's overnight absence from the foster home,
- comply with Department regulations and policies including standards for becoming a Department foster/pre-adoptive family. (See Exhibit J).

The final item listed above includes by reference the numerous qualifications outlined in 110 CMR 7.100, 7.104 and 7.105.

Considering all of the evidence, I find that there is a reasonable basis for the Department's decision.

Foster mother exposed her children to boyfriends who place them at risk. Her current boyfriend has a significant history of serious criminal convictions. The Department has

explicitly prohibited him from having contact with I. Nevertheless, foster mother repeatedly allowed him to stay at the home and be a caregiver for I.

Foster mother has utilized inappropriate and unapproved caregivers for I. Foster mother has continued to allow her mother to be a caregiver for I despite being informed by the Department, that her mother is not approved to be a caregiver. After being told that I's father cannot be around I, foster mother allowed him to move into her home after he was released from prison.

Foster mother has left the home and the state overnight and for extended periods of time without informing the Department. Not only has foster mother failed to inform the Department about certain information, she failed to be truthful with the Department about certain information.

Foster mother has a history of neglecting her children's educational needs. She has demonstrated a complete lack of involvement with the children's schools. Her sons had a history of excessive absences and they both ultimately dropped out of school before finishing high school. Her daughter is repeating that pattern.

Foster mother has and continues to demonstrate her inability to promote the well-being of her children. She has exhibited a lack of involvement in her children's activities and then blames them, regardless of their ages, for their poor choices.

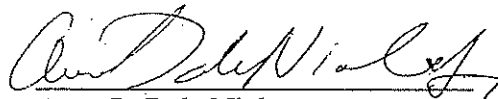
Foster mother has been unable to demonstrate the ability to draw upon community and professional resources as needed. She has blamed her work schedule for her lack of involvement with the children. Foster mother has failed to demonstrate an understanding of reasonable and age appropriate expectations of the children's behaviors.

Considering all of the evidence, I find that the Department's decision to remove I from foster mother's home was made in conformity with the Department's regulations and with a reasonable basis.

Conclusion and Order

The Department's decision to remove I from foster mother's home was made in conformity with Department regulations and with a reasonable basis and, 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 in Suffolk County, or in the county in which she resides, 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.



Anne L. Dale Nialetz,
Administrative Hearing Officer

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5/25/2018
Date



Sophia Cho, LICSW
Supervisor, Fair Hearing Unit