

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
CENTRAL ADMINISTRATIVE OFFICE  
600 WASHINGTON STREET, 6<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02111**

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Linda S. Spears  
Commissioner

Voice: (617) 748-2000  
FAX: (617) 261-7428

**IN THE MATTER OF**

**JG                      #2018-0640**

**FAIR HEARING DECISION**

JG appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to terminate services to him and close his case.

**Procedural History**

JG is a young adult who was in the Department's custody when he turned 18 years old on [REDACTED]. When JG turned 18, he and the Department entered into a Voluntary Placement Agreement (VPA) so that he would continue to receive services from the Department.

On March 21, 2018, the Department sent JG notice that his case would close on April 22, 2018, due to non-compliance with his action plan. On April 23, 2018, the Department sent JG another notice stating that his case would close on May 23, 2018. Both notices also contain references to the Department's policy to begin a transitional planning process 90 days prior to the case closing. Both notices informed JG of his right to request a fair hearing to appeal the Department's decision.

On May 9, 2018, JG made a request for a fair hearing to appeal the Department's decision to close his case. A hearing was held on June 7, 2018, in the DCF Hyde Park Area Office. JG, JG's Department on-going social worker, Department intern assigned to work with JG and the Department on-going supervisor testified at the hearing. JG was represented by an attorney.

The hearing was digitally recorded and transferred to compact disc.

The hearing record was held open for two weeks to allow the parties to submit additional evidence. The hearing record was closed on June 21, 2018.

The Department submitted the following exhibits at and after the hearing.

Exhibit A: Notice of case closing dated March 21, 2018.

Exhibit B: Notice of case closing dated April 23, 2018.

Exhibit C: Foster Care Review Report, review date November 16, 2017.

Exhibit D: Family Action Plan, effective date April 10, 2018.

Exhibit E: Family Action Plan, effective date October 11, 2017.

Exhibit F: Voluntary Placement Agreement, signed October 16, 2017.

Exhibit G: Case Dictation Report, notes dated December 21, 2015 to May 16, 2018.

JG submitted the following exhibits at and after the hearing.

Exhibit 1: Affidavit of JG

Exhibit 2: Registration Summary, dated June 6, 2018

Exhibit 3: Memo indicating JG's employment start date of March 23, 2018.

Exhibit 4: Paystub for pay period June 3-9, 2018.

Exhibit 5: Paystub for pay period May 27-June 2, 2018.

Exhibit 6: Letter from MA, undated.

Exhibit 7: The Department's Permanency Planning Policy for Youth in Department Placements.

JG's attorney also submitted a Hearing Brief and a separate letter outlining her arguments for overturning the Department's decision to close JG's case.

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

### **Issue to be Decided**

The issue presented in this Fair Hearing is whether 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. JG (d.o.b. [REDACTED]) was initially placed in the Department's custody at the age of 5. At the time, JG's mother was incarcerated and serving a life sentence. There is no evidence in the hearing record regarding his father. (Exhibit 1).
2. JG's paternal aunt obtained guardianship of JG when he was 7 years old. (Exhibit 1).
3. In 2009, JG's paternal aunt sent JG to live with another relative in Haiti. Shortly thereafter, the Haitian earthquake occurred and JG returned to live with his paternal aunt. (Exhibit 1).

4. JG's paternal aunt terminated the guardianship in September 2010, due to JG's behavior. JG was placed in the Department's custody at that time. (Exhibit 1; Testimony of JG's Department on-going social worker).
5. JG spent the next 5 1/2 years in various foster homes and residential placements provided by the Department. (Exhibit 1; Testimony of JG's Department on-going social worker).
6. JG turned 18 years old on [REDACTED]. On or about that date, the Department and JG entered into a voluntary placement agreement (VPA) so that JG would continue to receive services from the Department. (Exhibit 1; Exhibit F).
7. Under the terms of the VPA, JG and the Department agreed, among other things, to work cooperatively to select and maintain his living arrangements and jointly develop a service or action plan including tasks and services in support of the goal of living independently. (Exhibit F).
8. JG's action plan outlined what the Department expectations were for JG to be in compliance with his VPA. JG was required to meet with his social worker at least monthly at his home. He was required to enroll in school, attend classes regularly and on time, complete assignments and provide proof of enrollment and transcripts. JG was required to work toward obtaining employment, identify at least one job opportunity per week and submit applications until he obtains employment. He was required to continue working toward obtaining his driver's license. He was required to ensure that he is medically up to date including yearly physicals and any needed immunizations and obtain regular dental care. (Exhibit D; Exhibit E).
9. When JG turned 18 years old, he was a senior in high school. JG graduated from high school in June 2016, however, he did not do well academically. His attendance was poor, he was skipping classes, he had a low GPA (1.54), he was failing a class and he was caught cheating on a homework assignment. (Exhibit G, pp. 1, 2, 15).
10. JG was not working when he turned 18. He was still in high school and, in January 2016, he expressed his desire to hold off on seeking employment so that he could continue to participate in sports after school. At that time, the Department agreed to waive the employment requirement until he graduated from high school. (Exhibit G, pp. 2-3).
11. In March or April 2016, he told his social worker that he obtained a part time job at Subway. There is no evidence that he ever provided any documentation to show his employment. (Exhibit G, pp. 10-11).
12. At the time JG turned 18, he was living in a residential placement ([REDACTED]) provided by the Department. JG also often stayed with his paternal aunt. (Exhibit G, pp. 1, 2).
13. During the spring 2016, JG and his social worker discussed placement options following his graduation from high school. JG was clear that he did not want to live

at [REDACTED] after he finished high school. He wanted the Department to pay for him to live in an off campus apartment. He was informed that if he does not attend a school with dormitories, the Department could provide a placement, but the Department does not pay rent for apartments. JG decided he wanted to live with his paternal aunt. The Department social worker spoke with JG's aunt and she confirmed that JG would be moving in with her after his finishes high school. JG moved in with his aunt on or about June 6, 2016. (Exhibit G, pp. 8-9, 15, 16, 17-18).

14. JG did not attend school in the summer of 2016. (Testimony of JG; Exhibit G, pp. 33).
15. On July 21, 2016, JG informed his social worker he will begin a new job as a stock person on July 25, 2016. He did not provide any proof of his employment. In September he was asked to provide proof of employment. He said he would e-mail his paystubs which he never did. At a meeting in November 2016, JG said he forgot to bring paystubs, but he just got a new job at Game Stop. There is no evidence that he ever provided proof of employment at Game Stop. (Exhibit G, pp. 18, 19).
16. JG did not attend school during the fall of 2016. (Exhibit G, pp. 18-19).
17. JG registered for 4 classes at [REDACTED] Community College for the spring 2017, semester. He did not provide a transcript for the spring 2017, semester until November 2017. His transcript showed that he withdrew from 2 classes, failed one class and passed one class with a B. (Exhibit G, pp. 21, 27, 33).
18. At a foster care review on May 16, 2017, JG reported that he was working at the movie theater at [REDACTED]. On July 13, 2017, he provided the Department with proof of his employment at the movie theater. (Exhibit G, pp. 24, 25).
19. On August 17, 2017, JG told his social worker that his hours are being cut to 8-10 hours a week. He said he would like another job, but he has not applied anywhere and he does not want to work while he is going to school. (Exhibit G, p. 26).
20. JG quit his job at the movie theater in September 2017, because he did not like it and he felt he was underpaid. (Exhibit G, p. 33).
21. JG took one class at [REDACTED] Community College for the fall 2017, semester. In November 2017, he provided documentation that his mid-term grade in that class was a B. He completed the class with a C+. (Exhibit G, pp. 26-27, 33).
22. On November 1, 2017, JG was still unemployed and had not applied for any jobs. He agreed to apply for jobs and send his social worker copies of the applications. (Exhibit G, p. 27).
23. On December 14, 2017, JG was still unemployed. He provided his social worker with e-mails to show jobs he had applied for jobs at Amazon and car dealerships. (Exhibit G, p. 28).

24. Following the fall 2017, semester, there was a hold placed on JG's financial aid due to his failure to make satisfactory academic progress. JG informed the Department he could not register for the spring 2018, semester because of the hold on his account. JG's adolescent outreach worker instructed JG on how to file an appeal. Initially JG indicated that he wanted to continue school and take four classes and he filed the appeal. JG was informed by the school that, if the hold on his account was released, he would have to take at least three classes and do well or he will have to pay for all of them. (Exhibit G, pp. 28, 29, 30, 31).
25. On January 17, 2018, JG told his social worker he was working, however, he was not actually working. (Exhibit G, pp. 30, 33).
26. On January 19, 2018, JG told his social worker that he has an interview at the [REDACTED] Movie Theater on January 24, 2018. (Exhibit G, pp. 30).
27. On January 22, 2018, JG told his social worker that he no longer wants to attend school. He also said he decided not to go to the interview at the movie theater on the 24th. He said he will continue to apply for jobs and that he wants to get a job with a meat company as a truck driver. (Exhibit G, pp. 30-31).
28. On January 29, 2018, JG informed his social worker that he got the truck driving job and he only needs to have a drug test, a CORI check and a physical exam. The job is full time and pays \$17.00 an hour. (Exhibit G, p. 31).
29. On February 14, 2018, JG met with his social worker who informed him that the Department would likely be terminating his VPA within 90 days. (Exhibit G, pp. 31).
30. On March 21, 2018, the Department gave JG written notice that his case would close on April 22, 2018. JG told his social worker that he was going to be starting the truck driving job the next week. JG began working at his new job on March 23, 2018. (Exhibit G, pp. 31-32; Exhibit 3).
31. On April 23, 2018, the Department gave JG a second written notice that his case would close on May 23, 2018. (Exhibit B).
32. As of the date of the hearing, JG continues to be employed as a truck driver. His paystub dated June 14, 2018, indicates that he has earned \$6,812.07 since his employment began. (Exhibit 4).
33. JG testified at the hearing. He stated that he has passed two college classes since graduating from high school in June 2016. He said that he has been asking the Department to help him secure stable housing for years. He further stated that he is in danger of losing his housing because his aunt is planning on moving back to Haiti. (Testimony of JG).
34. I do not credit JG's testimony that he has been asking for housing assistance for years. Between June 2016 and March 2018, the Department social worker met with JG at his aunt's home numerous times. The home was typically noted to be cluttered and

somewhat dirty. JG was sharing a bedroom with one or two of his cousins. He slept on an air mattress. Although JG occasionally spoke about possibly getting an apartment with friends, he never complained about his living arrangement or asked for assistance with alternative housing. (Exhibit G, pp. 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33).

35. JG submitted a statement from his aunt that she is planning on moving back to Haiti. (Exhibit 6).
36. JG submitted a print-out which appears to indicate that he registered for two classes for the fall 2018, semester. (Exhibit 2).
37. The Department staff testified that JG was given verbal notice that his case would close in 90 days on February 14, 2018, and that they had worked with him on a transitional plan during the 90 day period between February 14, 2018 and May 23, 2018. (Testimony of the Department supervisor; Testimony of the Department on-going social worker; Testimony of the Department social work intern).
38. The Department's dictation notes for the 90 day time period in question indicate that, on February 14, 2018, JG met with his social worker. His social worker informed JG that his VPA would likely be terminated because he was not in school or working and she encouraged him to continue to look for work. On March 21, 2018, JG met with his social worker. She gave JG a case closing notice. JG raised his concern about no longer receiving financial aid for school. On May 14, 2018, JG met with his social worker. JG again expressed concern that his financial aid for school would end when the Department closed his case. They discussed his failure to meet the Department's expectations with regard to school and employment. He provided documentation to show that he was working and he stated he planned to take classes in the fall. He stated that he had a recent physical and needed a dental appointment. His social worker asked about his living situation and he stated that things were going well. (Exhibit G, pp. 31-33).
39. There is no evidence in the Department's records that any transitional planning occurred within the 90 period prior to the scheduled case closing.
40. I find that the Department's decision to terminate the VPA was made with a reasonable basis, however, the Department failed to comply with its policy and procedural regulations with regard to the 90 transitional planning period.

### Analysis

Department regulations provide that the Department is committed to assisting older adolescents and young adults in their transition to independence and self sufficiency. Towards that end, the Department may elect, on a case by case basis, to continue to serve children as they turn 18 years of age until their 22<sup>nd</sup> birthday. The decision to continue to serve individuals beyond age 18 is based upon their educational and/or rehabilitative needs, their willingness to enter into an agreement with the Department, and the

availability of resources. Such decisions require the approval of the Area Director. 110 CMR 8.02.

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The Department's Permanency Planning Policy sets forth guidelines for continuing to provide services to youth in the Department's care and custody beyond their 18th birthday until they turn 22 or the age of 23 under certain circumstances. The purpose of the "sustained connection" policy is to support the young adult in preparing to achieve success in living interdependently in the community. Permanency Planning Policy- Section 1, effective date 07/01/2013.

In general, the guidelines assume a collaborative relationship between the Department and a young adult who is motivated to be successful and engaged in activities geared toward that end. The Department is allowed some flexibility in creating specific plans to meet an individual's needs and abilities, however, the priority is that the young adult will engage in a full time schedule of education/vocational programming or employment or a combination of the two that equals a full time schedule. The Department expects young adults to refrain from all criminal activity and to comply with the expectations set forth in service plan as well as those of any placement. Youth seeking a sustained connection with the Department must agree to a plan that meets those criteria. Permanency Planning Policy - Section 1 (A).

If, at any time, the young adult fails to comply with the requirements set forth by the Department for sustained connection, the Department may elect to terminate the voluntary placement agreement (if applicable) and service provision. The Department must complete a 90 day transitional plan before terminating services and provide at least 30 calendar days of notice of the date services will be terminated and the case closed. Permanency Planning Policy - Section 1(C)(3).

The Department's Permanency Planning Policy outlines the transitional planning process in the section titled "Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults." That section also addresses requirements in the event that the Department is terminating a placement in addition to closing the case. Those requirements do not apply in this case, since JG is not living in a Department sponsored placement.

In relevant part, the transitional planning process should be completed in collaboration with the young adult and based upon an assessment of his readiness for living interdependently in the community, his age and follow up supports. It must include a discussion of the young adult's education, employment or work skills development, housing, health insurance including the importance of a medical health care proxy, local opportunities for mentoring and other specific support services. The plan should be reflected in the Service Plan and/or dictation. Any outstanding life skills needs are prioritized and addressed prior to the case closing. The date for case closing should be reflected in the current service plan.

The social worker and adolescent outreach worker collaborate with the young adult to plan specific tasks/activities necessary to address identified needs and achieve targeted goals, as well as the person responsible to assist in the process.

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The transition planning should include a description of the resources that will be available to the young adult and documents to be provided to the young adult prior to the case closing including the following.

- Appropriate and stable housing. This includes all housing except shelters, hotels/motels and dwellings that fail to meet governmental health and building codes. "Stable" is defined as reasonably expected to be available for at least 12 months.
- Employment/source of income
- Appropriate community resources such as health insurance, medical, mental health and dental providers; recreational, educational, vocational and legal services.
- Consistent, caring adult(s) with whom the young adult is anticipated to maintain a life long relationship.
- The medical, dental and educational information records held by the Department that will be provided to the young adult.
- Original social security card, birth certificate and immigration documents that will be provided to the young adult by the Department.

The decisions regarding the transition planning should be reflected in the young adult's case record.

The Department's decision to close JG's case was based upon his failure to meet the educational and employment requirements of his action plan and the VPA.

First, JG argues that, because his case was assigned to an intern, the Department should be found in violation of its policy that his social worker meet with him monthly. I find this argument to be without merit. The Department routinely provides internships to students to support their training and education. Absent some evidence, that the intern in question either did not meet with him or he was inadequately supervised by the supervising social worker and supervisor, I find that her visits with JG meet the requirement that monthly meetings between JG and his social worker occur.

JG argues that he was in compliance with his action plan and VPA at the time the Department made the decision to close his case. He contends that he was "enrolled" in school and he was actively seeking employment.



Regarding the educational component of JG's action plan, since he turned 18 on October 15, 2015, JG graduated from high school. His performance was poor mostly due to his lack of effort. His poor performance limited his options for college. He intended to enroll at [REDACTED] Community College in the fall of 2016, however, he failed to do so. He enrolled for the spring 2017 semester at [REDACTED] Community College and registered for four classes. He withdrew from two classes, failed one and passed one with a B. He did not attend school in the summer 2017. He took one class in the fall 2017, which he passed with a C+. In the two years since he graduated from high school, JG completed a total of two college classes. Although JG explains his current lack of attendance as due to a hold being placed on his financial aid, the evidence shows that the "hold" was put in place due to his lack of sufficient progress in school. JG's motivation to be successful in school is highly questionable at best. It is also noted that, when he was informed that he would have to take three classes and do well in order to receive financial aid for those classes, he decided that he did not want to attend school anymore.

Regarding the employment component of JG's action plan, he had no verified employment between October 2015 and July 2017, when he provided proof of employment at the movie theater at [REDACTED]. Not long after July 2017, he quit that job because he did not like it and he felt he was being under paid. He remained unemployed throughout the fall and into the spring for a total of seven months. During that time, he provided proof that he was applying for jobs only once in mid-December 2017.

I find that JG failed to meet the requirements of his action plan and VPA. JG failed to make any significant progress in school during the two years since he graduated from high school. He failed to provide the required evidence of employment since he turned 18. He provided documentation of employment only once since he turned 18 and he quit that position shortly thereafter without having first secured alternative employment. He was unemployed for the seven months leading up to the Department's decision to close his case.

JG argues that the Department violated its policy to provide transitional planning prior to the case closing. He specifically claims that the Department failed to provide him with appropriate and stable housing despite his repeated requests for the Department to do so. He claims now, for the first time, that his housing with his aunt was substandard and it will not be available to him for the next 12 months because his aunt is planning on moving back to Haiti.

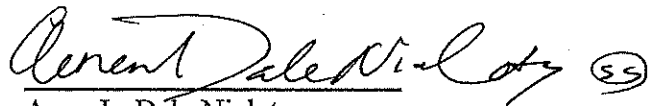
Based upon the lack of documentation that any transitional planning occurred between February 14, 2018 to the present time, I find that the Department violated its policy to complete a transitional plan as outlined in the Department's Permanency Planning Policy. Regarding the quality (or lack thereof) of JG's housing and its stability, since these issues were never raised with the Department prior to the fair hearing, they should be addressed by the Department with JG during a legitimate transitional planning process.

### Conclusion and Order

The Department's decision to terminate JG's VPA and close is case, was made in conformity with Department regulations and policies and with a reasonable basis and, therefore, the decision to close JG's case is AFFIRMED.

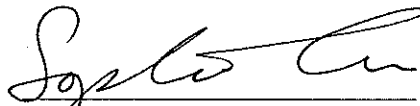
The Department violated its procedures by failing to engage in transitional planning during the 90 day period prior to the scheduled closing date, therefore, the matter is REMANDED to the Department to maintain an open case for a period of 90 days and to complete a transitional planning process in accordance with Department policy.

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 in Suffolk County, or in the county in which he 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

6/29/2018  
Date



Sophia Cho, LICSW  
Fair Hearing Supervisor