

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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IN THE MATTER OF: JR

Fair Hearing # 2017-0439

FAIR HEARING DECISION

The Appellant in this Fair Hearing is Mr. JR (hereinafter JR or Appellant). The Appellant appeals the Department of Children and Families' (hereinafter "the Department" or "DCF") decision, to terminate voluntary services.

Procedural Information

On January 24, 2017, the Department informed the Appellant that his case would be closing within ninety days. In accordance with Department policy, a second notice was sent to the Appellant on March 24, 2017 regarding case closing. The Appellant was informed of the decision and of his right to appeal the Department's determination. The Appellant filed a timely request for a Fair Hearing under 110 C.M.R. 10.06 (8).

The Fair Hearing was held on June 6, 2017 at the Department of Children and Families Berkshire Area Office. The witnesses were sworn in to testify under oath. The Fair Hearing was digitally recorded. The record remained open until June 20, 2017 to allow for the submission of further documentary evidence from the Appellant and from the Department. The records were received and the record closed on June 13, 2017.

The following persons appeared at the Fair Hearing:

Anna L. Joseph	Hearing Officer
JR	Appellant
NK	DCF Social Worker
SC	DCF Supervisor
SP	DYS Caseworker
JM	DYS Clinical Director Our House
JK	DYS District Manager

In accordance with 110 C.M.R. 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 following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit 1: Service Plan dated November 2, 2016 (Signed)
- Exhibit 2: Case Closing letter dated January 24, 2017
- Exhibit 3: Case Closing letter dated March 24 2017
- Exhibit 4: DCF Dictation report dated January 12, 2017-May 30, 2017

For the Appellant:

- Exhibit A: Psychiatric Evaluation dated September 15, 2016

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 CMR 10.21)

Issue To Be Decided

The issue presented in this Fair Hearing is whether the Department's decision to decline the Appellant continuation of services was made in conformity with its policies and/or regulations and if not, whether the violation(s) resulted in substantial prejudice to the Appellant 110 CMR 10.09(2); 110 C.M.R. §10.06(8) (c).

Findings of Fact

1. The subject consumer of this case closing J, turned eighteen (18) on December 25, 2016. (Testimony of DCF Social Worker)
2. J's involvement with the DCF dates back to his infancy. J was in the care and custody of the Department prior to being adopted by his parents. (Testimony of DCF Supervisor, Exhibit A)
3. J has a long and well documented history of disruptive, aggressive and assaultive behavior. J was expelled form a public high school in tenth grade due to this conduct. (Testimony of DCF Social Worker, Testimony of DYS Case worker, Testimony of Appellant, Exhibit A)
4. Due to his behavior, J's adoptive parents sought the help of both the juvenile court through a CRA, and the DCF. As a result of the criminal conduct, J was committed to the Department of Youth Services (DYS) until age nineteen (19). (Testimony of DCF Social Worker, Testimony of DYS Caseworker, Testimony of DYA District Manager)
5. In accordance with Department policy and practice, J was afforded the opportunity to voluntary sign on at age 18 for continued DCF services. In order to do so, J signed a voluntary agreement, with stipulations and expectations. These expectations, including participation in academic and or vocational training, and compliance with program rules, were clearly explained to J. (Exhibit 1, Exhibit 4)

6. J's assertion that he was unaware of the rules and expectations regarding his conduct is not credible. (See analysis, Fair Hearing Record)
7. These expectations were re-in forced on a routine basis, both in person with J's social worker and through the provision and review of service plans (Exhibit 1 Exhibit 4, Testimony of DCF Supervisor, Testimony of DCF Social Worker)
8. J presents as highly capable, performs exceedingly well academically when so motivated, and has no cognitive limitations which would prohibit him from understanding the agreements and service plans he signed. (Testimony of Appellant, Testimony of DYS District Manager, Testimony of DCF Supervisor, see analysis)
9. J had a successful placement at a now defunct residential program, and his behavior deteriorated when that program unexpectedly shut down. (Testimony of DYS Case Worker, Testimony of DCF Supervisor)
10. In his subsequent program, J was unwilling to participate in school, was disruptive to other students, assaulted other students and staff, and destroyed the property of staff members, including shattering car windows. For this conduct, J accumulated both juvenile and adult criminal charges, several of which remain pending. (Testimony of DCF Social Worker, Testimony of DYS Case Worker, Testimony of Appellant, Exhibit A)
11. The Department, in accordance with policy and practice, convened a Young Adult Panel (YAP) in January of 2017 to discuss J's progress and obstacles. The results were explained to the Appellant as were the consequences of continued non-compliance (Exhibit 4, Testimony of DCF Social Worker)
12. J's assaultive and explosive behavior continues as of the date of fair hearing. While J has done well academically at his most recent program, his damaging behavior continues. This behavior makes securing appropriate post discharge placement difficult. (Testimony of DYS Case Manager, Testimony of DYS Clinical Director)
13. J takes psychotropic medications and engages sporadically in individual and group treatment. J has the capacity to be engaged and compliant, and understands that his behavior makes his goals unrealistic. (Testimony of Appellant, Testimony of DYS Clinical Director)
14. As of the date of fair hearing, DYS staff is assisting J in securing appropriate services from a third agency, likely the Department of Mental Health. (Testimony of DYS Social Worker, Testimony of DYS Clinical Director)
15. In light of all the available evidence, including testimony at the Hearing, I find the Department's decision to close Appellant's case and terminate his voluntary placement agreement reasonable and in accordance with Department regulations (*See Analysis, 110 CMR §8.02*)

Applicable Standards

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; or (d) if the challenged decision is a supported report of abuse or neglect, that the Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected and the actions or inactions by the parent(s)/caregiver(s) placed the child(ren) in danger or posed substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

To prevail, an Appellant must show 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 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

Among the applicable standard in this case is 110 CMR §8.02, which states, in part: "The Department is committed to assisting older adolescents and young adults in their transition to independence and self-sufficiency. Towards this end the Department may elect, on a case by case basis, to continue to serve children as they turn 18 and up until their 22nd birthday, to the extent that other departments (for example, DMH, DDS, etc.) are not primarily responsible for such persons. The decision to continue to serve individuals beyond age 18 is based on 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."

The provision of support for older adolescents and young adults is codified within the General Laws, which in part state: "The department *shall* offer to continue its responsibility to *any* young adult¹ who is under the custody, care, or responsibility of the department ... (i) for the purposes of specific educational or rehabilitative programs, or (ii) to promote and support that person in fully developing and fulfilling that person's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the department and that person" (emphasis added). MGL c. 119, §23 (f) [effective on January 3, 2011 as amended]

The basis for the Department's decision to close Appellant's case was that the Appellant no longer meets criteria for continued support by the Department, as he has been chronically non-compliant and unaccountable to the Department. The Department further maintained that the services provided by the Department are, due to J's non-compliance, no longer contributing to

¹ Young adult is defined as a person between the ages of eighteen and twenty two.

Appellant's forward progress, thus it is appropriate for his case to close. 110 CMR §8.02; MGL c. 119, §23 (f) [effective on January 3, 2011 as amended]

Analysis

The Department notified the Appellant that voluntary services would be terminated due to non-compliance with the terms of the voluntary agreement. The Department has met its burden in demonstrating that the Appellant failed to comply with the agreement. The Appellant's attendance in his academic courses has been sporadic; he has continued to engage in violent and disruptive behavior.

The Appellant has a substantial criminal history for a man of eighteen (18), including multiple criminal charges still pending; this may well adversely impact his ability to access the limited resources which remain available.

This young man is capable of appropriate engagement and compliance when he so chooses. His claim of being uninformed as to the Department expectations is not credible. This young man has a host of providers who have worked on his behalf.

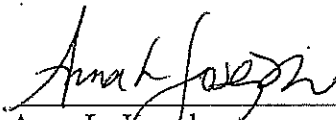
The evidence supports that Appellant received services from DCF prior to his 18th birthday and thereafter at the Department's discretion in order to successfully fulfill specific goals and precursors toward independence. 110 CMR §8.02

The evidence shows that the Department provided the Appellant ample explanation as to the expectations of the voluntary agreement and the consequences of non-compliance.

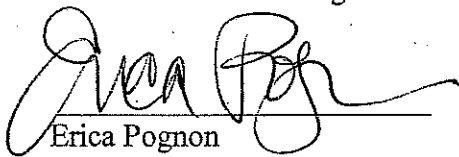
Conclusion and Order

The Department's decision to close Appellant's case and terminate the voluntary placement agreement was made in conformity with Department regulations and with a reasonable basis; therefore the Department's decision to close the voluntary case with JR is **AFFIRMED**.

This is the final administrative decision of the Department. If the Appellants wish to appeal this decision, they may do so by filing a complaint in the Superior Court in Suffolk County, or in the county in which they reside, 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 finding.



Anna L. Joseph
Administrative Hearing Officer



Erica Pogon
Supervisor, Fair Hearing Unit

Date: 7/17/17