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DEPARTMENT OF CHILDREN & FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
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COMMISSIONER

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(IN THE MATTER OF)
(L.W.)
(FH # 2017-0086)
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HEARING DECISION

Procedural Information

The Appellant, Mr. L.W., appealed the Department of Children and Families' ["the Department" or "DCF"] decision of December 30, 2016, to deny his application to become a licensed kinship, child-specific family resource for his one year-old granddaughter, B. After having discussed the matter of the denial of his home as well as the removal of the child with the Appellant on this date, the Department provided the Appellant with separate written notice of both decisions, his right to appeal the denial, and the eligibility grounds surrounding an appeal for the removal. The Appellant filed a request for a Fair Hearing ["Hearing"] on January 23, 2017, to appeal the removal. Pursuant to 110 CMR 10.07 (4) (a) and 110 CMR 7.108 (1), the Appellant's request to appeal the removal was denied as it was concurrent with the Department's decision not to approve his home, which makes his eligibility to appeal the removal moot. Nevertheless, the Appellant was afforded a right to appeal the denial of his home in accordance with 110 CMR 10.06 (4) (a) and 110 CMR 7.108 (1). The Appellant's Hearing on this matter was held on April 4, 2017 at the Department's South Central Area Office in Whitinsville, MA. Present were the DCF Area Program Manager [APM], L.F.; the DCF Family Resource Social Worker, H.W.; the DCF Response Social Worker, E.H.; and, the Appellant. All were sworn in and testified. The proceeding was recorded, pursuant to 110 CMR 10.26, and downloaded to a CD. Admitted into evidence for the Department was the DCF Notice to the Appellant of the Denial [Exhibit A], the Appellant's DCF Family Resource License Study [Exhibit B], the DCF 51B Non-Emergency Response [Exhibit C], and the Family Resource Dictation Report [Exhibit D]. The Appellant made no submissions. The Hearing record was closed at adjournment.

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.

Pursuant to 110 CMR 10.21 (1), the Hearing Officer need not strictly adhere to the rules of evidence, The Massachusetts Rules of Evidence do not apply, but the Hearing Officer shall observe any privilege conferred by statute such as social worker-client, doctor-patient, and

attorney-client privileges. Only evidence, which is relevant and material, may be admitted and may form the basis of the decision. Unduly repetitious or irrelevant evidence may be excluded.

Statement of the Issue

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, whether the Department's decision or procedural action, in denying the Appellant's license to provide kinship, child-specific foster care, 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, the issue is 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 10.00

Findings of Fact

1. The sixty one year-old Appellant is the maternal grandfather of B. The Appellant has five adult daughters. The youngest, A.W., is the mother of B, who was removed from AW's care by the Department due to parental substance abuse and placed in the Appellant's home on October 20, 2016 where she remained until December 30, 2016. This was an emergency placement. The child was one year-old during placement. [Exhibit D; Testimony of the Appellant; Testimony of the Family Resource Social Worker]
2. As a condition for the emergency placement of B in his home, the Appellant successfully met the initial eligibility requirements of the Department [set forth at 110 CMR 7.108 (1)] to include a background record check for which a waiver was required and a physical standards checklist. [Testimony of the Family Resource Social Worker; Exhibit D]
3. The Appellant then applied to become the child's kinship foster/pre-adoptive parent, which necessitated a comprehensive assessment assigned for completion to family resource social worker, H.W., of the Department's South Central Area Office. The first contact of family resource social worker, H.W., with the Appellant to begin the comprehensive assessment was on November 25, 2016. The assessment was ultimately completed/approved on February 15, 2017 and the Appellant's license denied. [Testimony of the Family Resource Social Worker; Exhibit B; Exhibit D]
4. The Department denied the Appellant's application to become a licensed family resource for his granddaughter, B, because the Appellant had allowed non-approved individuals to care for B in his absence, to include the child's mother, A.W., and the Appellant's sister, M.B., and his ninety one year-old mother [great grandmother of B], both of whom live together next door to the Appellant. The child's ongoing social worker and the family resource social worker had told the Appellant that unapproved individuals, like his sister and mother, could not care for B, unless approved by the Department. The Appellant was specifically told that AW, the child's mother, could not come into his home for any reason and there was to be no contact between AW and the child. The standard for licensure was not met. [Exhibit A; Exhibit B; Exhibit C; Exhibit D; Testimony of the Family Resource Social Worker]

5. This denial was predicated on the evidence gathered by the family resource social worker during the comprehensive assessment and by the response social worker, E.H., who was assigned to investigate the 51A filed on the Appellant. Each provided documentary evidence and testified at the Appellant's Hearing of April 4, 2017. [Exhibit B; Exhibit C; Exhibit D; Testimony of the Family Resource Supervisor; Testimony of the Response Social Worker]
6. On October 19, 2016, October 24, 2016, and November 28, 2016, B's ongoing social worker, N.L., spoke with the Appellant about not allowing the child to be with any caregiver who was not approved by the Department. [Exhibit C; Testimony of the Response Social Worker]
7. On December 15, 2016, during a home visit, the family resource social worker had a conversation with the Appellant about B's mother not having any contact with the child, unless the Department approved this, as well as explaining again that the Department must approve any other caregivers. The Appellant stated he understood. [Exhibit C; Testimony of the Family Resource Social Worker; Testimony of the Response Social Worker]
8. On December 30, 2016, B's mother picked the child up and went to the [REDACTED] District Court probation department for a drug screen. Staff there contacted the child's DCF ongoing supervisor and informed her that B was at the court house with her mother, unsupervised. Although mother looked like she was sober while caring for B, she tested positive for opiates and Suboxone on that same day, had no prescriptions for these medications, and admitted to using heroin at Christmas [December 25, 2016]. In addition, mother was present with her boyfriend, who appeared high. On this date, the Department made a decision to remove B from the Appellant's care to ensure the child's safety. The ongoing social worker picked B up at the court house and found an alternative placement. The family resource social worker had received a call about this and called the Appellant, who said he was at work. The family resource social worker then met with the Appellant at his home during the late afternoon of December 30, 2016, explained that the child's mother and his sister/mother were not approved caretakers for the child to which the Appellant said he understood that and did not want his extended family to know what was going on. During this visit, the family resource social worker handed the Appellant a removal letter and a letter denying his license to care for the child; a fact the Appellant did not dispute. A 51A was filed on December 30, 2016 alleging neglect of one year-old B by the Appellant in connection with this incident and for placing B at risk and the Department removed her immediately due to her safety. On January 17, 2017, following the 51B response assigned to and conducted by E.H, the Department supported for neglect of B by the Appellant, for his failure to provide the child with minimally adequate supervision, when he allowed unapproved caretakers, as in the child's mother and his sister, to care for B. [Exhibit A; Exhibit B; Exhibit C; Exhibit D; Testimony of the Family Resource Social Worker; Testimony of the 51B Response Social Worker]

9. The Appellant said he allowed B's mother to use his home to do laundry and pick up things, when the child was not there. He said he allowed the mother to see her child through his window, but denied ever leaving them alone. [Exhibit C]
10. The Appellant told the family resource social worker on December 30 2016, the 51B Response Social Worker on January 5, 2017, and testified at his Hearing of April 4, 2017 that his sister had been caring for B on December 30, 2016, because the child's day care was closed that Friday and he was working. He testified that he brought B over to his sister and mother's home and that the child's mother came, after he had left for work. He testified that he told B's mother that she could come to his home at 6:30 a.m. when he was gone. He told the family resource social worker that B's mother must have gone to his sister's house and picked the child up. He told the response social worker and testified at his Hearing that his sister saw B's mother's car pull up and in his yard and asked the child's mother to watch B because she got called into work plus his sister did not know what was going on because he had not told her. He testified that he did not know that B's mother took the child, until he got the phone call about it. In contrast to this, the Appellant's sister, M.B., denied caring for B on this date, when she spoke with the 51B response social worker on January 17, 2017, but did indicate there were two other times she did take care of B. As it pertained to December 30, 2016, the sister told the response social worker that the Appellant asked her to watch B on the Friday before New Year's Day [December 30, 2016], but because the Appellant did not have his planned knee surgery, she did not think he needed her and she went to work. [Exhibit C; Exhibit D; Testimony of the Family Resource Social Worker; Testimony of the Response Social Worker; Testimony of the Appellant]
11. The Appellant's sister reported caring for B on two other occasions – once on a Friday before Christmas for a couple of hours until the Appellant returned home and once when the Appellant had a doctor's appointment and she cared for B from 3:00 to 6:00 p.m. [Exhibit C; Testimony of the Response Social Worker]
12. The Appellant also acknowledged having his sister care for B on two occasions. Other than December 30th, he also left B with his sister, when he ran down to the store to pick up milk and cash a check [Exhibit C] However, subsequently at his Hearing, he testified that he left the child with his sister when he ran down to Shaw's to cash his check and again, at another time, when he was working in the yard and asked his sister to watch B, while he did that. [Testimony of the Appellant]
13. The Appellant was aware that his sister and his mother were not approved caretakers. [Testimony of the Family Resource Social Worker; Testimony of the Appellant]
14. The Appellant acknowledged being told about the rules and regulations governing this matter, that he violated these expectations on at least two occasions, and said he "was wrong in that part". "I screwed up". [Exhibit C; Exhibit D; Testimony of the Response Social Worker; Testimony of the Appellant]

15. The Appellant reported that he tried to get his sister's social security number so the Department could approve her for the care of B, but she would not give it to him and did not understand why he was asking, which he did not blame her for. The Appellant acknowledged that he did not tell his sister and his mother that B was in the care and custody of the Department, because he did not want his sister and his mother to know about his business and to be angry with B's mother. They were "busy bodies". He was sixty one and didn't need to be told "what to do all the time". He also said that he told the ongoing social worker, N.L. to call his sister to obtain the information. [Exhibit D; Testimony of the Appellant]
16. The Appellant did a good job taking care of B, while she was in placement with him. She was happy and always cleans. He loves the little girl, missed her, and wanted her back. [Testimony of the Appellant]
17. The Department's decision of September 2016, to deny the Appellant's application to become a licensed, child-specific family resource for the child, were made in conformity with its regulations and policies and was based upon sound clinical reasoning. *See, Analysis below.*

Applicable Standards

Foster parents and foster parent applicants have a right to appeal through the Hearing process a decision by the Department to deny a license. [110 CMR 10.06]

In the instant case, the Appellant appealed the Department's decision to deny his application to become a licensed kinship, child-specific family resource for his one year-old granddaughter, B. The Appellant's Hearing on this matter was held on January 4, 2017.

Family resource regulations and policies applicable to this appeal include, but are not limited, to the following.

Department decisions regarding assessment, approval, and licensing of foster and pre-adoptive parents are governed by 110 CMR 7.100, et seq.

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. ...
- (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; ...
- (6) When considering a kinship or child-specific placement, the Department shall require that the relative or extended family member or individual chosen...meet the Department's requirements, as set forth at 110 CMR 7.104 and 7.105.

110 CMR 7.104 Standards for Licensure as a Foster/Pre-Adoptive Parent -

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

- (1) A foster 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, including supporting and respecting a child's sexual orientation or gender identity;

110 CMR 7.105. Standards for Licensure of Foster/Pre-adoptive Homes

(14) The home may not have any household member, frequent visitor or alternative caretaker, who would, in the judgment of the Department, pose a threat of abuse or neglect to foster children placed in the home, or who would impede or prevent the provision of adequate foster care in the home.

110 CMR 7.108. Kinship or Child-Specific Placements

Kinship or child-specific placements may occur when a specific child is to be placed into a specific home and that home is not available for other foster children.

(1) Emergency Placements. If the Department determines that an emergency kinship or child specific placement is necessary for a child(ren), the Department will first conduct an initial eligibility screening of the individual(s) seeking to become the child(ren)'s foster parent(s), all household members and the home, which shall include the following:

- (a) background checks [CORI and Department history] on all household members 14 years and older, and on those younger about whom concerns exist;
- (b) a home visit;
- (c) a determination that the home meets the physical standards set forth at 110 CMR 7.105;
- (d) an initial interview is completed on all household members present, as appropriate to age and verbal capacity, including an individual interview with at least one potential foster/pre-adoptive parent and that parent has committed to completing the full assessment and approval process;
- (e) completion of the Family Resource Application;

If the proposed placement meets the requirements in 110 CMR 7.108, the Department may place the child(ren).

If an emergency placement or child-specific placement is made, the individual who has been deemed eligible to apply to become the approved family for the child(ren) shall submit to the Department a completed application. The Department shall complete a comprehensive assessment of the foster-pre-adoptive application within 40 working days after placement.

If the comprehensive assessment reveals compliance with the standards set forth at 110 CMR 7.100, 7.104, and 7.105, the placement shall be approved, solely for the child(ren) for whom an emergency placement had been made. If the assessment reveals that the requisite standards are not met, the placement shall not be approved and the child(ren) for whom an emergency placement had been made shall be removed forthwith. The kinship or child-specific placement

resource shall be notified in writing of the outcome of the comprehensive assessment, within ten working days after completion of the assessment. There is no right of appeal from the removal of a child(ren) from an unapproved home, but the denial of a foster-pre-adoptive application may be appealed via the Department's fair hearing process, set forth at 110 CMR 10.00 et seq.

110 CMR 10.23 Burden of Proof. 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. 110

Analysis

Notwithstanding the Appellant's efforts in going through the process involved in having his one year-old maternal granddaughter, B, placed in his home and undergoing a comprehensive assessment to become a licensed kinship, child-specific resource for that child, and notwithstanding that the Appellant clearly loves his granddaughter and, aside from the matter under review, did a good job caring for her, the Hearing Officer finds that the Department's concerns in this matter under review cannot be overlooked.

Pursuant to 110 CMR 7.108, kinship or child-specific placements may occur if the assessment reveals compliance with the standards set forth at 110 CMR 7.100, 7.104 and 7.105 and the applicant shall therefore be licensed as a kinship or child specific placement for the child(ren) named in the foster/pre-adoptive application, and the children may be placed in the home. In the instant case, the Department conducted a comprehensive assessment of the Appellant's home and found the Appellant not to be in compliance with several foster care standards as described below.

110 CMR 7.104 requires that a foster/pre-adoptive applicant demonstrate the ability to (a) assure a child placed in his home experience a safe, supportive, nurturing, and stable family environment which is free from abuse or neglect; (b) assure that a child placed in his home be provided with adequate supervision; and (d) promote the physical, mental, and emotional well-being of the child.

Further, 110 CMR 7.105 (14) (14) requires that the home may not have any household member, frequent visitor or **alternative caretaker, who would, in the judgment of the Department, pose a threat of abuse or neglect to foster children placed in the home, or who would impede or prevent the provision of adequate foster care in the home.**

In this case, the Appellant knowingly allowed his granddaughter, B, to be cared for by his sister and his mother [the child's great grandmother] without being approved by the Department. He does not dispute this. He reported at Hearing, "I made a mistake".

The evidence also demonstrates that on December 30, 2016, the biological mother picked B up and took her to the court's probation department so she could take her drug screen. The child was unsupervised, and mother with her boyfriend, who was high on a substance. The Appellant failed the drug screen of the same date and acknowledged using heroin at Christmas of 2016. As a result, the Department removed B from the Appellant's home to ensure her safety; denied the Appellant's license to provide kinship, foster/pre-adoptive care to the child; and a 51A Report was filed on the incident, which resulted in a supported finding of neglect of B by the Appellant because of his failure to provide the child with minimally adequate supervision on this date. The Appellant argues that, before he left for work on December 30, 2016, he took the child to his sister's home, and without his knowledge, his sister, who was called into work that day, let the child's mother care for the B. The Hearing Officer finds this unlikely, The Appellant's sister, interviewed by the response social worker, denied taking care of B on December 30, 2016. She said she agreed to care for B that day, but did not think this was needed because the Appellant's knee surgery was cancelled, so she went to work. The evidence demonstrates that the Appellant was in the habit of allowing the child's mother to enter his home to do laundry and the like, and that on December 30, 2016; he had called her to let her know she could come over. The Hearing Officer finds, more likely than not, that the Appellant, knowing that his sister was unable to care for B, allowed her mother to care for her, contrary to Department directive. This is reasonably inferred by the evidence.

The burden is on the Appellant to show, by a preponderance of the evidence, that the Department's decision, to deny his application to become a kinship, child specific foster parent for his granddaughter, was not in conformity with the Department's regulations and policies, and resulted in substantial prejudice to the Appellant. [110 CMR 10.23] A Hearing Officer must take into the account the record as a whole. [110 CMR. 10.05]. The Hearing Officer does not find any information offered by the Appellant at his Hearing to be substantial or compelling to such an extent that the Department failed to comply with its regulations or policies or acted unreasonably and/or abused its discretion in making its decision in this matter. Based upon a review of the evidence presented at the Hearing, including the testimony and documents provided, the Hearing Officer finds the decision made by the Department conforms to its regulations. The Appellant failed to meet his burden of proof. [110 CMR 10.23]

Conclusion

The Department's decision, to deny the Appellant's application to become a licensed kinship, child-specific family resource for his maternal granddaughter, B, is **AFFIRMED**.

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 for the county in which he lives within thirty (30) days of the receipt of this decision. [See, M.G.L. c. 30A, §14]

Frances Wheat

Frances I. Wheat *FW*
Administrative Hearing Officer
Office of the General Counsel

Date: October 2, 2017

Barbara Curley

Barbara Curley, Supervisor