

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET
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Commissioner

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| IN THE MATTER OF |) | |
| |) | |
| Mr. D.M. |) | FAIR HEARING |
| |) | |
| FH # 2017-0110 |) | |

FAIR HEARING DECISION

The Appellant, DM, appealed the Department of Children and Families; (hereinafter "DCF" or "the Department") decision to change the placement (foster care review) goal for his son, J, from reunification to adoption pursuant to 110 CMR 6.12.

Procedural History

In February 2016, the child was removed from the Appellant's care on an emergency basis. The Department filed a Care and Protection Petition on behalf of the child (J) and was awarded temporary custody of him. The Department placed the child in foster care and the Appellant had weekly supervised visits with the child. The Department determined at a Permanency Planning Conference on August 22, 2016, that due to the lack of progress that was being made towards the goal of reunification as well as the length of time the child had been in DCF custody, that the goal be changed to permanency through adoption for the child (J).

A foster care review was held on September 12, 2016, in accordance with 110 CMR §6.12(1) to review the case and determine whether continued placement was necessary. The foster care review panel determined that continued placement was necessary due to limited progress toward the goal of reunification; however the review found the Appellant to be in full compliance. As a result of that review, the placement goal for the child was changed from reunification to permanency through adoption. The Appellant was notified of the Department's decision and his right to appeal the goal change. The Appellant made a timely request for a Fair Hearing 110 CMR 10.06 and a hearing was held on May 11, 2017 at the Department's Central Office.

The following documents were submitted at the Hearing and admitted into evidence by the Hearing Officer:

For the Department:

Exhibit A: Service Plan dated 3/26/16-9/26/16 and extended until 11/20/16
Exhibit B: Foster Care Review dated 9/12/16
Exhibit C: Letter sent to the Appellant 8/22/16 to notify him of the goal change

For the Appellant:

Exhibit 1: Court report dated July 2016
Exhibit 2: Court report dated October 2016

Counsel submitted two Court reports, which were part of the Care and Protection. There was no evidence that the Court allowed the submission of these documents. A letter was sent to Counsel by this Hearing Officer regarding the status of these court reports (see fair hearing record) and there was no response. Therefore these documents were not reviewed as part of the decision making process.

The following persons appeared at the Fair Hearing:

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| Ms. Lisa A. Henshall | Administrative Hearing Officer |
| Mr. D.M. | Appellant |
| Atty. C.B. | Counsel for the Appellant |
| Ms. I.W. | Foster Care Review Unit |
| Ms. G.H. | DCF Supervisor |
| Ms. S.G. | DCF Ongoing worker |

All parties were sworn in to testify at the Fair Hearing.

In accordance with 110 CMR 10.03, the Hearing Officer attests to impartiality in this case, having had no direct or indirect interest, personal involvement or bias in this case.

Issue to be Decided

The issue presented in this Fair Hearing is whether the Department's goal change decision is in conformity with its regulations and policies and if not, whether the violation(s) resulted in substantial prejudice to the Appellant.

Findings of Fact

- 1) The Appellant is the father of the child J. (Exhibits A & B; Testimony of Appellant; Testimony of the SW)
- 2) J has been in foster care placement via a Care and Protection petition since February 2016. (Exhibit A; Testimony of the SW)

- 3) In July 2016, the Department reported to the court that the Appellant was engaging with the child and was coming to visits prepared and actively trying to engage with him. (Testimony of the SW)
- 4) In August 2016, the Department held a PPC and the child's goal was changed from reunification to permanency through adoption as there was not a clear plan about how reunification would take place and where, lack of sufficient progress and based on the amount of time the child had been in care (6 months). (Exhibit B; Exhibit C; Testimony of the SW; Testimony of the Supervisor)
- 5) After the goal changed, the visits between the Appellant and the child changed to bi-weekly. This was a clinical decision based on the child's presentation which was described as "inconsolable." The child would visit with the mother and then have a visit with the Appellant, often times back to back, and was described as "exhausted." This testimony contradicted the Department's testimony in court and at the FCR. (Testimony of the SW; Testimony of the Supervisor)
- 6) On September 12, 2016, the Department held a foster care review ("FCR") in accordance with its regulations. Based on input from foster care review participants, a review panel considers the previous six months' activities and makes four determinations, including a goal determination. At the September review, the panel determined, with the assistance of the Appellant, that the Appellant fully achieved his service plan tasks but found that there was limited progress toward the goal of reunification. There was no evidence as to why this goal was changed with respect to the Appellant as the focus was on the mother as she was not in compliance. (Exhibits A & B; Exhibit C, p. 3; Testimony of the SW)
- 7) At the FCR in September 2016, the visits between the child and the Appellant were said to be going well. The Appellant was meeting with his individual therapist weekly and psychiatrist monthly to address mental health treatment. (Exhibit B, p. 2; Testimony of the SW; Testimony of the Appellant)
- 8) The Appellant was engaged in a batter's intervention program at the time of the review and completed the program since that time. (Testimony of the SW; Testimony of the Appellant; Exhibit A)
- 9) The Appellant secured safe and stable housing prior to the FCR and he continues to reside there. (Testimony of the Appellant; Exhibit A)
- 10) In October 2016, the Department informed the court that the Appellant was responsive to feedback and his interactions with the child improved and there was more interaction between the Appellant and James. The Appellant was described as attentive to the child. (Testimony of the SW)
- 11) The goal was changed to permanency for adoption based on the lack of sufficient progress towards the goal of reunification. (Fair Hearing Record) I find that there was insufficient evidence to explain why the goal was changed. In fact the

evidence presented contradicted the testimony. The Appellant was found in full compliance with his service plan tasks and there was no concerns indicated.

- 12) It was the Appellant's desire to be reunified with his son in the event his son could not be reunified with his mother. (Testimony of the Appellant; Exhibits A & B)

Analysis

Procedures for Foster Care Reviews for children in placement are governed by 110 CMR 6.12. Department regulations require that a Foster Care Review be conducted for children in placement every 6 months by a three member panel and that the review panel shall consider, among other things, the appropriateness of the placement goal for the child and may make a determination that the goal should be changed. 110 CMR 6.12(1); 110 CMR 6.12(2) and 110 CMR 6.12(10).

All out of home placement decisions shall be made in the best interests of the child, based upon the safety of the child and the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of the children to their homes or their placement into a new permanent setting ... The Department will promote early permanency decisions and outcomes for children in substitute care...110 CMR 7.101. (1) and (5)

As parents, the Appellants may appeal a change of goal made at a Foster Care Review. 110 CMR 10.06(2) The issue presented at such a hearing is whether the Foster Care Review was conducted in accordance with the Department's regulations as set forth in 110 CMR 6.12. These regulations are extensive and specific. The membership of the Foster Care Review panel, the duties of the members, the notices that must be provided and the issues to be considered are all prescribed.

On appeal to a Fair Hearing, the issue is whether any of those specific regulatory requirements were violated and if so, whether the violations substantially prejudiced the rights of the Appellant. The Fair Hearing will not review the propriety or correctness of the clinical judgment made by the Foster Care Reviewer. Such a review is co-assigned by regulation and statute to the courts pursuant to Mass. Gen. L., c. 119, sec. 29B. As long as there is a reasonable basis for the judgment reached, the Fair Hearing will not further review the goal determination.

The Appellant did not argue any violation of regulation as set forth in 110 CMR 6.12. Rather, the Appellants asserted that the clinical decision made in this case was not appropriate, and that the goal should be reunification. The Appellant, as argued by Counsel, was fully compliant with service plan tasks, there had been no prior concerns documented in prior court reports, and the goal change was made six (6) months after the child entered care.

Based on a review of the relevant evidence, I find that the Arlington Area Office and foster care reviewer's clinical decisions to change the goal to adoption was made without a reasonable basis. The decision was based upon the length of time in placement [six months] and the lack of sufficient progress towards the goal of reunification. The Appellant had fully complied with the service plan tasks, such as attending a batterer's program, attending weekly visits, engaging in mental health treatment and securing safe and appropriate housing. The Department continued to

have concerns about the Appellant's ability to soothe the child during visits. These visits were held "back-to-back" after the mother had her visit. These concerns were not voiced in court or in the FCR. The Department also voiced their concern that the Appellant wanted to maintain a relationship with the mother and they were concerned about this due to an incident that occurred after the child had been removed, hence the task to complete a batter's program. The Department was obligated to consider what was in J's best interests and to assist J with a move towards permanency. 110 CMR 7.101 As noted above, the clinical decision was not made with a reasonable basis; the Appellant was in full compliance with his service plan tasks and the decision to change the goal with regard to the Appellant was not made in conformity with the Department's regulations. Based on the evidence provided there was insufficient evidence to determine that the goal be changed with respect to the Appellant (father). Accordingly, the Department's decision is reversed.

Conclusion and Order

Based on a review of the evidence before the Hearing Officer, the Department's goal change from reunification to adoption was not in conformity with Department regulations and policies. The September 12, 2016 foster care review goal change from reunification to adoption on behalf of J is REVERSED.

6-11-18
Date

Lisa Henshall
Lisa Henshall
Administrative Hearing Officer

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor

Date

Linda S. Spears
Commissioner