

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111**

**Linda Spears
Commissioner**

**Voice: 617-748-2000
Fax: 617-261-7428**

IN THE MATTER OF

YG #2017 0281

FAIR HEARING DECISION

Appellant, YG, appeals a decision by the Department of Children and Families to revoke her kinship foster care license pursuant to 110 CMR 10.07 (4)

Procedural History

On February 26, 2017, a report was filed with the Department which alleged neglect of Y by the Appellant, her mother, after the Appellant and her male friend were caught shoplifting with Y and the Appellant's male friend was found with a fentanyl patch that was not prescribed to him. The Department screened-in the report and conducted a response. During the response, the Department discovered the Appellant was an open kinship foster care provider for her niece, L, which the Appellant failed to disclose during the response. Concurrent with the Department's response, the Appellant's annual licensing reassessment was underway. The Appellant did not disclose the shoplifting incident and criminal charges that stemmed from the incident to the Family Resource Worker. The Department subsequently determined the Appellant failed to meet foster care licensing standards and made the decision to revoke the Appellant's foster care license and remove L from the Appellant's foster home. The Department notified the Appellant of the decisions and her right to request an appeal. L remained in the Appellant's care pending the issuance of a Fair Hearing decision.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at the Worcester East Area Office on May 9, 2017. The Department did not obtain an interpreter for the Appellant and the Appellant did not wish to go forward due to her limited proficiency in English. The Appellant was provided with documentary exhibits submitted by the Department and the matter was continued. The hearing was

rescheduled and held at the Worcester East Area Office on June 6, 2017. In attendance were the following: Maura Bradford, Administrative Hearing Officer; RZ, DCF Area Program Manager; MS, DCF Family Resource Worker; YG, Appellant; AS, Interpreter.

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.

The Fair Hearing was digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

The following evidence was entered into the record:

For the Department:

Exhibit A: (A1) Removal Letter; License Revocation Letter; (A2) 51A Report of February 6, 2017; (A3) 51B Report completed on February 28, 2017 by AS; (A4) Excerpts from 110 CMR 7.100 and 7.105; (A5) Family Resource License Renewal; (A6) Narrative Police Report, [REDACTED] Police Department

For the Appellant:

Exhibit 1: Appellant's Request for a Hearing

Issue to be Decided

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, the Department's decision to revoke the Appellant's foster care license, 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 10.05

Findings of Fact

1. YG was a licensed kinship foster care provider for the Department. The Appellant's niece, L, was placed with the Appellant on June 24, 2014, when L was seven (7) weeks old. At the time of the challenged decision, L was two (2) years, 10 months old. (Testimony of MS and Appellant)
2. In 2016, L's permanency planning goal was changed to adoption; her biological father's parental rights were terminated and L's mother assented to the Appellant's adoption of L. The Appellant filed her pre-adoptive registration of interest. (Testimony of MS)

3. The Department's Worcester West Area Office (WWAO) managed the clinical case that involved L and her parents and the Department's Worcester East Area Office (WEAO) managed the Appellant's foster home. (Exhibit A2, 51B Report, p. 11; Testimony of MS)
4. In 2016, the Department's WEAO started the Appellant's annual license renewal study and merged it with an assessment of the Appellant's pre-adoptive foster care application. Prior to the challenged decision, the Appellant's license renewal/adoption license study was on track to be approved. However, during the license study, the Department conducted a background record check, which included a Criminal Offender Record Information (CORI) review. The Department discovered that the Appellant "picked-up criminal charges" amidst the assessment and that she had an open clinical case with the Department. The Appellant did not inform the WEAO Family Resource Unit about the shoplifting incident. (Exhibit A5; Testimony of MS)
5. On February 6, 2017, the Appellant was caught shoplifting with her 13-year-old daughter, Y¹, and the Appellant's male friend RJ. RJ possessed a fentanyl patch that was not prescribed to him. A report was filed with the Department's WEAO which alleged neglect of Y by the Appellant. The Department screened-in the report and conducted a response. During the response, a Response Worker from the WEAO visited the home and met with the Appellant and her children, J (16 years old), Y (13 years old), E (10 years old) and O (6 years old). Neither the Appellant nor the children mentioned that L resided in the home. After the visit, the Response Worker reviewed the Appellant's DCF history and discovered the Appellant was an active kinship foster care provider for L. When asked about L's presence in the home, the Appellant "nonchalantly" verified that L resided with her and that the day of the Response Worker's visit, L was at daycare. (Exhibits A2, A3, p. 10, A6; Testimony of MS and Appellant)
6. On February 27, 2017, the Department's WEAO and WWAO held a phone conference regarding the Department's 51B response and L's placement with the Appellant. During the conference, the Department's WEAO expressed several concerns which included: The Appellant withheld information about the shoplifting incident and about L's placement in her home during the related response; she associated with a possible drug user (RJ); and, concern for J, Y and O's behavior. (Exhibits A2; A3, pp. 10, 11; Testimony of MS)
7. On February 28, 2017, upon completion of its 51B response, the Department determined that there was "substantiated concern"² for the children, including L,

¹ MS testified that the Appellant was caught on camera stealing items and RJ admitted they were shoplifting, which led to the Department's concern that she was "teaching her child how to steal".

² "Substantiated Concern" means the Department has determined that there is reasonable cause to believe that a caregiver neglected a child and the caregiver's actions or inactions create the potential for abuse or neglect, but there is no immediate danger to a child's safety or well-being. (DCF Protective Intake Policy #85-016, revised 2/28/16)

opened the case for an assessment, and referred the matter regarding the Appellant's foster care status to the WEAO Family Resource Unit. At the Fair Hearing, the DCF Family Resource Worker erroneously testified that the allegations were "supported"³ and the decision to support allegations of neglect was a factor in the decision to revoke the Appellant's license; rather, the allegation was substantiated. (Exhibit A3, p. 12; Testimony of MS)

8. In part, to be licensed as a foster/pre-adoptive home, an applicant must demonstrate to the Department's satisfaction the following:

- a) The ability to assure a child's basic needs are met, including the provision of a safe, supportive, nurturing and stable family environment which is free from abuse or neglect 110 CMR 7.104(1);
- b) The applicant or any member of the household must have a record free of criminal conduct which, in the judgment of the Department, affects his/her ability to assume and carry out responsibilities of a foster/pre-adoptive parent. 110 CMR 7.100(d) and 110 CMR 7.104(3)

9. The Department completed its License Renewal study and on March 1, 2017, the DCF WEAO informed the Appellant in writing of the decision to revoke the Appellant's foster care license and remove L from her foster home on March 15, 2017. As a basis for the decision to revoke the Appellant's license, the Department determined the Appellant failed to meet specific license standards under 110 CMR 7.104, which included (Exhibits A1, A4, A5; Testimony of MS):

- a) "All household members, age 14 and older must have a record which is free of criminal conduct, which, in the judgment of the Department, bears upon the foster/adoptive family's ability to assume and carry out the responsibilities of a foster/adoptive parent" (110 CMR 7.100(3)(a); 110 CMR 7.104[3])⁴;
- b) "No member of the household is currently, or during the 12 months prior to the completion of the 'Family Resource Registration of Interest', has been involved in an open case with DSS, except, with the approval of a clinical review team" (110 CMR 7.100(3)[b]);
- c) The physical and emotional stability and well-being to assure that a child placed in her/his care will experience a safe, supportive and stable family environment which is free from abuse and neglect". (110 CMR 7.104(1)[a])

10. After the Department made the decision to revoke the Appellant's foster care license and remove L, the Appellant filed a request for a hearing; L remained in

³ A decision to "support" allegations of neglect means the Department has determined a child was neglected and a caregiver's action placed a child in danger and/or posed a substantial risk to the child's safety and well-being. (110 CMR 2.00 and DCF Protective Intake Policy #85-016, revised 2/28/16)

⁴ MS testified that the Department's concern was the Appellant was arrested for stealing, was showing her child (Y) how to steal and this affected the Department's perception of the Appellant's ability to carry out her duties as a foster parent.

the Appellant's care pending the issuance of a Fair Hearing decision, as allowed by the Department's regulations, and at the time of the Fair Hearing, the Appellant's foster home was without further incident. (110 CMR 7.113[4]; Testimony of MS; Exhibit 1)

11. The Appellant was aware of the Department's expectations for kinship foster care providers and the agreement which outlined the relationship between the Appellant and the Department. (Testimony of MS and Appellant)
12. Considering the totality of the evidence, including testimony at the hearing, I find the Department had a reasonable basis for its determination that the Appellant failed to meet the Department's licensing standards. (See Analysis)
13. The Department's decision to revoke the Appellant's foster care license was made in compliance with its policies and regulations. (See Analysis)

Applicable Standards

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, 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; for a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, whether there was reasonable cause to believe that a child had been abused or neglected. 110 CMR 10.05

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 CMR 10.23

To be licensed as a pre-adoptive parent an applicant must demonstrate, to the Department's satisfaction, the ability to assure a safe, supportive, nurturing and stable environment for a child they wish to adopt. Among other qualifications, an applicant or household member must have a record free of criminal conduct which would bear upon their ability to carry out their duties. 110 CMR 7.104 and 7.105

Analysis

During its licensing study process, the Department determined that the Appellant failed to meet licensing standards for foster/pre-adoptive homes. The Department determined that the Appellant's involvement in a shoplifting incident precluded her ability to assume and carry out the role of a foster parent, (110 CMR 7.100 (3)(a); 110 CMR 7.104[3]); that the incident resulted in an open clinical case with the Department, and disqualified the Appellant from consideration as a foster/pre-adoptive parent (110 CMR 7.100(3)[b]); and, that the Appellant's involvement in a shoplifting incident precluded her ability to provide a safe, supportive and stable family environment which is free from abuse and neglect". (110 CMR 7.104(1)[a]) The Department was also concerned about the Appellant's honesty with the Department, as she did not inform the Family Resource Worker about the shoplifting incident and during the 51B response resulting from the shoplifting incident, she did not inform the response worker that she was a foster parent.

The Appellant argued that she had cared for L without incident since L was placed in her care, and while she made a mistake and was involved in criminal activity, that she is the only family L has ever known and it is in L's best interests to remain with the Appellant or another family member. The Appellant's argument was not persuasive. 110 CMR 10.23

In the instant case, the evidence did suggest that prior to the shoplifting incident, there were no concerns regarding L's placement with the Appellant; the Appellant was bonded with L and wished to become L's adoptive parent. The Appellant's pre-adoptive application was in process and likely to be approved when the Department learned the Appellant withheld information about a February 2017 shoplifting incident. The Department was concerned that the Appellant had failed to notify the Department of the incident and had failed to notify the response worker that she was a foster parent for L. Although the crime was not one directly harmful to L, the Appellant involved her own minor child in the shoplifting incident. The Appellant's trustworthiness was questioned. Coupled with concern for the behavior of the Appellant's own children, the Appellant's association with a person who possessed a fentanyl patch and the Appellant's failure to communicate openly and honestly with the Department, and with respect to L's very young, vulnerable age, the Department's decision to revoke the Appellant's foster care license was reasonable, and was made in compliance with its policy and regulations.

The Appellant did not present persuasive evidence in this matter to allow for a reversal of the Department's decision.

Conclusion and Order

Appellant has not shown by a preponderance of the evidence that the Department's decision to revoke her foster care license was not in conformity with Department policies and/or regulations, 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, s/he may do so by filing a complaint in Suffolk County, or in the Superior Court for the county in which s/he lives, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, § 14)

11-4-17
Date

Maura E. Bradford (ms)
Maura E. Bradford
Administrative Hearing Officer

Nancy A. Brody
Nancy Brody, Esq.
Fair Hearing Unit Supervisor