

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

LINDA SPEARS  
Commissioner

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IN THE MATTER OF

MH #2017 0460

**FAIR HEARING DECISION**

Appellant, MH ("Appellant"), appeals the Department's decision to deny her kinship foster care license application pursuant to 110 CMR 7.104.

**Procedural History**

In August 2016, the Department of Children and Families (hereinafter "DCF" or "The Department") placed the Appellant's grandson K and his half siblings J, Ja and S in the Appellant's care, pending approval of her foster care license, following the children's removal from their mother's care. On September 21, 2016, the Department commenced a Family Resource License Study. During the license study, the Appellant and her daughter JT were identified as the approved caregivers for the children. On January 5, 2017, the Department initially approved the Appellant's license study. On January 9, 2017, the Department received information that suggested the Appellant relied on an unapproved caregiver and allowed her adult son to have contact with the children, contrary to the Appellant's agreement with the Department. Due to concern that the Appellant was not forthcoming and failed to abide by the Department's instructions and applicable foster care license standards, the Department denied the Appellant's foster care license. On March 23, 2017, the Department notified the Appellant in writing of the decision and her right to appeal.

The Appellant made a timely request for a Fair Hearing under 110 CMR 10.06. A hearing was held at the DCF Robert Van Wart Area Office on June 22, 2017. In attendance was Maura Bradford, Administrative Hearing Officer; KR, DCF Area Program Manager; TG, DCF Family Resource Supervisor; SF, DCF Ongoing Social Worker; MH, Appellant; JT, Appellant's Daughter; LT, Appellant's Daughter.

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 Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

Exhibit A: Family Resource License Study completed on March 10, 2017 by PM and TG

For the Appellant:

Exhibit 1: Appellant's Request for Hearing and License Denial Letter

Exhibit 2: Academic Record for JT

Exhibit 3: Appellant's Written Response and Early Intervention Documents

**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 deny the Appellant's foster care license application, 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. The Appellant is the paternal grandmother of K. K's father is the Appellant's son, TH, and K's mother is KD. (Exhibit A; Testimony of Appellant)
2. TH was in a relationship with KD, who is the mother of K and his half-siblings J, Ja, and S. In or around August 2016, the Department removed K, J, Ja and S from TH and KD's care due to protective concerns. TH was incarcerated. The Appellant came forward as a kinship resource for the children, although she is only biologically related to K. The Department placed the children with the Appellant on an emergency pending a license study. (Exhibit A; Testimony of

Appellant; see 110 CMR 7.100 et seq.)

3. At the time of their placement with the Appellant, K was one (1) month old; S was two (2) years old; Ja was four (4) years old; and, J was six (6) years old. (Exhibit A; Testimony of Appellant)
4. On September 21, 2016, the Department commenced the Family Resource License Study ("license study"). The Department made nine (9) visits to the Appellant's home during the license study, contacted collaterals and collected information about the Appellant and her daughter JT, including family background, personal history, relationships and support network and documentation of income and expenses. The Department received positive school, medical, employment and personal references regarding the Appellant's care of her children, including D and C, then 16 years old and 14 years old. The Department contacted law enforcement agencies and conducted a background record check review without adverse findings to the Appellant or JT. (Exhibit A; Testimony of KR and TG)
5. To meet the needs of the children, the Appellant initially relied on assistance from JT and another daughter, LG.<sup>1</sup> During the license study, the Department advised the Appellant that LG could not have any unsupervised contact with the children because LG had an open protective case with the Department in the past. The Appellant discussed a waiver with the Department to allow LG to continue to help with transportation, which the Department declined to pursue. The Appellant and JT denied any unsupervised contact between LG and the children thereafter for the duration of the children's stay in the Appellant's home. (Exhibit A; Exhibit 3; Testimony of TG, KR and Appellant)
6. JT invested significant time and effort in the children's care and was the most frequent caregiver for the children beside the Appellant. When the children were placed with the Appellant, JT was a community college student in good standing. During the children's placement and because of the time invested in their care, JT's grades suffered noticeably.<sup>2</sup> Both JT and the Appellant participated in S's Early Intervention appointments at their home. (Testimony of JT and Appellant; Exhibits 2 and 3)
7. LG's daughter attended a dance class, which she recommended to the Appellant for J. The Appellant enrolled J in the same dance class. J was familiar with LG because of this contact and her visits to the Appellant's home. (Exhibit 3; Testimony of Appellant and JG)

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<sup>1</sup> The Appellant testified that due to having four (4) children who relied on car seats, and because she could only put three car seats in her own car, she needed another person to help with transportation to church or school. (See Exhibit 3)

<sup>2</sup> JT was emotional when she addressed the Department's assertion that other people took care of the children, stating [the assertion] "frustrates me so badly" because of her daily care of the children to the point that her studies suffered.

8. After they were placed with the Appellant, the children had supervised visits with KD. Once released from the ██████ House of Correction, TH had supervised visits with K at the DCF Robert Van Wart Area Office. TH stayed with LG upon his release from jail. (Exhibit A; Testimony of Appellant and LG)
9. In or around December 2016<sup>3</sup>, Ja left the Appellant's home and was placed in a group home due to his significant behavioral issues. (Testimony of Appellant)
10. On Friday, December 6, 2016, a DCF Social Worker LT picked up J after school for a supervised visit with KD. During the ride, J told the Social Worker that she went to dance class with [LG], that the Appellant was not with them and that there were two other occasions when LG took J places without the Appellant. There was no timeframe for when these events occurred. The successor Social Worker, SF, testified that she believed J was telling the truth and that J "slipped up" when she told LT about unsupervised contact with LG and mentioned that she saw TH at the Appellant's house. SF had no other concern for the Appellant's provision of care for the children. (Exhibit A, p. 9; Testimony of SF)
11. The Appellant was admittedly frustrated with the Department during the license study and questioned the Department's protocol. In part, the Appellant cited the Department's questions regarding income and ability to pay her mortgage required contact with her ex-husband, who owned the home and payed for the mortgage; contact the Appellant found complicated. The Appellant felt she was asked for more information than the children's parents had been required to provide.<sup>4</sup> (Exhibit A, p. 4; Testimony of Appellant)
12. The Department asserted the Appellant failed to provide proper veterinary care for their dog, who was hit by an ATV. The Family Resource Worker recommended over-the-counter medication for the dog, which the Appellant acquired.<sup>5</sup> The Department asserted that the perceived failure of the Appellant to obtain proper care for the dog led to questions about the Appellant's ability to provide proper care for the children. The evidence did not support the Department's assertion that there was a lack of proper medical or other essential care for the children. (Exhibit A, pp. 5, 9; Testimony of KR and Appellant)
13. The children made positive gains while in the Appellant's care; J "loved" the Appellant and was happy at her home. The Department's clinical staff found the Appellant "a very good foster mom" except for the concern that TH may have

<sup>3</sup> The Appellant testified that J was in her home for four (4) months prior to placement in a group home, placement with a maternal family member and then reunification with KD.

<sup>4</sup> The Family Resource Worker who completed the license study ("PM") subjectively described that the Appellant "present (sic) with the habit of asking the same question of multiple contacts at the Department" despite his impression that the Appellant's questions were clearly answered. PM also noted it was "unclear if this is due to her discomfort with the fostering policy, a mistrust of the system, an inability to retain information or [to] [get an answer more to her liking]." (Exhibit A, p. 4)

<sup>5</sup> The Appellant testified that they contacted the dog's former owner and together they checked out the dog and did not feel he required immediate veterinary attention.

visited the home and only then based on TH's criminal history and involvement with the Department in an ongoing protective case. (Exhibit 1; Testimony of SF and TG)

14. Despite the Department's reservations, on January 5, 2017, the Department recommended initial approval of the Appellant's license study. The Family Resource Worker had continued contact with the Department's ongoing staff regarding the Appellant after the initial decision was reached. (Exhibit A; Testimony of KR and TG)
15. On January 9, 2017, the Family Resource Social Worker informed Area Program Manager (APM) KR that he was "rethinking" his approval of the Appellant's home, in part due to concern that the Appellant allowed TH to frequently visit and stay at her home and due to his concern that the Appellant was "unable to be trusted" due to her lack of acceptance of the Department's "rules and regulations". (Exhibit A, p. 9)
16. On February 17, 2017, the children were reunified with KD. (Testimony of Appellant and KR; Fair Hearing Record)
17. On February 27, 2017, KD spoke with DCF Social Worker LT about permitting TH to visit with all the children, which the Department did not allow. KD opined to LT that the Appellant allowed TH to visit the children at her home while the children were in her care and KD could not understand why the Department would not allow her request for visits. (Exhibit A; Testimony of SF)
18. The evidence demonstrated that contacts made with the Department's ongoing clinical staff after January 5, 2017, including contact on February 27, 2017 after the children's reunification, influenced the Department's decision to deny the Appellant's foster care license. (Exhibit A, pp. 8, 9)
19. Based upon the statements of J and KD, the Department concluded that the Appellant willfully dismissed DCF protocol and regulations and allowed perpetrators of abuse (TH) and neglect (TH and LG) access to the children, which the Appellant, JT and LG categorically denied. Neither the Department nor mandated collaterals with regular contact with the Appellant and children<sup>6</sup> reported that TH was in the Appellant's home. (Exhibit A; Testimony of Appellant, JT and LG)
20. Department regulations require that the Department complete a license study within 40 working days after children are placed in a prospective foster home. The Appellant's license study was approved/completed on March 10, 2017, 115 working days following the commencement of the license study and without regard to the lack of licensure in the interim. The Department maintained the study was delayed due to difficulty obtaining information from the Appellant

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<sup>6</sup> S received speech therapy at home. (Testimony of JT)

including income information, that the study required multiple visits to the home, communication with clinical staff and review of concerns from the Department's ongoing social worker and supervisor regarding the possibility of the children's exposure to perpetrators of abuse and neglect. (Exhibit A; Exhibit 1; Testimony of KR and TG; see 110 CMR 7.108 et seq.)

21. On March 23, 2017, the Department informed the Appellant in writing<sup>7</sup> of the decision to deny her foster care license. The Department determined the Appellant failed to meet specific license standards under 110 CMR 7.104(1)(a) and (d) (Exhibit 1; Testimony of TG):

- a) 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 (110 CMR 7.104(1)(a): Specifically, that the Appellant allowed an unapproved caregiver to transport and supervise the children on a regular basis without regard to application for a waiver for the caregiver;
- b) Promote the physical, mental and emotional well-being of a child placed in his or her care (110 CMR 7.104(1)(d): Specifically, that the Appellant "exposed the children to an abuser shortly after his release from prison"; and the Appellant neglected the children's trauma and mental health histories when allowing the contact and placed them at risk for abuse.

22. In reaching the decision that the Appellant failed to meet license standards, the Department gave significant weight to the statements of KD and J regarding what, if any, unsupervised contact LG and TH had with the children. There was no independent verification of KD or J's statements. No reports pursuant to M.G.L. c. 119 §51A were filed on the children's behalf during the time they resided with the Appellant. (Exhibit 1; see 110 CMR 7.107[4]; also see 110 CMR 2.00, 4.32 and DCF Protective Intake Policy #86-015, rev. 2/28/16)

23. The Department's testimony at the hearing contradicted the assertion that the Appellant failed to provide appropriate care for the children. The Department testified that there were no concerns for the Appellant's ability to meet the needs of the children; instead, that there were concerns regarding the Appellant's ability to "follow regulations and policy" based upon information provided by the DCF Ongoing Worker and Supervisor [regarding J and KD's statements]. (Testimony of TG and SF)

24. The Appellant and her family remained an informal resource for the children. After the children's reunification with KD, KD continued to depend upon the Appellant, JT and LG for their support, including LG, who regularly transported J to dance class and elsewhere after the reunification. (Testimony of Appellant, JT and LG)

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<sup>7</sup> Notice provided to the Appellant was for the denial of an unrestricted foster care license. (Exhibit 1)

25. Considering the totality of evidence, including testimony at the hearing, I find the Department's decision to deny the Appellant's child specific kinship foster care license application was not reasonable or made in accordance with Department regulations and that it was substantially prejudicial to the Appellant

### Applicable Standards

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

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 foster parent an applicant *must* demonstrate, to the Department's satisfaction, the ability to 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". (emphasis added); 110 CMR 7.104(1)[a]

To be licensed as a foster parent an applicant *must* demonstrate, to the Department's satisfaction, the ability "to promote the physical, mental and emotional well-being of a child placed in his or her care" (emphasis added); 110 CMR 7.104(1)(d)

When considering a relative or extended family member to be utilized as a foster parent for a child in DCF custody "...the Department shall require that the relative...meet the Department's requirements for kinship or child-specific placements, as set forth at 110 CMR 7.108." 110 CMR 7.101(3)

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 person has committed to completing the full assessment and approval process; (e) completion of the Family Resource Application; (f) if a Department employee, the placement has been approved in accordance with 110 CMR 7.106B(4)

If the proposed placement meets the requirements in 110 CMR 7.108, the Department may place the child(ren). If the proposed placement does not meet the requirements in 110 CMR 7.108, the placement shall be deemed ineligible for an emergency placement, and the Department shall not place the child(ren). A determination of ineligibility under 110 CMR 7.108(1) is final, and is not subject to appeal. Nothing in 110 CMR 7.108 precludes the kinship/child specific home from being considered as a non-emergency placement as set forth in 110 CMR 7.108(2).

If an emergency kinship 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 foster/pre-adoptive 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 comprehensive assessment. There is no right of appeal from the removal of a child(ren) from an unapproved home, but the denial of a foster/preadoptive application may be appealed via the Department's fair hearing process, set forth at 110 CMR 10.00 et seq

#### **Analysis**

The Department placed the children in the Appellant's home, on an emergency basis,



pending a full licensing study, which according to the Department's regulations, must be completed within 40 days of the placement. The Department did not complete its licensing study within the regulated time frame, and its failure to do so was substantially prejudicial to the Appellant. Additionally, prior to issuing its decision to deny the Appellant's license, the subject children were returned to their mother, negating the need for continued placement with the Appellant; due to such change in circumstances, the Appellant's application for licensure was no longer necessary. The Department's notification, a month later, was also substantially prejudicial to the Appellant.

The Appellant argued that the Department's decision was not reasonable or made in accordance with Department regulations. The Appellant asserted that the denial of her foster care license forecloses her eligibility to be a resource for the children in the event they are removed from KD's care in the future. 110 CMR 10.23 The Appellant's argument was persuasive.

The Department denied the Appellant's application for a kinship foster care license based on its determination that the Appellant failed to meet specific license standards under 110 CMR 7.104(1)(a) and (d), including that the Appellant allowed an unapproved caregiver to transport and supervise the children on a regular basis without regard to application for a waiver for the caregiver; and, that the Appellant neglected the children's trauma and mental health histories when allowing contact with TH and placed them at risk for abuse.

This Hearing Officer carefully considered the evidence, which evidenced the following:

The Department placed J, Ja, S and K in the Appellant's care in late summer of 2016, commenced a license study in September 2016 and initially recommended approval of the Appellant's license application on January 5, 2017. On January 9, 2017, the worker who completed the license study expressed reservations about his recommendation for approval after receiving feedback from the ongoing social work staff who managed the children's clinical/protective case, including concern that in December 2016, the Appellant allowed an unapproved caregiver (LG) for the children, neglected the children's emotional needs and placed the children at risk for abuse (by TH). Despite these concerns, the children remained in the Appellant's care without incident until they were reunified with KD in February 2017, by which time they had been in the Appellant's care nearly 6 months. The Department's decision not to license the Appellant was not issued until March 23, 2017.

The Appellant provided a safe and loving home for the children, kept them together and connected as a sibling group and suggests, despite the Department's assertion otherwise, that the Appellant's home was an appropriate placement until the children's reunification with their mother in February 2017. The Appellant ensured that Ja received appropriate services for his behavioral health issues, which required placement and evaluations in an out-of-home setting. Considering the evidence, the Department's assertion that the Appellant placed the children at risk for abuse, is not borne out by the evidence, including the Department's testimony at the hearing. See 110 CMR 7.104 et seq.

The Department's concern that the Appellant was not trustworthy and that she willfully disregarded the rules was not an unreasonable one, given the possibility that while the children were in the home, she allowed the children to have contact with unapproved individuals. However, balanced with the observations that the Appellant was otherwise providing appropriate care for the children and the children made progress in her home, further assessment of such concerns was warranted, especially given that the children remained in the Appellant's home for two months after DCF learned about the possible contact with unapproved individuals. Furthermore, the Department's decision to deny the Appellant's license was issued in March 2017, a month after the children returned home to their mother, and three months after learning about the possibility of unapproved contact. The children's return home in February terminated their placement in the Appellant's home and for all intents and purposes, the Appellant's application for licensure as a kinship foster home was moot. The denial of her license, a month later, may preclude her ability to seek a license to provide care for the children in the future, should it become necessary, and therefore, as evidenced, the Department's actions were substantially prejudicial to the Appellant.

With careful consideration to the evidence, this Hearing Officer found that the Department's denial of the Appellant's license application was not made in accordance with Department regulations and that it was substantially prejudicial to the Appellant. 110 CMR 10.05; 110 CMR 10.23, 110 CMR 7.108

### Conclusion and Order

The Appellant has shown by a preponderance of the evidence that the Department's decision to deny her kinship foster care license application failed to conform to Department regulations and was substantially prejudicial to her; therefore, the Department's decision is **REVERSED**.

3-12-18  
Date

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

Nancy S. Brody  
Nancy S. Brody  
Supervisor, Fair Hearing Unit

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Date

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Linda S. Spears  
Commissioner