

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

LINDA S. SPEARS
Commissioner

Voice: 617-748-2000
FAX: 617-261-7428

**IN THE MATTER OF
VC & SD
2017-0536**

FAIR HEARING DECISION

Procedural Information

The Appellants in this Fair Hearing are VC and SD. The Appellants are appealing the Department of Children and Families' (hereinafter "the Department" or "DCF") decision to deny their Foster Parent Application.

Procedural History

On April 26, 2017, the Appellants received a license denial letter from the Department's Family Resource Social Worker. Within the letter, the Department informed the Appellant with their right to appeal the Department's determination. The Appellants made a timely request for a Fair Hearing under 110 C.M.R. 10.06

The Fair Hearing was held on September 27, 2017, at the Department of Children and Families' Area Office located in Lawrence, MA. All witnesses were sworn in to testify under oath. The record officially closed on the same date.

The following persons appeared at the Fair Hearing:

Carmen Colón
JM
SD
VC
SD

Fair Hearing Officer
DCF Family Resource Worker
DCF Family Resource Supervisor
Appellant
Appellant

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 Fair Hearing was recorded on a digital voice recorder, pursuant to 110 CMR 10.26

The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit A: Not Available/ Withdrawn Letter of 02.24.2017
- Exhibit B: License Denial Letter of 03.28.2017
- Exhibit C: Request for Reference Letters Packet sent 09.23.2016 - 11.17.2017
- Exhibit D: Medical Reference and School Reference Letter Received 03.2017
- Exhibit E: License Denial Letter 04.26.2017
- Exhibit F: Family Resource License Study 05.10.2017
- Exhibit G: Family Resource Kinship Application Completed 08.01.2016
- Exhibit H: Family Resource Dictation Report
- Exhibit I: DCF Family Resource Worker and VC Email Correspondence 09.28.2017 – 04.20.2017
- Exhibit J: DCF Supervisor Case Notes & Timeline

For the Appellant:

- Exhibit 1: Foster/ Preadoptive Reference Letter – Medical 03.06.2017
- Exhibit 2: Foster/ Preadoptive Reference Letter – Medical 09.23.2016
- Exhibit 3: Foster / Preadoptive Reference Letters (School & Employer)
- Exhibit 4: Request for Fair Hearing
- Exhibit 5: Email Correspondence 01.2017 – 04.2017
- Exhibit 6: License Denial Letter of 03.28.2017

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)

Statement of the Issue

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 . 110 CMR 10.05

Findings of Fact

On the basis of my assessment of all the evidence, I make the following factual findings and AFFIRM the Department’s decision:

1. The Appellants in this Fair Hearing are VC and SD. The Appellants reached out to the Department on July 13, 2016 and expressed their interest in foster parenting. (Appellant testimony; Family Resource worker testimony)

2. On July 15, 2016, the Department responded to the Appellants' inquiry and invited Appellants to an information session to be held at the area office in the month of August. (Family Resource worker testimony, Exhibit J)
3. The Department was able to conduct a home visit with the Appellants on September 2, 2016. The Appellant's were informed of the requirements to complete a home study by the Family Resource Worker. (Family Resource worker testimony, Exhibit J , Exhibit H)
4. After the meeting, the Department Resource Social Worker corresponded with on Appellant, VC, throughout the month of September. Throughout the communication, the need for references and completion of MAPP training were discussed. The Appellants began their MAPP training on October 22, 2016 but did not complete the course on November 15, 2016 as scheduled. (Family Resource Supervisor testimony, Exhibit H, Exhibit J)
5. The Appellants have a son, I, who was involved in mental health services for active suicidal ideation during the time the Appellants were attempting to complete the Family Resource/ Foster Parent Application. I was experiencing difficulty managing his mental health which led to his psychiatric hospitalization. This made it difficult for the Appellants to meet with the Department or complete the necessary paperwork. Due to this difficulty, the Family Resource Social Worker offered the Appellants the opportunity to stop the process and reconvene at a later time once their family stabilized. The Appellant, VC, declined this opportunity and expressed wanting to move forward with the Application process on November 29, 2016. (Family Resource worker testimony, Exhibit I, Exhibit J)
6. During the contact of January 12, 2017, the Appellants application process, was extended for an additional thirty (30) days. The Appellants were informed that all paperwork needed to be submitted, specifically the references for both Appellants along with required home visits. (Family Resource worker testimony, Family Resource supervisor testimony)
7. The Department sent out a total of three reference requests to identified providers and personal references on behalf of both VC and SD. The Department only received a medical and employer reference for VC as well as a school reference for I. (Family Resource worker, Family Resource supervisor testimony, Exhibit C)
8. The Department was notified, via medical reference that due to VC's extensive medical and mental health record, that the reference could not recommend VC as a foster parent. This reference was received on March 28, 2017. On April 15, 2017, the same provider submitted a letter in which she changed her initial opinion and stated that the Department should use VC's mental health provider for reference to address how VC's mental health issues might and impact foster parenting. Information for VC's provider was never shared by the Appellant with the Department. (Exhibit C, Family Resource worker testimony, Family Resource supervisor testimony)
9. The Department Family Resource Supervisor and Social Worker conducted meeting with the area office mental health specialist as well as the regional Quality Assurance Supervisor. Concerns were expressed for the mental health of VC and the lack of documentation provided by the Appellants. Attempts made by the Department to obtain the necessary documentation were also discussed.

Family Resource was instructed to obtain a confirmation of treatment from VC's mental health provider as well as length of time in treatment. Additionally, due to the Departments documented efforts, the Family Resource team was informed that the application approval for the Appellants was at their discretion per Quality Assurance. (Family Resource supervisor testimony)

10. On April 26, 2017, the Department provided the Appellant with a second and final application denial letter. The following reasons for denial were listed as Appellant were not able to meet Departmental standards and the following regulations were cited by the Department:
 - a. 110 CMR 7.104(1F) (1Q)
 - b. 110 CMR 7.104 (2)
 - c. 110 CMR 7.107 (a-e)
11. During the months leading up to the Fair Hearing, Appellants were unable to address any of the concerns that led to the denial of their application (DCF Family Resource testimony, Appellant testimony).
12. I find the Department's decision to deny the Appellant's Foster Parent Application was made with reasonable basis. The Department made this decision in compliance with its regulations (Please see Applicable Standards below).

Applicable Standards and Analysis

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

110 CMR 7.103: Application to become a Foster Parent/Adoptive Parent

(3) Application forms shall require at least the following information and consent

- c. The current physical, mental and emotional condition of the applicant and all household members;
- d. The name, address, telephone number of the applicant's employer and the employer of the head of household, if the applicant is not the head of household;
- e. The name, address and telephone number of the last physician who has examined or treated the applicant;
- f. The name(s), address(es) and telephone number(s) of any physician(s), psychologist(s) or other professional (s) who has treated the applicant or other household member for any serious or chronic illness, drug abuse or alcohol abuse;

(5) If the Department does not receive a completed application form from the foster/pre-adoptive applicant within 30 days after giving or mailing the application materials to the applicant, the Department shall attempt to contact the applicant to determine whether the applicant still wishes to become a foster/pre adoptive parent. If, after the Department has contacted the foster/ pre adoptive parent applicant, the Department does not receive the completed application form within another 30 days, or the Department determines that the applicant no longer wishes to become a foster/pre adoptive parent, the Department shall note that fact in the foster/ pre adoptive parent applicant file and close the file.

110 CMR 7.107: Assessment and Licensing of Foster/Pre adoptive Parent Applicants

(1) All applicants seeking licensure as an unrestricted foster/pre adoptive parent are required to complete the Department's foster/pre adoptive parent pre service training program. Within 30 working days after the applicant completes the training, or approval of a pre service training waiver, the Department shall complete a comprehensive assessment of the foster/pre adoptive applicant, unless the foster/pre adoptive applicant requests, and the Department approves, an extension of time to complete the assessment.

The matter in question at Fair Hearing is the Departmental decision to deny the Appellants' ability to complete a Family Resource / Foster Parent Application with the Department.

Upon review of the testimony and evidence provided by the Appellants and the Departmental staff, it is undisputed that the Department was in compliance with the Agency's policy and regulation when making their denial decision.

The Appellants, while at the Fair Hearing, argued that although they were not fully available for appointments with the Department and references were missing, it was the Department who failed to provide them with clarification as to what documentation they needed to provide or point out any mistakes in how the paperwork was filled by them. The Appellants did acknowledge having faced difficulties during the time that they contacted the Department to be considered as resources identifying their son's mental health, move and an unexpected death in the family as reasons for their delay or lack of compliance with the application process. This Hearing Officer acknowledges how these circumstances (i.e. DCF Foster Parent Application process) can impose on one's ability to comply with responsibilities outside of the home. However, their argument was not persuasive as the Department staff did provide the Appellant's with an option to stop and complete the application process at a later time due to the circumstances listed. The Appellants declined this opportunity and the Department continued to show their commitment to completing the process with the Appellants by extending their application by an addition thirty days. The Appellants initially contacted the Department in July 2016 and by April 2017, had only met with DCF staff on a single occasion and had failed to provide the necessary information to complete their application which made it difficult for the Department to begin their Home Study process leading to denial of the Applicants request.

Conclusion and Order

In conclusion, I find that the Department's decision to deny the Appellants adoption application was

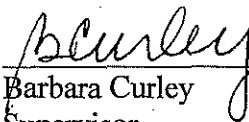
made in conformity with Department regulations and was reasonable; therefore, the Department's decision is **AFFIRMED**. Pursuant to its regulations, the Department can remove the children from the Appellants' foster home and close the home to any future placements.

This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or in Suffolk County, 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 reserve the right to supplement the findings.



Carmen Colón
Fair Hearing Officer

April 17, 2018
Date



Barbara Curley
Supervisor
Fair Hearing Unit