

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

LINDA S. SPEARS  
Commissioner

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(  
( IN THE MATTER OF )  
( SB )  
( )  
( FH # 2017-0778 )  
(

**HEARING DECISION**

**Procedural History**

The Appellant in this Fair Hearing is SB (hereinafter the "Appellant" or "SB"). The Appellant appealed the Department of Children and Families' (hereinafter "the Department" or "DCF") decision for denial of a foster parent license.

On June 14, 2017, the Department of Children and Families denied SB of her foster parent license. During the license study, the references that the Appellant provided expressed concerns regarding the Appellant's abilities to meet the emotional and behavioral needs of E (hereinafter "E" or the "child"). There were also concerns that the Appellant was sharing too much information with E which caused E to become more stressed and depression thus affecting E's mental health. There were further concerns expressed from E's medical provider and the Department that the Appellant did not always agree with medical recommendations and what type of long term mental health needs were appropriate for E. As a result E was removed from SB's foster home.

The Appellant made a timely request for a Fair Hearing under. 110 CMR 10.06

The Fair Hearing was held on September 7, 2017 at the Department of Children and Families' North Central Area Office. All witnesses were sworn in to testify under oath.

The following persons appeared at the Fair Hearing:

DH	Administrative Hearing Officer
RB	Attorney for Appellant
SB	Appellant
JV	Witness
KD	DCF Family Resource Social Worker
SC	DCF Family Resource Supervisor
RG	DCF Social Worker

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: Dictation
- Exhibit B: Letter to SB on her foster parent license being denied
- Exhibit C: Family Resource License Study

For the Appellant:

- Exhibit 1: Letter from Appellants Attorney
- Exhibit 2: Emails from RG dated 9/9/16
- Exhibit 3: Emails from RG dated 1/6/17
- Exhibit 4: Emails from RG dated 1/31/17
- Exhibit 5: Emails from RG dated 2/1/17
- Exhibit 6: Emails to RG dated 3/1/17
- Exhibit 7: Emails to RG dated 3/3/17
- Exhibit 8: Email to RG dated 3/13/17
- Exhibit 9: Text messages from MA dated 3/7/17 and 3/10/17
- Exhibit 10: Email to RG dated 3/23/17
- Exhibit 11: Email to RG dated 4/5/17
- Exhibit 12: Email to RG dated 4/24/17
- Exhibit 13: Email to RG dated 4/25/17
- Exhibit 14: Emails to RG dated 4/27/17
- Exhibit 15: Emails to RG dated 5/3/17
- Exhibit 16: Emails to RG dated 5/7/17
- Exhibit 17: Emails to RG dated 5/10/17
- Exhibit 18: Emails to RG dated 5/12/17
- Exhibit 19: Emails to RG dated 5/15/17
- Exhibit 20: Emails to KD dated 5/24/17
- Exhibit 21: Emails to RG dated 5/24/17
- Exhibit 22: Emails to RG dated 5/25/17
- Exhibit 23: Emails to RG dated 5/30/17
- Exhibit 24: Emails to RG dated 5/31/17
- Exhibit 25: Emails to RG dated 6/2/17
- Exhibit 26: Emails to RG dated 6/27/17
- Exhibit 27: Notes written by EW
- Exhibit 28: Letter from E's therapist
- Exhibit 29: Reference letter and Health Status
- Exhibit 30: EW discharge sheet from [REDACTED]
- Exhibit 31: Reference letter dated 8/31/17
- Exhibit 32: Reference letter dated 6/24/17

- Exhibit 33: Reference letter dated 9/6/17  
Exhibit 34: Medical Records of E  
Exhibit 35: Google search of medications  
Exhibit 36: Reference letter from Doctor  
Exhibit 37: Video of E
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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 Hearing is whether, based upon the evidence and the Hearing record as a whole, and on the information available at the time of and subsequent to the Department's Family Resource License Study, the Department's decision to deny the Appellant's child-specific 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 was the foster parent for E, who at the time of the Hearing was fifteen (15) years old. Therefore, she was deemed a caregiver pursuant to Department regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16
2. On June 14, 2017, the Department became concerned by references on the Appellant's application that raised the concerns regarding her abilities to meet E's behavioral and emotional needs. Concerns were also raised that the Appellant failed to accept feedback by the Department in regards to her parenting style and how it affected E. (Exhibit B, p. 2; Exhibit C, p. 9)
3. A medical reference from HH (hereinafter "HH") reported that the Appellant had been coming to her office for one (1) year. HH raised concern that the Appellant did not agree with recommended therapies for E. (Exhibit B, p. 2; Exhibit C, p. 9).
4. A social worker observation form was completed by RG (hereinafter "RG"). RG stated that the Appellant shared too much information with E that then caused E to become more depressed or stressed. RG stated there has been a struggle with the Appellant to work cooperatively with the Department due to her not agreeing with the Department's decisions for E. RG reported that while the Appellant understood E had mental health needs, she did not understand to what extent. The Appellant needed to ensure she was acting more as a parent to E than a friend as informing E of all adult

conversations and decisions was detrimental to E's mental health. (Exhibit B, p. 2; Exhibit C, p. 9).

5. The Department had concerns that the Appellant struggled with decisions that were made regarding E and her sister A (hereinafter "A"). The Appellant created turmoil for A and the resource home where she was placed. There were concerns that the Appellant continuously exposed E to adult conversations and decisions resulting in negative impact to E's mental health and well-being. As a result, E was hospitalized in a secure program setting due to the Appellant's inability to handle E in her home. (Exhibit B, p. 2; Exhibit C, p. 9)
6. The Department held internal meetings relative to the clinical formulation of the Appellant's home study. Based on this information and the noted licensing regulations, the Department denied the Appellant's foster care license. (Exhibit B, p. 2; Exhibit C, p. 9).
7. On June 30, 2017, E was removed from SB's home (Exhibit A)
8. This hearing officer reviewed and considered all exhibits as well as testimony from the Hearing. At the Hearing, the Appellant denied all concerns that the Department brought to her attention. The Appellant testified that she cooperated with the Department; that she did everything she could to let the Department know about E's declining mental health. The Appellant testified that she was not the one who gave adult information to E and that it was E's last foster home who gave her adult information. The Appellant denied she interfered with the decisions that the Department made for E. The Appellant acknowledged that she understood E's mental health concerns and addressed them as needed. The Appellant testified that since she communicated with the Department (Exhibit 2 - 37), that E should not have been removed. (Exhibit 1, pp 4, 5, 6, 7) This Hearing Officer did not find the Appellant's testimony pervasive.
9. At the Hearing, the Appellant also denied all the allegations. The Appellant wanted E at her home because she has known her from the past. The Appellant stated that she would do anything to help E and A. The last thing the Appellant wanted to happen was have E removed from her home. The Appellant disagreed with the Department to deny her foster parent license. (Hearing Record).
10. In light of the totality of the evidence in this case, this Hearing Officer has no reason to doubt clinical judgement the Department's decision to deny the Appellant's foster parent license. The Family Resource Worker followed all policies and regulations. The Department was within their guideline to deny the Appellant of her foster care license and was made with a reasonable clinical basis. (Fair Hearing Record; Exhibit C; Exhibits 1 - 37).

### 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

#### Caregiver

- (1) A child's parent, stepparent or guardian, or any household member entrusted with responsibility for a child's health or welfare; or
- (2) Any other person entrusted with responsibility for a child's health or welfare, whether in the child's home, a relative's home, a school setting, a child care setting (including babysitting), a foster home, a group care facility, or any other comparable setting.

As such, the term "caregiver" includes, but is not limited to school teachers, babysitters, school bus drivers and camp counselors. The "caregiver" definition should be construed broadly and inclusively to encompass any person who at the time in question is entrusted with a degree of responsibility for the child. This specifically includes a caregiver who is a child such as a babysitter under age 18.

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

#### 7.104: Standards for Licensure as a Foster/Pre-adoptive Parent

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

- (1) A foster/pre-adoptive 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; (c) to assure that a child placed in his or her care will be provided with routine and emergency medical and

dental care; (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; (e) to respect and make efforts to support the integrity of a child's racial, ethnic, linguistic, cultural and religious background; (f) to manage the stressful situations which are frequently associated with the placement of a child in substitute care, such as the temporary nature of such placement, the integration of a child in crisis into the foster/adoptive family, and the potential return of the child to his/her family; (g) to respect and be bound by the same standards of confidentiality as the Department and its employees; (h) to accept and support the child's relationship with his/her parents, siblings and other family members and with the Department; (i) to assist a child in handling his/her situations such as removal from the home of their parent(s), placement in a new home environment, placement in a new school (when applicable), visits with parents and siblings, and possible return to the home of the parent(s) or placement in other substitute care; (j) to assure that a child placed in his /her care will be expected to attend school regularly and will have the opportunity to participate in an educational program and in extracurricular activities that meet the child's educational and social needs; (k) to work with the Department and the foster child's parents in implementing the child's service plan in order to meet development goals and outcomes; (l) in collaboration with the Department, to develop and participate in an annual plan for trainings, education and support that will assist the foster/pre-adoptive parent in meeting the needs of the child(ren) to be placed in his/her care. (m) to draw upon community and professional resources as needed; (n) to transport children safely, within the standards set by state law; (o) to deal with difficult issues in the child's background, and be able to talk with the child comfortably and constructively about his/her birth parents and family; (p) to have reasonable expectations of a child's behavior and potential growth; and (q) to assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents.

(2) A foster/pre-adoptive parent applicant or any member of her/his household must be free of any physical, mental or emotional illness or handicap which, in the judgment of the Department, would impair his or her ability to assume and carry out the responsibilities of a foster/preadoptive parent. However, no illness or handicap in and of itself shall disqualify an individual from becoming a foster/pre-adoptive parent...

7.108; Kinship or Child- Specific Placement: If the comprehensive assessment reveals that the requisite standards are not met, the placement shall not be approved, and the child (ren) shall be removed forthwith. 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 Departments fair hearing process, set forth at 110 CMR 10.00.

Non-Emergency Kinship or Child-specific Placements. Where the Department is not considering the kinship or child-specific home for an emergency placement, the Department shall conduct an initial eligibility screening of the proposed caregivers in accordance with 110 CMR 7.100(3) and (4). If as a result of the initial eligibility screening the proposed caregivers are determined to be ineligible, that determination shall be final, and there shall be no right of appeal. (See 110 CMR 7.100(6).) If the proposed

caregivers are determined to be eligible, they shall submit a completed foster/pre-adoptive application to the Department, and the Department shall complete a foster/pre-adoptive assessment within 40 working days after receiving the completed application. If the assessment reveals compliance with the standards set forth at 110 CMR 7.100, 7.104 and 7.105, the applicant shall be licensed as a kinship or child-specific placement for the child(ren) named in the foster/pre-adoptive application, and the child(ren) may be placed in the home. The kinship or child-specific placement parent(s) shall be notified in writing, of the outcome of the comprehensive assessment, within ten working days after completion of the comprehensive assessment. Applicants may appeal the denial of a foster/pre-adoptive application via the Department's fair hearing process, set forth at 110 CMR 10.00 et seq. 110 CMR 7.108(2)

### Analysis

It is undisputed the Appellant was a caregiver pursuant to Department regulation and policy. 110 CMR 2.00; DCF Protective Intake Policy # 86-015, rev 2/28/16

On June 14, 2017 the Department denied the foster parent license of the Appellant. During the hearing the Appellant denied that she caused any issues with E and letting her know about adult decisions. The Appellant denied that was the cause of E to be depressed or stressed out. The Department had sufficient evidence to show the Appellants behaviors had effects on E's emotional stability. The Department did have concerns that the Appellant was acting more like a friend to E than a parent. The Department stated that they have seen the Appellant struggle with the decisions made by the Department regarding E. E's doctor reported concerns that the Appellant did not always agree with medical recommendations made for E and did not possess the ability to care for her long term. The Department provided examples of their concerns with the Appellant being a foster parent but the Appellant disagreed with all their findings.

In light of the totality of the evidence in this case, this Hearing Officer has no reason to doubt clinical judgement the Department's decision to deny the Appellant's foster parent license. The Family Resource Worker followed all policies and regulations. The Department was within their guideline to deny the Appellant of her foster care license and was made with a reasonable clinical basis. The Appellant was unable to show through the testimony and evidence to overturn the Departments decision.

### Conclusion and Order

The Departments decision to deny the Appellants Foster Parent License is **AFFERMED**

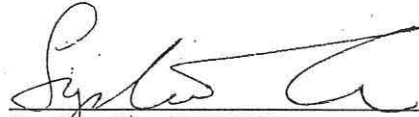
This is the final administrative decision of the Department. If Appellant wishes to appeal this decision, she may do so by filing a complaint in the Superior Court for the county in which she lives, or in Suffolk County, within thirty (30) days of the receipt of this decision. *See*, M.G.L. c.30A, §14. In the event of an appeal, the Hearing Officer reserves the right to supplement the findings.



David Halloran  
Administrative Hearing Officer

5/23/2018

Date



Sophia Cho, LICSW  
Fair Hearing Supervisor