

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN & FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111

LINDA S. SPEARS,
COMMISSIONER

Voice: (617) 748-2000
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IN THE MATTER OF)
)

Ms. L.O.)
)

FH # 2017-1077)
)

HEARING DECISION

Procedural Information

The Appellant in this Fair Hearing is Ms. L. O. (or "the Appellant"). The Appellant appealed the Department of Children and Families ("the Department" or "DCF") decision to revoke her license to be a foster parent. The Department made its decision following the completion of a limited reassessment, which was initiated after a supported 51B response on the Appellant's home.

Notice of the Department's revocation was sent to the Appellant on or about August 15, 2017, and the Appellant filed a timely appeal with the Fair Hearing Office on August 21, 2017.

The Fair Hearing was held on October 4, 2017, at the DCF Cape Ann Area Office in Salem, MA. The following persons appeared at the Fair Hearing:

Ms. Lisa A. Henshall	Administrative Hearing Officer
Ms. L.O.	Appellant
Atty. M.M.	Appellant's Attorney
Ms. D.O.	DCF Family Resource Worker (FRW)
Ms. T.G.	DCF Area Program Manager (APM)

The record remained open until October 5, 2017, to allow the Appellant's Counsel time to submit a closing argument. The argument was received and reviewed.

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 recorded pursuant to 110 CRM 10.26.

The following documents were submitted into the record at the Fair Hearing:

For the Department:

- Exhibit 1: DCF Dictation
- Exhibit 2: DCF License Revocation Letter dated 8/15/17
- Exhibit 3: DCF Removal Letter dated 8/18/17
- Exhibit 4: DCF License Renewal Assessment & Limited Reassessment
- Exhibit 5: DCF 51A dated 5/4/17
- Exhibit 6: DCF 51A dated 5/7/17
- Exhibit 7: DCF 51B completed 5/10/17

For the Appellant:

- Exhibit A: 51As dated 5/4 and 5/7/17
- Exhibit B: 51B completed 5/10/17
- Exhibit C: Safety Plan re: approved alternate caregivers dated 6/26/17
- Exhibit D: Approval and denial letters from DCF to Appellant dating back to 1995
- Exhibit E: Criminal background results for alternate caregiver for child
- Exhibit F: Family Resource License Renewal Evaluation dated 3/17
- Exhibit G: Family Resource Limited Re-evaluation from 2015
- Exhibit H: Family Resource License Study from 2014
- Exhibit I: Foster Parent Agreement from 2015-2016
- Exhibit J: Foster Parent Agreement from 2014
- Exhibit K: Reference Letter
- Exhibit L: DCF Email regarding approval of alternate caregivers for child dated 7/17

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 Appellants; 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 Appellants. 110 CMR 10.05

Findings of Fact

1. In July 2014, the Appellant expressed interest in becoming a child-specific/kinship placement resource for her great grandson, S (or "the child"), who was in DCF custody. S had been born six weeks prematurely on May 1, 2014 and was exposed to Methadone in utero. The Appellant had previously been home studied in 1995 and was an approved resource for the child's mother M, her granddaughter. S was placed in the Appellant's home on May 23, 2014. The home

study was approved by the Department on October 7, 2014. S was returned to his mother's care in October 2014. In December 2014, the child was again placed in the care of the Appellant where he has remained. (Exhibits F & H; Exhibit 4; Testimony of the APM)

2. When the Appellant was approved for the placement of the child the Appellant already had guardianship of the child's older sibling, her great granddaughter, L. The Appellant resided in an apartment and M lived in the same building, next door. The Department was aware of this close proximity prior to the child being placed with the Appellant. (Testimony of the FRW; Testimony of the APM; Exhibit B; Testimony of the Appellant)
3. It was undisputed that the Appellant was bonded with the child and the Appellant's care of the child was excellent. (Testimony of the FRW; Exhibits F, G & K; Testimony of the APM)
4. The visits between the child and his mother were to be supervised by the Appellant and there was no visitation schedule. (Exhibit 1; Exhibit 4; Testimony of the FRW)
5. On December 6, 2016, the Appellant was struggling with a wound on her "foot/leg," which was causing her pain. The Appellant required assistance getting the child off the bus. The Department agreed to allow M to get the child off the bus during this time, while the Appellant remained in the house. (Exhibit 1; Testimony of the APM)
6. On January 26 2017, the Department addressed concerns that M had "open access" to the child. The Appellant had been letting L have free access to M as she had no concerns and had guardianship of L. This became problematic as S wanted to accompany L next door to see his mother. The Department told the Appellant that this practice could not continue, updated the service plan tasks and the Appellant agreed to "abide by the rule." Despite this, the Department continued to agree to allow M to take the child off the bus to assist the Appellant. (Exhibit 1; Testimony of the FRW; Testimony of the Appellant)
7. The Department had concerns that the child's father had visited M's home and based on his violent history there were concerns that this could place the child in danger. (Fair Hearing Record) There was no evidence to determine if this had occurred.
8. On March 20, 2017, the Department completed and approved a license renewal for the Appellant's home. The Appellant was compliant with service planning and the child placement agreement. There were no concerns with respect to the Appellant or her care of the child. (Exhibit D; Exhibits F & 4; Exhibits I & J)

9. A 51A was filed on May 4, 2017, alleging neglect of the child by the Appellant due to concerns the Appellant was having medical problems with her legs and as a result she was having difficulty caring for the child.¹ On May 7, 2017, a subsequent 51A was filed alleging neglect of the child by the Appellant. The report alleged that the Appellant became ill and allowed their mother (M) to care for S, and be alone with the child. The two reports were incorporated, as permitted by Department policy and screened in for an emergency response. (Exhibit 6; Exhibit A; Testimony of the APM; Testimony of the FRW; Testimony of the Appellant)
10. The Department conducted an emergency response and the child was located in the care of M and her boyfriend, J. L was also present. M was cleaning and the door to both her and the Appellant's apartment were open. The children had been driven to M's home by a relative the day prior (Saturday) to the DCF response. (Exhibit B; Exhibits 3 & 4)
11. The Appellant had become ill while away with the children in [REDACTED] and could barely walk.² The Appellant did not have approved caregivers in [REDACTED] and her adult children were unable to assist her. The Appellant was unaware that an alternative caregiver whom she had identified in 2015 had been approved by the Department. It was undisputed that the Appellant made the decision to have the children stay with their mother until she was able to resume caretaking responsibilities. (Exhibit 4; Exhibit E; Testimony of the FRW; Testimony of the Appellant)
12. There was no plan in place in the event of a medical emergency. The Appellant had no approved emergency caretaker in [REDACTED]. (Fair Hearing Record; Testimony of the FRW; Exhibit 1; Testimony of the APM)
13. The Department determined there was no imminent risk to the child so the child was not removed from the Appellant's home. The Department left the child in the care of the mother from 12:39pm- 4:45pm, when they returned to the Appellant's home to speak to her as she had returned from [REDACTED] (Testimony of the APM; Exhibits 7 & B; Testimony of the FRW)
14. The Department ran criminal record checks at the time of the response. J's most recent charges were from 2009 and M's were from 2015. (Fair Hearing Record)
15. On May 10, 2017, the Department supported the allegation of neglect of the child by the Appellant. A limited reassessment of the Appellant's home was generated as indicated by Department policy. (Exhibits 7 & B; Exhibit 4; Testimony of the APM)

¹ The report also alleged neglect of "L" who was in the Appellant's custody and was not the subject of this appeal.

² The Appellant had a residence in [REDACTED], as well as Massachusetts, which the Department was aware of.

16. On June 26, 2017, the Department had the Appellant develop a safety plan for caregivers she could use in the event of an emergency and to contact the DCF hotline with updated information. (Exhibit C; Testimony of the FRW)
17. The initial visit to the Appellant's home for the limited reassessment took place on May 22, 2017. The assessment was not completed until August 15, 2017, when the Appellant was made aware of the Department's decision. 110 CMR 7.113A The Department acknowledged that the decision was delayed as it was a difficult as the Appellant took very good care of the child and was bonded. (Testimony of the APM)
18. At the conclusion of the reassessment, the Department made the decision to revoke the Appellant's foster care license and close her home. This was due to the Appellant having a supported 51B and an open case with DCF, which now made her home a "Category 1 DCF history" and was a "DCF policy violation." The Department did not explore a waiver to permit the child to remain in the home, in part, as there had been a history of the Appellant allowing M to have unsupervised access to the child, the Appellant not being able to set limits with M and the Appellant now had an open case with the Department and an assessment was in progress. (Testimony of the APM)
19. On August 15, 2017, the Department mailed the Appellant the "Notice to Foster/Adoptive Family: Annual/Limited Reassessment or License Renewal Study Outcome-License Revoked; Home Closing" citing to 110 CMR 7.113(B) & 7.00 (1). The Department documented its reasoning, specifically citing "Standards for Eligibility to Apply: "No member of the household has currently, or during the 12 months prior to the completion of the Initial Eligibility Screening, has had an open DCF case." 110 CMR 7.100 (Exhibit D; Exhibit 2; Testimony of the APM)
20. A letter dated August 18, 2017, was sent to the Appellant notifying her of the Department's decision to remove the child from the home as determined by DCF regulation 110 CMR 7.113 & 7.116. Subsequently, the child's Attorney petitioned the court and the Judge issued a stay and the child has remained with the Appellant pending the outcome of this process. (Exhibit D; Exhibit 3; Testimony of the APM)
21. The Appellant acknowledged that she made a mistake allowing the child to be cared for by his mother but felt she had no other choice. The Appellant was not concerned about M caring for the child as she felt she was doing well and had been in treatment for the past 8 months. (Exhibit 4; Testimony of the Appellant; Exhibit C)
22. It was undisputed that the Appellant failed to adhere to the contract (foster care agreement) made with the Department by allowing the child to be with his mother

unsupervised. However, the Department also allowed the child to be with his mother, unsupervised, when the mother would pick the child up from the bus and when the Department conducted the response and left the child in the care of the mother and her boyfriend. The Department did not return back to the house for approximately 3 hours and the child remained with the mother. (Fair Hearing Record)

23. It was unclear, based on the evidence, if and how often S may have had unsupervised contact with his mother. (Fair Hearing Record)
24. Based on a thorough review of the evidence, I find that the Department's decision to revoke the Appellant's foster care license and close her home was not a reasonable clinical decision. 110 CMR 7.00; 7.113(B); & 7.00 (1) 110 CMR 7.116 (2) a, b & c; Family Resource Policy #2006-01

Applicable Standards

110 CMR 10.06: Allowable Grounds for Appeal

(4) Foster Parents' Grounds of Appeal. Foster parents and foster parent applicants have a right to appeal the following decisions by the Department via the Fair Hearing process:

- (b) a decision to close the foster home, to terminate a license as a foster parent/home or to not renew a license to be a foster home.

A Fair Hearing shall address whether, based upon the evidence and the hearing record as a whole: (a) whether the Department's or provider's decision was not in conformity with its policies and/or regulations and resulted in substantial prejudice to the aggrieved party.... In making a determination on these questions, the Fair Hearing Officer shall not recommend reversal of the clinical decision made by a trained social worker if there is reasonable basis for the questioned decision.

The Department's concerns and basis for denial in the instant matter are addressed in the following regulations:

110 CMR 7.113A: Limited Reassessments

In addition to the annual reassessment or license study, the Department may perform a limited re-assessment of the foster/pre-adoptive parent and/or foster/pre-adoptive home at other times.

- (1) The Department shall conduct a limited reassessment whenever the Department:
 - (a) investigates and supports a report of abuse or neglect under G.L. c. 119, § 51B and the foster/pre-adoptive parent or other household member is identified as responsible for abuse or neglect; or
- (3) In conducting the limited reassessment the Department will follow the following procedure:

(a) The Department shall give written notice to the foster/pre-adoptive parent as soon as possible. Such written notice shall include at least the following information:

1. the fact that the Department intends to perform a limited re-assessment of the foster/pre-adoptive parent, the foster/pre-adoptive home, or both; 2. the reason(s) for performing the limited re-assessment; and 3. the steps which the Department intends to take in order to complete the limited re-assessment. A copy of the written notice shall be entered in the foster/pre-adoptive parent file.

(b) Within 30 days after the written notice has been given, the Department shall perform and complete the limited re-assessment of the foster/pre-adoptive parent and/or foster/preadoptive home. The limited re-assessment may consist of one or more of the steps described under 110 CMR 7.113(1) and in the Department's Family Resource Policy.

(c) The Department shall prepare a written report of findings and conclusions made as a result of the completed limited re-assessment. A copy shall be entered in the foster/preadoptive parent file. The foster/pre-adoptive parent may receive a copy upon request.

(d) At the conclusion of the limited re-assessment, the Department shall reach one of the decisions in 110 CMR 7.113(4)(c).

(e) The Department may combine an annual reassessment or Licensed renewal study with a limited reassessment if the annual reassessment or license renewal study is due within three months of the commencement of the limited reassessment. If the reassessments are combined, all steps in the annual reassessment or license renewal study will be conducted.

FAMILY RESOURCE POLICY DCF Policy #2006-01

Supported 51B in which a Foster/Pre-Adoptive Parent or Other Household Member is Identified as the Person Alleged to be Responsible for the Child Abuse/Neglect

1. **Removal Decision Following a Supported 51B.** Following a supported 51B investigation of a foster/pre-adoptive family, regardless of who is identified as the person alleged to be responsible for the child abuse or neglect, the Department determines *whether the child's physical, mental, or emotional well-being would be endangered by remaining in the foster/pre-adoptive home. If yes, the child's Social Worker immediately removes the child on an emergency basis.*
 - ***If a foster/pre-adoptive parent is identified as a person alleged to be responsible for a child's abuse and/or neglect:*** the Department immediately suspends future placements to the home **and conducts a Limited Reassessment to determine whether it is in the best interests of each child placed with the family to remain there.** If the Department determines that a child should remain placed with the family, the home must be restricted (i.e., as "kinship" or "child-specific") for that child only.
 - If a household member other than a foster/pre-adoptive parent is named as a person alleged to be responsible for a child's abuse and/or neglect: the Department conducts a Limited Reassessment to determine:

- whether it is in the best interests of each child placed with the family to remain there;
- whether the home will be open to future placements; and
- whether the home needs to be restricted (i.e., as "kinship" or "child-specific").

110 CMR 7.113B: License Revocation

(1) Except as provided otherwise in 110 CMR 7.100 et seq., whenever the Department reaches a decision to revoke a license, it shall give written notice to the foster/pre-adoptive parent. The written notice shall include at least the following information:

- a) notice that the Department will no longer place any foster children in the home;
- b) notice that agreement(s) between the Department and the foster/pre-adoptive home is terminated and that the license should be returned to the Department;
- c) the reason(s) for the license revocation; and
- d) if applicable, notice of the foster/pre-adoptive parent's right to appeal and the procedures for taking such appeal. A copy of the written notice shall be entered in the foster/pre-adoptive parent file.

(2) If the decision to revoke the license is concurrent with a decision to remove one or more children from the foster/pre-adoptive home, the written notice required under 110 CMR 7.00 may be modified as necessary and combined with the written notice of the decision to remove the foster children from the foster/pre-adoptive home as required under 110 CMR 7.116.

7.113C: Closing a Foster/Pre-adoptive Home

Foster/pre-adoptive homes may be closed either at the request of the foster/pre-adoptive parent or as a result of a decision by the Department. The basis and process for decisions by the Department are set forth above in 110 CMR 7.113 through 7.113B. Whenever a foster/pre-adoptive parent requests that their foster/pre-adoptive home be closed they shall do so in writing. Prior to closing the home, the Department will meet with the foster/pre-adoptive parent to discuss the reasons for closing the home, plans to remove any foster child(ren) placed in the home and to establish dates for the removal of the foster child(ren) and the closure of the home. The Department will confirm in writing the decisions agreed upon at that meeting, the reasons for those decisions, and provide a copy to the foster/pre-adoptive parent.

110 CMR 7.116: Removal of Foster Children from Foster/Pre-adoptive Homes

(3) Whenever the Department has received, investigated, and supported a report of abuse or neglect of any foster child and the foster/pre-adoptive parent is named as the person believed to be responsible for the abuse or neglect of the child, the following procedures shall be observed: (a) the foster/pre-adoptive home shall be closed to any future placements of children. (b) the license shall be changed and, pending a determination under 110 CMR 7.116(3)(b) or (c), the placement will be deemed a child specific placement for any children who remain in the foster/pre-adoptive home. (c) As to any foster child(ren) already in the foster/pre-adoptive home, if the Department determines that the foster child's physical, mental or emotional well-being would be endangered by

leaving the child in the foster/pre-adoptive home, it shall immediately remove the foster child from the foster/pre-adoptive home and arrange an alternative placement. The foster/pre-adoptive parent shall be given verbal notice as soon as possible after the child is removed, and written notice within five days after the removal. The written notice shall include at least the following information: 1. the reason(s) for the removal; 2. notice of the foster/pre-adoptive parent's right to appeal the removal decision, and the procedures for taking such an appeal; 3. notice that the Department intends to perform a limited re-assessment of the foster/pre-adoptive parent(s) and the foster/pre-adoptive home.

A copy of the written notice shall be entered in the foster/pre-adoptive parent file. The Department shall then conduct a limited re-assessment of the foster/pre-adoptive parent(s) and foster/pre-adoptive home in accordance with the provisions of 110 CMR 7.113(1). (d) If the Department determines that the foster child's physical, mental or emotional well-being would not be endangered by leaving the child in the foster/pre-adoptive home, it shall not remove the foster child, and shall proceed to perform a limited re-assessment of the foster/pre-adoptive parent(s) and the foster/pre-adoptive home. If the limited re-assessment is satisfactory, the placement shall become a child-specific placement as to the foster child remaining in the home. (e) The limited re-assessment performed for purposes of 110 CMR 7.116(3) shall be conducted for the purpose of determining: 1. whether the removal of the foster child should be sustained if the foster child has already been removed; and 2. whether any other foster children in the foster/pre-adoptive home should be removed. (f) If the limited re-assessment results in a decision to remove one or more foster children from the foster/pre-adoptive home, the Department shall make arrangements for removing any of those children still remaining in the foster/pre-adoptive home and moving them to new placements. If the limited re-evaluation does not result in a decision to remove one or more foster children from the foster/pre-adoptive home, the reason(s) for said determination shall be recorded in writing in the case file and approved in writing by the Hosting Area Director. (g) Whenever a foster child is removed under 110 CMR 7.116, the Department shall notify, as appropriate, the child's parents (unless they have surrendered the child for adoption or a court of competent jurisdiction has issued a decree dispensing with the need for parental consent to adoption), school officials, juvenile probation officers, and/or other individuals interested in the child's whereabouts of the change in the child's placement.

(5) Whenever the Department has revoked or not renewed a license for a licensed foster/pre-adoptive parent(s) and foster/pre-adoptive home, as a result of an annual or limited re-assessment, the Department shall remove all children from the foster/pre-adoptive home, unless the Department determines that it is in the child(ren)'s best interest to remain in the foster/pre-adoptive home. If the Department determines that it is in the child(ren)'s best interest to remain in the foster/pre-adoptive home, the home shall become a child specific home and subject to the same terms and conditions as any home approved under 110 CMR 7.108.

7.105A: Waiver of Standards for Approval of Foster/Pre-adoptive Parents or Homes

The requirement set forth in 110 CMR 7.104(6) may be waived for an applicant for a child specific or kinship home as set forth at 7.108, provided the applicant otherwise

meets the eligibility criteria set forth for child specific and kinship applicants and a determination is made that it would be in the child's best interest to be placed in the applicant's home. In determining whether a waiver is in the child's best interest, the decision maker(s) shall consider the nature and length of the applicant's relationship with the child(ren), the applicant's ability to support and maintain the child's connection to family, community and culture and the child's anticipated length of stay in placement. The decision whether to waive the requirement shall be made by a Regional Clinical Review Team (RCRT), or in an emergency placement situation, by the Regional Director who shall then arrange for a final decision by the RCRT after the comprehensive assessment under 110 CMR 7.107. Waiver decisions made in connection with an emergency placement may be changed as a result of information obtained or reassessed during the comprehensive assessment under 110 CMR 7.107. There shall be no appeal from a decision not to waive the requirement for an emergency placement.

Analysis

The Appellant, as argued by Counsel, appealed the Department's decision to revoke her foster care license and close her home. The Appellant had been the foster parent for her great grandchild since he was newborn. At the time of the hearing the child was three years old. Upon learning of the Department's decision to revoke the Appellant's license and remove the child, the child's Attorney petitioned the court and the Judge issued a stay on the removal of the child. The Appellant's overall care of the child was described as excellent and the two were bonded. It was undisputed that at the time of the reported incident the Appellant placed the child in the care of his mother M despite agreeing the Department's expectation that the child not be left with M unsupervised.

Counsel argued that that the Department's decision to revoke the Appellant's license violated their time frame. Counsel argued that the Appellant had a medical emergency and made the decision to leave the child in his mother's care while the Department had done the same thing at the time of the response for no reason. Counsel argued that the child was not neglected by the Appellant however this was not the basis for this appeal.

The Department argued that the Appellant had an open case as a result of the Department's decision to support the allegation of neglect which violated Department policy as the Appellant now had a Category 1 DCF history, as she was an open consumer. The Department made the decision to not seek a waiver as Appellant had failed to adhere to the Department's expectation which she had agreed to, to not permit the child's mother to have unsupervised access to the child. The Department reached this decision after completing a limited reassessment.

The Appellant did violate the Department's trust and did not adhere to the agreement that all visits between the child and the mother would be supervised. At the time of the reported incident, there was no plan in place for what the Appellant was to do in the event of an emergency. A plan was developed with the Department after the emergency response. The Appellant acknowledged that when she became ill, she should have contacted the Department instead of permitting the child to be in the care of his mother.

The Appellant and the mother resided in the same building, while in separate apartments they were adjacent to one another. This had been the situation since prior to the child being placed with the Appellant in 2014. The Department was aware of this and the Appellant's home was approved regardless. In addition, the Department permitted the Appellant to have the child's mother assist her with getting the child off the bus and accompany him into their building. On the day the Department responded to reported 51A, the ERWs left the child in the care of M for a few hours. The Department used the child's mother as a caregiver despite their expectation that the Appellant should not. (See Findings)

It was undisputed that the Appellant's care of the child was excellent and the two were bonded. In March, 2017, the Department completed and approved a license renewal for the Appellant's home. The Appellant was compliant with service planning and the child placement agreement. There were no concerns with respect to the Appellant or her care of the child. At Fair Hearing, there was no evidence presented to demonstrate that it was not in the child's best interest to remain in the Appellant's home. The child has remained in the home since he was a newborn and continues to reside with the Appellant. See 110 CMR 7.116 3 (a)(b)(c) (5); 7.105A; 7.100.


This Hearing Officer did find the arguments offered by the Appellant to be compelling. The Department's decision to revoke the Appellant's foster care license, was not made in conformity with its policies and regulations, and was not made with a reasonable basis.

Conclusion and Order

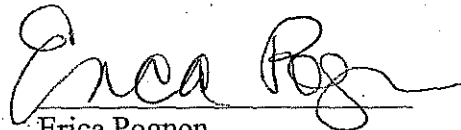
The Department's decision to revoke the Appellant's foster care license, this resulting in the loss of this placement for the child is **REVERSED**.

The Department is **ORDERED** to convene a Regional Clinical Review Team to explore approving a waiver pursuant to 110 CMR 7.105A.

Date: 2/2/18



Lisa Henshall
Administrative Hearing Officer



Erica Pogon
Supervisor, Fair Hearing Unit

Date: _____

Linda S. Spears
Commissioner