

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Children and Families
Central Administrative Office
600 Washington Street, 6th Floor
Boston, Massachusetts 02111

Linda S. Spears, Commissioner

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IN THE MATTER OF: NA

Fair Hearing #20171403

FAIR HEARING DECISION

Appellant, NA, appeals the decision of the Department of Children and Families (“Department”) to deny her services past the age of eighteen.

Procedural History

NA (“Appellant”) requested continued services from the Department through a Voluntary Placement Agreement at or about Appellant’s turning eighteen years old. On October 25, 2017, the Department decided to deny Appellant services through a Voluntary Placemen Agreement and close her case upon her reaching eighteen years of age. The Department notified Appellant in writing of its decision and of Appellant’s right to appeal. Appellant made a timely request for a Fair Hearing pursuant to 110 C.M.R. §10.06. The Fair Hearing took place on January 10, 2018 at the Department’s Area Office in Hyde Park, Massachusetts. In addition to the Hearing Officer, the following persons appeared at the Fair Hearing:

AS	Department Social Worker
BC	Department Supervisor
JD	Department Area Program Manager
NA	Appellant
LR	Witness/Appellant’s mother
JR	Attorney for Appellant
BR	Social Worker at Attorney for Appellant’s office

In accordance with 110 C.M.R. §10.03, the Hearing Officer attests to impartiality in this matter, having no direct or indirect interest, personal involvement, or bias in this case. The hearing was digitally recorded. All witnesses were sworn in to testify under oath. The record remained open until January 16, 2018 to afford Appellant's attorney the opportunity to submit additional documentation. The following documentary evidence was entered into the record for this Fair Hearing:

For the Department:

- Exhibit 1 Department letter of October 10, 2017
- Exhibit 2 Department letter of October 25, 2017
- Exhibit 3 Incident Event Documents
- Exhibit 4 Substance Monitoring Reports
- Exhibit 5 Department agreement of December 1, 2017
- Exhibit 6 [REDACTED] letter of January 3, 2018
- Exhibit 7 E-mail, November 14, 2017

For Appellant:

- Exhibit A Fair Hearing request with attachments
- Exhibit B [REDACTED] letter of January 9, 2018
- Exhibit C Email, employment
- Exhibit D Email, [REDACTED] College
- Exhibit E [REDACTED] letter of November 6, 2017
- Exhibit F Group Home, Medical Coordinator letter of November 1, 2017
- Exhibit G Emails, Department social worker

The Hearing Officer need not strictly follow the rules of evidence.... Only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 C.M.R. § 10.21

Statement of the Issues

The issue for resolution is whether the Department's decision to terminate services and close Appellant's case is in conformity with Department regulations and/or policies and, if not, whether any regulatory violation resulted in substantial prejudice to Appellant. 110 CMR §10.05.

Findings of Fact

On the basis of my assessment of all the evidence presented, I make the following findings:

1. The Department obtained custody of Appellant when she was fifteen years old through a CRA application. The Department initially placed Appellant in a foster home and then in the G residential program. In February 2017, when Appellant was seventeen years old, the Department placed Appellant in the C group home. The C

group home was a program for youth under eighteen years of age. [Testimony of Appellant's mother; Testimony of Department social worker; Exhibit E]

2. Appellant was psychiatrically hospitalized twice at age fifteen/sixteen for suicidal thoughts. [Testimony of Appellant's mother]
3. In August 2017, Appellant received a new Department social worker. At the time of her transfer to a new worker, Appellant was compliant with the requirements of her Service Plan.¹ [Testimony of Department social worker]
4. At the C group home, Appellant met with a clinician consistently (multiple times per week). She also participated in groups, such as PAYA,² at the C group home on a consistent basis. Appellant's clinical goals centered on behavior management (difficulty with managing anxiety, frustration, and anger), substance use (marijuana),³ and family relationships. By November 2017, Appellant had demonstrated an increased capacity to avoid verbal and physical aggression. Appellant also participated in family therapy with her mother. Appellant's participation in family therapy increased to 90% of the sessions by November 2017. Appellant and her mother reported improved family relationships. [Testimony of Appellant; Testimony of Appellant's mother; Exhibit E; Exhibit 6]
5. On August 30, 2017, Appellant also began work with a community based therapist whom she saw weekly. [Exhibit E; Testimony of Appellant]
6. From approximately April 2017 until September 2017, Appellant worked at [REDACTED] on weekends. Her hours varied. [Testimony of Appellant]
7. In or about September 2017, Appellant underwent placement testing relative to GED preparation/examination.⁴ Appellant tested at a fifth grade reading level. Appellant found this "embarrassing" and it made her feel "useless" and "horrible." She lost motivation in pursuing her GED. [Testimony of Appellant]
8. In or about October 2017, Appellant stopped working at [REDACTED] to take a job at a pizza shop located near the group home. This job offered more consistent hours, two to four hours per day. However, this employment ended within a month after Appellant started as the pizza shop closed. [Testimony of Appellant]
9. On October 7, 2017, Appellant underwent a medication evaluation and was prescribed four medications, Adderall, Lamictal, Melatonin, and Vistaril, to treat ADHD, anxiety, and depression. [Exhibit F; Testimony of Appellant]

¹ The Department did not submit any evidence as to what was on Appellant's Service Plan at the time.

² PAYA is an acronym for Preparing Adolescents for Young Adulthood.

³ Appellant reports using marijuana since the age of 12 ½.

⁴ Appellant had previously participated in a GED preparation program at [REDACTED] but stopped going. She identified various reasons for stopping, i.e. issues with transportation and wanting to take part in activities such as camping offered by the group home over the summer.

10. On October 10, 2017 (as Appellant approached her eighteenth birthday in November 2017), the Department informed Appellant in writing of its expectations should she want to remain involved with the Department past her eighteenth birthday through a Voluntary Placement Agreement. These expectations included: working towards completing a high school diploma or getting a GED; taking all medication as prescribed, keeping all medical and dental appointments, and following recommendations from health care providers; maintaining a bank account; being employed at least 20 hours per week; engaging in weekly family therapy; following all rules and expectations of the group home, i.e. meeting curfew every night and not being absent/missing from her placement. [Exhibit 1]
11. Appellant had a bank account with her mother which she had opened at or about the time she began working at [REDACTED]. [Testimony of Appellant]
12. In October 2017, Appellant decided to take an online GED preparation course. She provided the Department with documentation which indicated that she had only completed 12 hours of online work from October 22, 2017 through November 12, 2017. [Testimony of Department Supervisor; Testimony of Appellant]
13. In or about October 2017, the C group home clinician discussed with Appellant her interest in being referred to the C Pre-Independent Living program. Appellant was not interested as she knew many of the residents that had moved there from the C group home and their "drama" and feared she would not do well there. Appellant wanted to remain at the C group home. [Testimony of Appellant]
14. It is unclear as to whether in October 2017 Appellant understood she could not remain at the C group home past her eighteenth birthday. [Fair Hearing record]
15. On October 25, 2017, the Department informed Appellant in writing that it would not be offering her a Voluntary Placement Agreement. The Department's concerns included Appellant's failure to: complete high school or work toward getting a GED; take all medication as prescribed and report any changes or concerns to her primary care provider and psychiatrist; obtain full-time or part-time employment (at least 20 hours per week); engage in weekly family therapy; follow all rules and expectations of the group home; and refrain from smoking marijuana. [Exhibit 2]
16. There is no evidence that the Department had been conducting comprehensive transition planning with Appellant prior to sending her the above-referenced notice denying her a sustained connection with the Department through a Voluntary Placement Agreement. [Fair Hearing record]
17. On November 9, 2017, Appellant requested a Fair Hearing relative to the Department's decision to deny Appellant a sustained connection through a Voluntary Placement Agreement. [Exhibit A]
18. On November 14, 2017, Appellant's group home clinician informed the Department that she had been working with Appellant and Appellant's mother to prepare Appellant for moving back home (something which Appellant and her mother did not

believe was an appropriate option) and providing Appellant with information on local housing resources. [Exhibit 7]

19. In November 2017 (approximately one week before Appellant turned eighteen), the Department convened a "YARB" to review the determination as to whether the Department would sustain a connection with Appellant once she turned eighteen and offer her the opportunity to enter into a Voluntary Placement Agreement. The Panel determined that it would not offer services to Appellant once she turned eighteen years old. [Testimony of Department social worker]
20. Appellant turned eighteen on November 28, 2017. [Testimony of Social Worker]
21. The Department did not make any referrals to DMH or DDS for Appellant. [Testimony of Department Supervisor]
22. Department policy requires that the Department continue to provide services for a youth/young adult who is denied services beyond age 18 and files for a Fair Hearing. The youth/young adult needs to sign a Voluntary Placement Agreement in order for placement services to remain unchanged *until the fair hearing outcome is received*. [emphasis added] See Permanency Planning Policy – Section 1, Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults, Effective: 07:01/2013, pp.61-62
23. On December 1, 2017, the Department entered into a Voluntary Placement Agreement with Appellant valid only until the date of the Fair Hearing. In order for Appellant to maintain Voluntary Placement Agreement status, the Department required that Appellant do the following:
 - complete and document 25 hours/week of a GED program;
 - take all medications as prescribed from her doctor; follow all recommendations from her PCP and psychiatrist; agree to drug screening if the program suspected she was not taking her medications and/or selling them;
 - follow all rules and expectations of the group home/placement;
 - attend every scheduled court date;
 - attend all scheduled meetings with the Department; and
 - obtain employment within a month; show her social worker all submitted applications; and inform her social worker of all interviews. [Testimony of Area Program Manager; Exhibit 5]
24. The C group home agreed to keep Appellant until the date of the Fair Hearing. [Testimony of Department social worker]
25. In December 2017, Appellant decided to go back to [REDACTED] to take GED preparation classes. She applied, underwent testing, and met with a guidance counsellor. [Testimony of Appellant]
26. From December 3, 2017 through December 23, 2017, Appellant took 6 unauthorized leaves ("AWOLs") from her group home. These AWOLs involved her going outside

to smoke marijuana and not returning within the 15 minutes she was authorized to go outside for a walk and/or leaving the group home without authorization. On December 5, 2017, Appellant's clinician reminded Appellant of available resources to help her reduce her marijuana use, including Team 14 substance use groups. Appellant declined but agreed to continue to discuss options with her clinician. [Exhibit 3]

27. Between November 28, 2017 and January 3, 2018, Appellant had limited success in applying alternative coping mechanisms to reduce substance (marijuana) use. [Exhibit 6]
28. There were concerns that Appellant was not taking her prescribed medications consistently and/or selling her medications as she tested negative for amphetamines on December 15, 2017. [Exhibit 4; Testimony of Department social worker]
29. Appellant tested positive for marijuana use on December 1, 2017, December 15, 2017, and December 28, 2017. [Exhibit 4]
30. On January 8, 2018, Appellant began attending [REDACTED] (GED) preparation classes again at [REDACTED]. The classes occur four days/16 hours per week (which is considered full time attendance). [Testimony of Appellant; Exhibit B]
31. While at the C group home, Appellant acquired or enhanced some independent living skills such as hygiene skills, doing laundry, making her bed, cleaning skills, and the ability to seek assistance from her supports, i.e. with banking matters and in obtaining her social security card and birth certificate. [Testimony of Appellant]
32. In the time preceding the Fair Hearing, Appellant was studying to obtain her learner's permit. [Testimony of Appellant]
33. Appellant was compliant with her prescribed medications for the ten days preceding the Fair Hearing. [Testimony of Department social worker]
34. There is no evidence that between October 25, 2017 and the date of the Fair Hearing, the Department had provided Appellant with comprehensive transition planning, i.e. including appropriate and stable housing arrangements; employment/source of income; appropriate community resources such as health insurance, medical, mental health, and dental providers, recreational, educational, vocational, and legal services. For example, there was no plan developed for how Appellant would continue to access her community medical, therapeutic, and psychiatric providers were she to be discharged from the C group home.⁶ [Fair Hearing record; See Department Permanency Planning Policy – Section 1, Effective: 07/01/2013, Planning for

⁶ At the Fair Hearing, the Department did indicate that they could have arranged [REDACTED] transportation through MassHealth for Appellant to continue to access her therapist/prescription providers had she initially chosen to go to a Pre-Independent living program.

Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults, pp.60-61]

35. A youth/young adult should not be discharged from Department placement until appropriate and stable housing is found. Department Permanency Planning Policy – Section 1, Effective: 07/01/2013, Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults, p.61
36. The Department’s Permanency Planning Policy defines “Appropriate Housing” as “all housing *except shelters*, hotel/motels and dwellings that fail to meet governmental health and building code standards.” [emphasis added] Department Permanency Planning Policy – Section 1, Effective: 07/01/2013, Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults, p.60
37. The Department’s Permanency Planning Policy defines “Stable Housing” as “housing in which there would be reasonable expectation that the residence will remain accessible for the first 12 months after discharge.” See Department Permanency Planning Policy – Section 1, Effective: 07/01/2013, Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults, p.60
38. In January 2018, Appellant’s mother’s housing situation changed and was such that Appellant could not relocate with her mother long term. [Testimony of Appellant’s mother]
39. On or about January 9, 2018, the Department discussed with and initiated a referral for Appellant to a Transition to Independent Living program. It was unknown when a bed would open up in the program. In the meantime, the options offered to Appellant were staying with her mother or going to a shelter. [Exhibit G; Testimony of social worker]
40. The housing options offered to Appellant did not constitute appropriate and stable housing arrangements. See Department Permanency Planning Policy – Section 1, Effective: 07/01/2013, Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults
41. At the Fair Hearing, Appellant exhibited difficulty processing information and did not always comprehend the information presented. She self-reported having a hard time understanding things. [Testimony of Appellant]
42. Appellant requested information about degree programs at ██████████ College. She received an email from the admissions office with some basic information and an invitation for a one-on-one phone or office appointment. There is no indication that Appellant informed the admissions office that she did not have a high school degree or a GED. Appellant interpreted the email from ██████████ College as acceptance to a degree program. [Exhibit D; Testimony of Appellant]

43. Appellant received an email from a company where she was seeking employment which stated that the company had reviewed her profile and would like to add her to their team. The email further stated that Appellant needed to complete a brief training and onboarding process. Appellant interpreted this e-mail as a guaranteed fulltime job offer. [Exhibit C; Testimony of Appellant]
44. On January 10, 2018 (after the conclusion of the Fair Hearing), Appellant went to the B program to try to access housing but no bed was available. The counsellor at the B program provided Appellant with a list of shelters. Appellant spent the night with her mother. [Exhibit G]
45. On January 14, 2018, Appellant sent an email to the Department indicating that she had spent two days walking around for hours and sleeping on a bench. [Exhibit G]
46. Appellant needs continued support in preparing to achieve success in living interdependently in the community. [Testimony of Appellant's mother; Testimony of Appellant]
47. In making the decision to deny Appellant a sustained connection through a Voluntary Placement Agreement, the Department failed to comply with: M.G.L. Part I, Title XVII, Chapter 119 §23(f); and the Department's Permanency Planning Policy.

Applicable Standards

The department *shall* offer to continue its responsibility to any young adult⁷ who is under the custody, care, or responsibility of the department *including, but not limited to*, those persons who meet any of the criteria set forth in 42 USC § 675(8)(B)(iv):⁸ (i) for the purposes of specific educational or rehabilitative programs, or (ii) to promote and support that person in fully developing and fulfilling that person's potential to be a participating citizen of the commonwealth under conditions agreed upon by both the department and that person. [emphasis added] M.G.L. Part I, Title XVII, Chapter 119 §23(f)

The Department is committed to assisting older adolescents and young adults in their transition to independence and self sufficiency. Towards this end the Department may elect, on a case by case basis, to continue to serve children as they turn eighteen and up until their 22nd birthday, to the extent that other departments...are not primarily responsible for such persons. The decision to continue to serve individuals beyond 18 years of age is based on their educational and/or rehabilitative needs, their willingness to

⁷ Young adult is defined as a person between the ages of eighteen and twenty two.

⁸ The criteria set forth in 42 USC § 675 (8) (B) (iv) are: (I)completing secondary education or a program leading to an equivalent credential;(II)enrolled in an institution which provides post-secondary or vocational education;(III)participating in a program or activity designed to promote, or remove barriers to, employment;(IV)employed at least 80 hours per month; or (V)incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

enter into an agreement with the Department, and the availability of resources....110
C.M.R. §8.02

Sustaining Department Connection with Young Adults

A. POLICY: PLANNING SUSTAINED DEPARTMENT CONNECTION

The Department continues the provision of services beyond age 18 to young adults who remain in Department care or custody until their 18th birthday. The Department *will offer* each young adult the opportunity to continue with Department services beyond the age of 18....The young adult...must agree to a plan for sustained connection, based on an assessment of her/his life skills readiness, that meets the Department criteria outlined below. *The purpose of sustained connection is to support the young adult in preparing to achieve success in living interdependently in the community....* [emphasis added]

Department Permanency Planning Policy – Section 1, Effective: 07/01/2013, Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults

Criteria for Sustained Connection

For a young adult to continue receiving services from the Department beyond the age of 18, the young adult must meet one of the following criteria:

- (a) Completing secondary education or a program leading to a GED; or
- (b) Enrolled in a post-secondary or vocational program or trade school, full or part time; or
- (c) Participating in a program or activity designed to promote, or remove barriers to employment; or
- (d) Employed for at least 80 hours per month; or
- (e) Incapable of doing any of the above education or employment activities due to a medical condition; or
- (f) Participating in a program or plan which promotes specific educational or rehabilitative skills; or
- (g) Participating in a program which promotes and supports the young adult in fully developing and fulfilling the young adult's potential to be a participating citizen of the commonwealth under conditions agreed by both the Department and the young adult;

The Department places priority on young adult education and/or vocational training, preferably on a full-time basis, although discretion is exercised with regard to therapeutic demands on the young adult, special needs and/or learning disabilities. Most young adults will be expected to either work or participate in an educational/vocational program full time, or a combination of the 2 that equals a full-time schedule....

Department Permanency Planning Policy – Section 1, Effective: 07/01/2013

Planning for Discharge and Transition from Placement and Case Closing for Older Youth/Young Adults

Planning for discharge and transition from placement and case closing can begin at many different points but the Department *must*, beginning 90 calendar days prior to discharge and case closing, provide a transition planning process in collaboration with the youth/young adult, based on an assessment of her/his readiness for living

interdependently in the community, age and follow up supports. The discharge and transition planning process must include a discussion of the youth/young adult's education, employment or work skills development, housing, health insurance including the importance of a medical health care proxy, local opportunities for mentoring and other specific support services... Any outstanding life skills needs are prioritized and addressed prior to discharge from placement and case closing.... [emphasis added]
Permanency Planning Policy – Section I, Policy #: 2013-01, effective: 07/01/2013

A Fair Hearing shall address (1) 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. 110 C.M.R. §10.05.

To prevail, the aggrieved party must show by a preponderance of the evidence that (1) the Department's or provider's decision was not in conformity with the Department's policies and/or regulations and resulted in substantial prejudice to the aggrieved party; (2) that the Department's or provider's procedural actions were not in conformity with the department's policies, regulations, or procedures and resulted in substantial prejudice to the aggrieved party; 110 C.M.R. §10.23.

Analysis and Order

To prevail in this appeal, the Appellant must demonstrate, by a preponderance of the evidence, that the Department's decision to deny her a sustained connection through a Voluntary Placement Agreement and terminate services was not in conformity with the Department's policies or regulations or that the Department acted without a reasonable basis. Upon review of the record in light of applicable statutes, Department regulations, and Department policy, I reverse the Department's decision.

The Department has some legitimate concerns relative to Appellant's failure to be engaged fulltime in educational and/or employment pursuits and her failure to abide by program curfew (in order to smoke marijuana). However, the purpose of sustained connection is to support Appellant in preparing to achieve success, not to require that she be independent in order to receive continued support.⁹ The Department made a decision not to continue services to Appellant beyond the age of 18 less than two months after her previous social worker had reported that Appellant was compliant with her service plan tasks. It is unknown what the tasks on the service plan were. It is unclear as to whether the Department discussed and explained its expectations of Appellant for sustained connection prior to sending her a letter on October 10, 2017. There is insufficient evidence to show that, in determining the requirements for sustained connection, the Department took into consideration any learning and/or psychological issues which Appellant may have. There is no evidence that the Department looked into any diagnoses which the Appellant may have or spoke with Appellant's individual therapist, medication

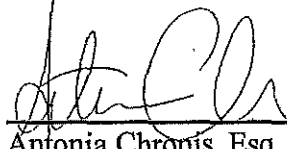
⁹ M.G.L. ch.119,§23(f) states that the Department *shall* offer to continue its responsibility to youth at age 18. It is only after termination, if a young adult requests the Department renew its responsibility, that the Department may require the person to meet 1 of the criteria set forth in 42USC 675(8)(B)(iv).

prescriber and/or primary care provider to get their input as to Appellant's abilities and limitations and/or what supports she may need to achieve success in living independently.

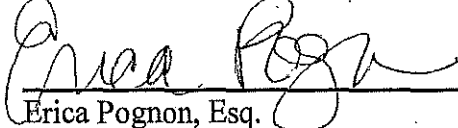
Despite apparent limitations, Appellant has been able to make some progress while in placement with the Department prior to turning eighteen. She has participated consistently in individual therapy. She has undergone a medication evaluation and appears to be making an attempt to take her medications more consistently. She has made progress in improving family relationships by participating in family therapy with her mother. She used the support of the group home's clinician and had constant contact with her while at the group home. She has been able to find employment, albeit short-lived, on at least two occasions.

Although Appellant ultimately bears responsibility for not consistently working on obtaining her GED, not finding employment, and/or in not reducing her marijuana use, it is not enough to justify a denial of a sustained connection through a Voluntary Placement Agreement with the Department. The purpose of sustained connection is to support the young adult in preparing to achieve success in living interdependently in the community. It is clear that Appellant needs assistance and guidance to continue to work towards the goal of independent living and further support to fully develop and fulfill her potential to be a participating citizen of the Commonwealth. The Department's decision to deny Appellant a sustained connection was not reasonable. Furthermore, the Department failed to follow its policies by not engaging in comprehensive transition planning with Appellant and by terminating her placement as of the day of the Fair Hearing without ensuring that she had alternate appropriate and stable housing arrangements.

Taking into consideration all of the evidence, I find the Department's decision to close Appellant's case and deny her sustained connection through a Voluntary Placement Agreement was not made with a reasonable basis or in compliance with the applicable statutes, regulations and policies. Therefore, the Department's decision is **REVERSED**.



Antonia Chronis, Esq.
Administrative Hearing Officer



Erica Pogon, Esq.
Supervisor, Fair Hearings

1/30/18

Date

Date

Linda S. Spears,
Commissioner