STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Family First Child Care

PROPOSED DECISION

ML-09-0116

Pursuant to Wis. Stat. §227.42 and Wis. Admin. Code §DCF 250.11(11), the above-named petitioner requested a hearing on April 23, 2009. Following a prehearing conference, a hearing was held on August 5, 2009, at Waukesha, Wisconsin.

The issue for disposition is whether the Department correctly denied the petitioner's application for a family child care license. Specifically, the Department determined that the applicant licensee, Anthena Young, (1) failed to disclose on her application form/background check documents that she had been convicted of a crime, (2) was convicted of a crime substantially related to childcare, and alternatively (3) is not fit and qualified to operate a daycare center.

PARTIES IN INTEREST:

Petitioner:

Family First Childcare

By: Anthena Young, applicant

By: Atty. Stephen Govin
Reddin & Singer
324 E. Wisconsin Ave., Suite 625
Milwaukee, WI 53202

Respondent:
Department of Children and Families
201 E. Washington Ave.
Madison, WI
By: Attorney Debra Bursinger

Office of Legal Counsel

ADMINISTRATIVE LAW JUDGE:
Nancy Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. The applicant/petitioner is a resident of Milwaukee County. She filed a license application to operate a family child care facility on August 14, 2008. Department's Exhibit 1.

2. The Department issued a Notice of Denial of Family Child Care License to the petitioner in care of its principal, Anthena Young, on April 10, 2009. Department's Exhibit 2. Ms. Young appealed from that denial.

3. The Department's bases for denying the requested license were that Ms. Young (1) failed to disclose a conviction on the Background Information Disclosure Form (BID) attached to her application, (2) that Ms. Young has been convicted of a crime that substantially relates to the care of children or the operation of a daycare center, and, alternatively (3) that Ms. Young is not "fit and qualified" for licensure.

4. The only conviction disclosed by the petitioner on the BID attached to her license application, was "AFDC Overpayment – WI." The BID also asked if any government agency "ever limited, denied, or revoked your license, certification, or registration to provide care, treatment or educational services?" The petitioner answered "no." Department's Exhibit 1.

5. Following a 1996 arrest, the petitioner was convicted of a felony public assistance violation, contrary to Wis. Stat. §49.127, in Milwaukee County Circuit Court, Case No. 1996 CF 960507. On March 8, 2006, the petitioner was convicted of fraudulent use of a credit card, a misdemeanor, in Kenosha County Circuit Court, Case No.2006 GM 000187.

6. Ms. Young formerly held a foster care license. That license was "non-renewed" by the Bureau of Milwaukee Child Welfare (BMCW) in 2004. See Department's Exhibit 7. The BMCW determination noted that on March 17, 2002, Ms. Young was arrested for reckless endangerment of safety. She was not convicted, but the circumstances of the incident caused concern. During the incident, Young's ex-boyfriend, Kevin Smith, forced himself into the petitioner's home, and an argument ensued. Smith attempted to choke Young, and she produced a semi-automatic weapon (Jennings .22 caliber) from her bedroom and fired it at Smith, striking him in the throat. He recovered from his injury. Young's weapon was not kept in a child safety cabinet, separate from ammunition. BMCW also noted that Young was involved in seven other documented incidents with Smith in 1998 and 2002, who repeatedly violated a restraining order. Finally, the BMCW cited the petitioner's history of financial instability.

7. Per the criminal complaint that led to the petitioner's 2006 fraudulent use of a credit card conviction, the underlying incident at Soha's Leather Store on December 23, 2005, involved Ms. Young acting in concert with Kevin Smith. Specifically, she presented a charge card that was not her own (*i.e.*, its owner was "Gregory Piotrowski") to purchase two jackets brought to the counter by Smith. Department's Exhibit 5.

8. The judgments and penalties considered by the Department as evidence of ongoing financial mismanagement were as follows:

   a. On August 14, 2007, a $600 penalty resulted from a guilty finding on contested parking tickets. Failure to pay the penalty resulted in enforcement in February, 2008 of vehicle registration denial for 1,095 days.
   b. On July 2, 2007, a judgment was obtained by Franklin Financial Corporation for $1,870.16.
   c. On March 27, 2007, a judgment was obtained by Enterprise Rent a Car Company for $5,288.50.
   d. On February 15, 2007, a $109 penalty resulted from a guilty finding on traffic citation #H2185072; more significantly, her failure to pay resulted in a referral to collections on April 28, 2007.
   e. On February 5, 2007, a judgment was obtained by Franklin Financial Corporation for $111.50.
   f. On April 18, 2002, a judgment was obtained by Mega Marts Inc. for $797.20.
   g. On August 19, 1998, a judgment was obtained by Thorn Americas Inc. for $109.50 plus possession of property.
   h. On November 18, 1996, a judgment for eviction was obtained by 3700 Greentree Corporation for $791.84.

   See Department's Exhibits 8, 9, 10, 11, 12, 13, 14, 15.

DISCUSSION

State licensing procedures and requirements for childcare are specified in Wis. Stat. §§48.65 through 48.77. A person may not operate a day care center over a certain size without a license issued by the department. Wis. Stat., §§48.66(1) and 48.715(2)(a). The broad bases for denial of a child day care license are stated at section 48.68(1), which then cross-references sections 48.67 and 48.685. Section 48.67 directs the Department to develop rules with further standards for licensure.

The Department has promulgated rules pursuant to the statutory directive. The pertinent rule here reads as follows:

> **(2)** GENERAL CONDITIONS FOR APPROVAL OF LICENSE.
> ...
> (a) Prior to receiving or continuing a license, an applicant for a license under this chapter shall complete all application forms truthfully and accurately and pay all fees and forfeitures that are due to the department.
> ...
> (c) Persons licensed to operate a family child care center shall be responsible, mature individuals who are fit and qualified. In determining whether an applicant is fit and qualified, the department shall consider any history of civil or criminal violations or other offenses substantially related to the care of children by the applicant, owner, manager, representative, employee, center resident or other individual directly or indirectly participating in the operation of the family child care center. A determination that a person is unfit and unqualified includes substantiated findings of child abuse or neglect under ch. 48, Stats., or substantiated abuse under ch. 50, Stats., or under similar statutes in another state or territory whether or not the abuse or neglect results in a criminal charge or conviction.

Wis. Admin. Code §DCF 250.11(2)(a),(c). Among the application forms that must be truthfully completed is the BID. *Id*., (4).

There is no dispute that Young was convicted of the crimes in Finding #5. Young acknowledges that these things occurred. However, at hearing she asserted that she simply misunderstood the BID question regarding past convictions, and that it therefore should not be held against her. Specifically, she asserted that because she only paid a fine for the credit card fraud, she did not realize it was a crime. However, the petitioner's assertion was undercut by her statement in the June 16, 2009, prehearing conference, and her written appeal request of April 22, 2009, that she did not disclose the 2006 conviction on the BID "because there was not that much room on the paper."

Further, the BID question was clear and not susceptible to misunderstanding:

> 1. Do you have any criminal charges pending against you or ***were you ever convicted of any crime anywhere***, including in federal, State, local, military and tribal courts?
> (emphasis added)

Young answered this by disclosing only the welfare fraud conviction, which was not truthful. That alone was sufficient basis for license denial. *Id*., (8)(a)8.

But, there is more. The Department also correctly denied this application because Young is not "fit and qualified" to operate a center. She has a long history of financial irresponsibility, including a multi-year vehicle registration suspension for nonpayment of parking tickets. She has a history of welfare fraud, although her conviction is admittedly remote. The 2002 incident with Smith showed that she (a foster parent at the time) was violating foster care rules by not keeping her gun properly secured and separated from ammunition. Finally, her fraudulent use of a credit card episode in 2005 involved a joint criminal

venture with, astonishingly, Kevin Smith. The fact that Young continues to have involvement with this violent man shows that she has a breathtaking absence of judgment in her personal associations. Thus, license denial was also proper under §250.11(8)(a) & (b).

Because the Department had ample reasons for license denial based on the above, I will forego a discussion of whether the license should have been denied for convictions for crimes substantially related to the care of children or operation of a daycare center.

CONCLUSIONS OF LAW

1. The Department correctly denied the petitioner's application for a family child care license because the applicant did not truthfully answer license application materials.
2. The Department correctly denied the petitioner's application for a family child care license because the applicant is not fit and qualified to operate a center.

NOW, THEREFORE, it is **ORDERED**

That the petition for review is dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2010.

_____
Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals