



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

Other Mother Child Care

ML-09-0419

ML-09-0422

Pursuant to a petition filed with the Division of Hearings and Appeals on November 9, 2009 contesting a decision by the State of Wisconsin's Department of Children and Families (DCF) to revoke Petitioner's family child care license and a petition filed with the Division of Hearings and Appeals on November 10, 2009 to contest a decision by the Milwaukee County Department of Health and Human Services (MCDHHS) to revoke existing child care authorizations, a hearing was held on May 25, 2010, at Milwaukee, Wisconsin. By agreement of the parties these matters were consolidated and both cases represented by the DCF Office of Legal Counsel.

The issues for determination are:

- A. whether Petitioner's family child care license should be revoked because she violated reporting requirements and for failing to continuing to meet requirements necessary to be licensed as a family child care center and
- B. whether the county agency was legally permitted to revoke Petitioner's existing child care authorizations.

There appeared at that time and place, the following persons:

PARTIES IN INTEREST:

Petitioner:

Alisha Jordan
Other Mother Child Care
6019 N. 35th Street
Milwaukee, WI 53209

Respondent:

Department of Children and Families, by

Atty. Nancy Wettersten
Department of Children and Families
Office of Legal Counsel
201 East Washington Avenue, 2nd Floor
Madison, WI 53703

Administrative Law Judge:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is owned and operated by AJ. She is the licensee. The term 'Petitioner' used in this decision refers to AJ. She was issued a family child care license effective August 6, 2006 that was valid through August 2009.
2. AJ was sent a letter by the Department of Children and Families (DCF) dated November 3, 2009 that informed her that her child care license was being revoked. The revocation letter indicated that Petitioner's family child care license was to be revoked for violating provisions of DCF Chapter 250 (formerly HFS Chapter 45) of the Wisconsin Administrative Code and that Petitioner was not fit and qualified to retain that license based on a lack of judgment in allowing her son to have contact with children in child care. This decision was based on the following incidents:
 - MLH, Petitioner's son who was reported by Petitioner to live in her home, was convicted of misdemeanor battery stemming from an incident which occurred in June 2008 and that this raised concern for the health safety and welfare of the children at the CC.
 - Petitioner and MLH were both convicted of municipal disorderly conduct violations by the City of Milwaukee Municipal Court for an incident occurring in May 2008.
 - MLH was convicted of assault and battery by the City of Milwaukee Municipal Court September 2008 for an incident which occurred in July 2008.
3. The violations noted at Finding # 2 were not reported to the department by Petitioner, rather they were discovered by the department when processing Petitioner's family child care renewal application in the summer of 2009.
4. Given the incidents noted at Finding # 2 the regulatory basis for the revocation of Petitioner's family child care license is as follows:
 - Petitioner failed to report these incidents by the next business day as required by DCF §250.04(3), Wis. Adm. Code.
 - That as a household member MLH was presumed to have contact with the day care children in contravention of DCF §250.07(6)(a)2.a., Wis. Adm. Code.
 - That these violations lead the department to conclude that Petitioner was not fit and qualified to hold the family child care license pursuant to DCF §250.11(2)(c), Wis. Adm. Code.
 - The revocation letter also informed Petitioner that she could not accept any new children for care at the child care center.

5. The Milwaukee County Department of Health and Human Services (MCDHHS) was notified by the DCF that it issued the November 3, 2009 revocation letter to Petitioner. This prompted the MCDHHS to issue a letter dated November 4, 2009 that informed Petitioner that because she was not in compliance with the rules and regulations governing the child care program that all of her Wisconsin shares authorizations were revoked as of November 14, 2009.
6. Petitioner had a problem with respect to her child care licensing because of the criminal history of another individual, AJ (a different AJ, not Petitioner herself).

DISCUSSION

A ‘family child care center’ is defined as a facility which provides care and supervision for less than 24 hours a day for at least 4 but not more than 8 children who are not related to the provider. *DCF §250.03(9), Wis. Adm. Code*. Family child care licenses are regulated by the *Wisconsin Statutes at §§48.65 - 48.77*. The statutes require that:

The department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees. ...
 §48.67, *Stats.*

The department has promulgated rules as noted above (again, per §48.67, *Stats.*) and those rules are found in the *Wisconsin Administrative Code at Chapter DCF 250 - FAMILY CHILD CARE CENTERS*.

Pursuant to those rules a child care licensee is required to report justice system contacts to the department as follows:

(3) REPORTS. The licensee shall report to the department all of the following. If the report is made by telephone, the licensee shall submit a written report to the appropriate regional licensing office within 5 business days of the incident. Fax, e-mail and letter are acceptable ways of filing a written report:

...

(e) Any known convictions, pending charges or other offenses of the licensee, a provider, household member or other person subject to a caregiver background check which could potentially relate to the care of children at the center or activities of the center by the department’s next business day.

...

(g) Any incident involving law enforcement within 24 hours after the occurrence that:

1. Involves a licensee, a household resident or an employee of the center in an incident that causes, or threatens to cause, physical or serious emotional harm to an individual, including a child in the care of the center.
2. Involves any traffic-related incident where a person responsible for the violation transports children in the care of the center.

Additionally,

(8) LICENSE DENIAL OR REVOCATION. (a) The department may deny, revoke or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, *Stats.*, or place conditions on the license if the applicant or licensee, a proposed or current employee, a volunteer, a household member or any other person having regular contact with the children is, has or has been any of the following:

1. The subject of a pending criminal charge for an action that substantially relates to the care of children or activities of the center.
2. Convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.
- ...

(b) The department may deny, revoke, refuse to renew or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee is not fit and qualified as determined under sub. (2).

DCF, §250.11(8)(a) & (b), Wis. Adm. Code.

The relevant of section ‘sub 2’ states:

(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.

DCF, §250.11(2)(c), Wis. Adm. Code.

The term ‘fit and qualified’ is also defined in the Administrative Code:

(11) “Fit and qualified” means displaying the capacity to successfully nurture and care for children and may include consideration of any of the following:

- (a) Abuse of alcohol or drugs.
- (b) A history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children, as described in ch. DHS 12.
- (c) Exercise of unsound judgment.
- (d) A history of civil or criminal offenses or any other action that demonstrates an inability to manage the activities of a center.

DCF §250.03(11), Wis. Adm. Code.

In determining if an offense is substantially related to caring for children the following Administrative Code section is applicable:

DHS 12.06 Determining whether an offense is substantially related to client care. To determine whether a crime, delinquency adjudication under s. 48.685 (5m) or 50.065 (5m), Stats., or conduct relating to a governmental finding of abuse or neglect of another or of misappropriation of another’s property is substantially related to the care of a client, the agency or entity may consider all of the following:

(1) In relation to the job, any of the following:

- (a) The nature and scope of the job’s client contact.
- (b) The nature and scope of the job’s discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.
- (c) The opportunity the job presents for committing similar offenses.
- (d) The extent to which acceptable job performance requires the trust and confidence of clients or a client’s parent or guardian.
- (e) The amount and type of supervision received in the job.

(2) In relation to the offense, any of the following:

- (a) Whether intent is an element of the offense.
- (b) Whether the elements or circumstances of the offense are substantially related to the job duties.
- (c) Any pattern of offenses.
- (d) The extent to which the offense relates to vulnerable clients.
- (e) Whether the offense involves violence or a threat of harm.
- (f) Whether the offense is of a sexual nature.

(3) In relation to the person, any of the following:

- (a) The number and type of offenses the person committed or for which the person has been convicted.
- (b) The length of time between convictions or offenses, and the employment decision.
- (c) The person's employment history, including references, if available.
- (d) The person's participation in or completion of pertinent programs of a rehabilitative nature.
- (e) The person's probation or parole status.
- (f) The person's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.
- (g) The age of the person on the date of conviction or dates of conviction.

DHS §12.06, Wis. Adm. Code

Finally, "A licensee, provider, household member, employee, volunteer, visitor or parent whose behavior with respect to any child, adult, animal or property, on or off the center's premises, raises reasonable concern for the safety of the children, may not be in contact with the children in care." *DCF §250.07(6)(a)2.a., Wis. Adm. Code.*

Applying all of the above to Petitioner's case, the DCF concluded that Petitioner had violated provision of the Administrative Code requiring the reporting of police and court contacts and that Petitioner is not fit and qualified within the meaning to the Administrative Code to operate the child care, given that the person having regular contact with child in care had been convicted of offenses substantially related to caring for children or the activities of a child care center.

Petitioner's defense is that her son had moved from her home in April 2008 though she further indicated that he has a key and does come to her home. He also babysits for her. She also testified that she was unaware of the requirement to report the police contact and arrests as required by *DCF, §250.11(8)(a) & (b), Wis. Adm. Code.* She thought she only had to report if it had to do with child abuse. Finally, she also indicated that in the incidents involving the arrests and convictions that she and her son had been attacked and were defending themselves.

I am sustaining the DCF license revocation. Petitioner had a prior child care licensing problem because of the criminal record of another individual. She should have heightened her awareness of the reporting requirement. Additionally, she and her son became embroiled in incidents that did lead to criminal and/or municipal charges for which there were convictions. These were not reported as required by law. Further that failure is indicative of a lack maturity and sound judgment. Finally in allowing her son to be around the child care and its children Petitioner was not evincing the maturity/sound judgment required to obtain and keep the license.

Finally, the convictions involved here are related to the care of children or the activities of the child care center as they involve fighting and aggressive or violent behavior. This type of conduct and the lack of impulse control suggested by those violations justify this revocation as the conduct indicates that Petitioner is not following the regulations established to assure the safety and welfare of children in child care.

Given all of this I conclude that the evidence demonstrates that Petitioner is not following the regulations necessary to continue to operate a family child care center and that the DCF correctly revoked her license.

The next question is whether the county agency was able to revoke existing child care authorizations once notified by the DCF that it had concluded that Petitioner had violated licensing requirements. The Administrative Code states:

(c) If a child care administrative agency has given notice to a provider that *the provider is in violation of licensing or certification rules* and the provider has not corrected the violation or if the provider submits false attendance reports, refuses to provide documentation of the child's actual attendance, or gives false or inaccurate child care price information, *the child care administrative agency or department may take one or more of the following steps:*

1. Refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months.
 2. *Revoke existing child care authorizations to the provider.*
 3. Refuse to issue payments to the provider until the provider has corrected the violation.
- DCF § 201.04(5)(c), Wis. Adm. Code.*

As the county agency had been notified that Petitioner had been determined by the DCF to be out of compliance with licensing requirements and Petitioner so notified, the county agency was legally permitted to issue the revocation of existing child care authorizations.

CONCLUSIONS OF LAW

1. That the evidence does not demonstrate that Petitioner is able to follow the regulations, detailed in the *Wisconsin Statutes at §48.715(4)* and the *Wisconsin Administrative Code at DCF §250.11*, necessary to continue to hold a family child care center license, thus that license is revoked.
2. That the county agency was permitted by law to revoke existing child care authorizations where the provider has been notified that the provider is in violation of licensing rules.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 IMPLMENTED 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.

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals