



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Ruthie L. Price
Granny Ruthie's Family Day Care
5522 North 33rd Street
Milwaukee, Wisconsin 53209

DECISION

ML-09-0427

PRELIMINARY RECITALS

Petitioner filed a petition on November 10, 2009, under Wis. Stat. § 48.72 (2007-08) and Wis. Admin. Code § DCF 250.11(11)(a) (December 2008), to review a decision by the Wisconsin Department of Children and Families ["DCF"] to revoke petitioner's license to operate a Family Child Care Center in Milwaukee, Wisconsin known as *Granny Ruthie's Family Day Care* ["Grannys"]. A Hearing was held on January 21, 2010 at the Madison office of the Division of Hearings and Appeals ["DHA"].

The issue for determination is whether or not it was lawful for DCF to revoke petitioner's Family Child Care license.

PARTIES IN INTEREST:

Petitioner:

Ruthie L. Price
Granny Ruthie's Family Day Care
5522 North 33rd Street
Milwaukee, Wisconsin 53209

Department of Children and Families
State of Wisconsin
Room G200
201 East Washington Avenue
P.O. Box 8916
Madison, Wisconsin 53708-8916

BY: Debra S. Bursinger, Attorney
Office of Legal Counsel
Department of Children and Families
State of Wisconsin
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OTHER PERSONS PRESENT:

Nicole Bjork, DCF Attorney
Willie Price, petitioner's husband
Judy Shwaiko, DCF Licensing Specialist (via telephone)
Cinda Stricker, DCF Licensing Chief (via telephone)

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County, Wisconsin.
2. Petitioner's holds a license to operate a Family Child Care Center in Milwaukee, Wisconsin known as *Granny Ruthie's Family Day Care* ["Grannys"]; Grannys licensed hours of operation are 6:00 A.M. to 10:00 P.M. Exhibits #R-7 & #R-11.
3. Over a 3-month time period in 2009 DCF employees attempted licensing visits at Grannys at the following 6 times and dates but were unable to gain access to Grannys because no one answered the door: Friday morning, June 26, 2009 at 10:45 A.M.; Wednesday afternoon, July 1, 2009 at 2:30 P.M.; Tuesday, July 7, 2009 at 12 noon; Monday afternoon, July 13, 2009 at 3:00 P.M. - 3:15 P.M.; Tuesday afternoon, August 11, 2009 at 12:15 P.M.; and, Tuesday afternoon, September 8, 2009 at 1:15 P.M. Exhibit #R-2.
4. DCF sent petitioner a warning letter dated July 16, 2009 and a *Noncompliance Statement and Correction Plan* dated July 15, 2009 both advising her of failed attempts to gain access to Grannys on June 26, 2009, July 1, 2009, July 7, 2009, and July 13, 2009; on July 16, 2009 petitioner responded to the *Noncompliance Statement and Correction Plan* stating: "I will comply there will be someone at the Facility in the Furture [sic]. 6-26-09, 7-1-09, 7-7-09 we were on Field trip. 7-13-09 center was closed." Exhibits #R-8 & #R-3.
5. By a letter dated October 27, 2009 and entitled "Notice of Revocation of Family Child Care License" DCF revoked petitioner's Family Child Care license. Exhibit #R-10.

DISCUSSION

The purpose of the law regulating Family Child Care Center licenses is to protect and promote the health, safety and welfare of children placed in Group Child Care Centers. Wis. Stat. § 48.67 (2007-08); Wis. Admin. Code § DCF 250.01 (December 2008). The protection of children is a paramount goal, the health and safety of children are the paramount concerns, and the best interest of the child is always the paramount consideration. Wis. Stat. §§ 48.01(1) & (1)(a) (2007-08). Given this mandate, Family Child Care Center rules must be applied and interpreted strictly so as to give effect to the paramount goal of protecting children and the paramount concern of assuring children's health and safety.

A Family Child Care Center license may lawfully be revoked if the licensee fails to meet the minimum requirements for a license. Wis. Stat. § 48.67 (2007-08); Wis. Admin. Code § DCF 250.10(8)(a)7.

(December 2008); see also, Wis. Admin. Code § DCF 250.11(11)(c)1. (December 2008). In order to meet the minimum requirements for a license, it is necessary to meet all requirements contained in DCF Family Child Care Center rules unless an exception has been granted. Wis. Stat. § 48.67 (2007-08); Wis. Admin. Code §§ DCF 250.02(2) & 250.11(8)(a)7. (December 2008). Thus, a Family Child Care Center license may be denied for any failure to meet a requirement contained in DCF Family Child Care Center rules (unless an exception has been granted).

DCF Family Child Care Center rules state that a license must comply with all laws governing the facility and its operation. Wis. Admin. Code § DCF 250.04(2)(a) (December 2008). DCF Family Child Care Center rules also state that DCF may revoke a license if the licensee violates any provision of the DCF Family Child Care Center rules or violates any provision of Chapter 48 of the Wisconsin Statutes¹. Wis. Admin. Code § DCF 250.11(8)(a)7. (December 2008). Chapter 48 of the Wisconsin Statutes states, in part, that DCF may visit and inspect each day care center licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license. Wis. Stat. § 48.73 (2007-08). As noted in the above Findings of Fact, over a 3-month time period in 2009 DCF employees attempted licensing visits at Grannys on 6 different times and dates but were unable to gain access to Grannys because no one answered the door. Therefore, it was lawful for DCF to revoke petitioner's Family Child Care license.

Petitioner argues that she was on field trips on most of the dates DCF tried to visit. However, petitioner was unable to state the location of the filed trips except to say they were to "the park." Petitioner also testified that at some of the times DCF tried to visit she may have been transporting children back to their homes. Finally, petitioner testified that "maybe my worker was there and did not answer the door. Petitioner's testimony is not credible.

CONCLUSIONS OF LAW

For the reasons discussed above, it was lawful for DCF to revoke petitioner's Family Child Care license.

NOW, THEREFORE, it is

ORDERED

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

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

¹ Chapter 48 of the Wisconsin Statutes is known as the "Children's Code."

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals concerning this matter must be served on the Department of Children and Families; State of Wisconsin; Room G200; 201 East Washington Avenue; P.O. Box 8916; Madison, Wisconsin 53708-8916.

The appeal must also be served on the other “PARTIES IN INTEREST” named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

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

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
01262010/SPM