



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Brown's Transitional Development Foundation, Inc.

DECISION

ML-09-0388

PRELIMINARY RECITALS

Pursuant to a petition filed on October 26, 2009, under Wis. Stat., §48.72, to review a decision by the Division of Safety and Permanence (Division) to deny a permanent group foster home license, a hearing was held on December 17, 2009 at Waukesha, Wisconsin.

The issue for determination is whether the department correctly denied a permanent license because of ongoing compliance problems.

PARTIES IN INTEREST:

Petitioner:

Nyishia Brown Roby
Brown's Transitional Development
4730 W. Center Avenue
Milwaukee, WI 53210

Wisconsin Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: Atty. Debra Bursinger

EXAMINER:

Brian C. Schneider, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner was the operator of a group foster home in Milwaukee County.
2. The corporation was granted a probationary group home license at a different location on May 21, 2007. It thus was required to submit an annual audit by June 30, 2008. When no audit was submitted, the Division sent reminder letters on July 25 and September 15, 2008, and then additional reminder letters at later dates. Despite promises to file the audit, petitioner submitted no audit for 2007 and then also no audit for 2008.
3. The group home moved to its current location in 2008, and was granted a probationary license at that location effective September 18, 2008.
4. The Division conducted site visits on January 23, March 31, September 21, October 6, and October 13, 2009. Numerous noncompliance problems were noted in all visits, including missing or

inappropriate documentation in both staff and resident records, inappropriate handling of medication and food, and physical plant safety violations. Many of the violations were found more than once.

5. On April 1, 2009, the Division issued a second probationary license to the facility to run for six months. Violations continued to be found after that date. In the meantime the Division discovered that petitioner had relocated to California without informing the agency.
6. By a notice dated October 26, 2009, the Division informed petitioner that the permanent license was denied.

DISCUSSION

Group foster home requirements are found in the Wisconsin Administrative Code, Chapter DCF 57. Under Wis. Adm. Code, §DCF 57.015, a licensee must operate the group home in compliance with the rules of the administrative code chapter. The operator must maintain a management system of complete and accurate accounts and records. §DCF 57.07(1)(c). The rules require an annual audit of a corporately-run group home. §DCF 57.07(1)(a).

The rules require a sound business model for a corporately-operated facility. It is evident that the operation of petitioner's business was not up to the Division's standards. Specifically the corporation never filed required annual audits despite repeated requests from the department and assurances that the audits would be filed. Petitioner explained that her accountants were inefficient and did not provide the audits as promised, but the Division cannot be expected to waive the rules because the licensee's representatives are inefficient. Furthermore, it is evident that the problems with the audits were related to the bookkeeping by petitioner's facility, not just ineffective practices by the accountants.

Despite three earlier compliance visits, the Division's visits in October, 2009 found 21 additional rules violations, including record keeping and medication/food storage and handling problems. Many of them were repeat or similar violations to earlier ones.

Petitioner testified that the relocation to California was not permanent, and that her staff was working on correcting the problems. She argued that despite the problems the children in the group home thrived. The problem is that petitioner had over two years to get the facility operating to the Division's standards, and it simply never happened. Typically a facility has six months to show it can operate to standard, with an additional six months to show improvement if the first six months do not satisfy the Division. In this case after two years at two different locations the facility was not up to standard. Petitioner and her staff may very well have been excellent caretakers of foster children, but it is evident that they were unable to operate a sound and efficient business.

I conclude that the Division had a reasonable basis for denying petitioner's permanent license.

CONCLUSIONS OF LAW

The Division had a reasonable basis for denying petitioner's permanent group foster home license because of repeated noncompliance with state standards and the inability to show a sound business operation.

NOW, THEREFORE, it is **ORDERED**

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

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wisconsin Statutes § 227.49. A copy of the statutes can be 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 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Wisconsin Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: Office of the Secretary, 201 East Washington Avenue, Room G200, Madison, WI 53703.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

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

Brian C. Schneider, Attorney
Division of Hearings and Appeals