



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PROPOSED DECISION

Lady's Bug's Little Angels Child Care

ML-10-0491

Pursuant to a petition filed November 10, 2010, under, Wis. Stat. § 48.72 and Wis. Admin. Code § DCF 250.11(11)(a), to review a decision by the Department of Children and Families [DCF] to revoke petitioner's license to operate a Family Child Care Center in Milwaukee, Wisconsin known as Lady Bug's Little Angels Child Care, a hearing was held on March 24, 2011 at Waukesha, Wisconsin.

The issue for determination is whether DCF correctly seeks revocation of petitioner's Family Day Care Center license.

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

PARTIES IN INTEREST:

Petitioner:

Lady's Bug's Little Angels Child Care, by

Glenora Lenon
Lady's Bug's Little Angels Child Care
3118 North 7th Street
Milwaukee, WI 53212

Respondent:

Department of Children and Families, by

Attorney Megan McDermott
Department of Children and Families
Office of Legal Counsel
201 East Washington Avenue, 2nd Floor
Madison, WI 53703

Administrative Law Judge:

Thomas H. Bround
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner holds a license to operate a Family Child Care Center in Milwaukee, Wisconsin known as *Lady Bug's Little Angels Child Care*; the scheduled hours of operation are 6:00 A.M. to 12:00 A.M. Monday through Saturday. (Exhibit 3)
2. Over a 16 month period from June 24, 2009 to October 21, 2010 DCF licensing specialists made nine visits to Lady Bug's during licensed operating hours. Each time the employee knocked on the

door, rang the doorbell and waited for approximately 5 minutes for a response. On only one visit, December 2, 2009, did someone at the facility respond by coming to the door.

3. On that visit the employee gained access and found 14 violations of statutes or administrative rules relating to child care. Four of the violations were previously cited on a May 28, 2008 visit. (Ex. 7)
4. DCF could not gain access on four visits after the cited violations to determine if the violations had been corrected.
5. DCF sent three warning letters to petitioner warning her of the consequences of denying access to her facility. (Exs. 4, 5, & 6) By letter dated November 5, 2010 DCF notified petitioner that it was revoking her Child Care License due to the inability to gain access to the facility to determine if the December 2, 2009 violations had been corrected and if she was in compliance with licensing standards. (Ex. 1)

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 Family Child Care Centers. Wis. Stat. § 48.67; Wis. Admin. Code § DCF 250.01. 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). 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; Wis. Admin. Code § DCF 250.10(8)(a)7.; see also, Wis. Admin. Code § DCF 250.11(11)(c)1. 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; Wis. Admin. Code §§ DCF 250.02(2) & 250.11(8)(a)7. 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). 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 Statutes. Wis. Admin. Code § DCF 250.11(8)(a)7. 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. Further, DCF rules state that DCF may visit and inspect any Family Child Care Center at any time during licensed hours of operation and DCF must have unrestricted access to the premises identified in the license. Wis. Admin. Code § DCF 250.12(2). As noted in the above Findings of Fact, over a 16-month time period from June 2009 to October 2010 DCF employees attempted licensing visits during scheduled hours of operation on 9 dates but, on all but 1 of the dates, were not able to gain access because no one answered the door. Therefore, it was lawful for DCF to revoke petitioner's Family Child Care license. It is not necessary to consider the other reason DCF cites to support the license revocation in this matter, the alleged failure to be fit and qualified.

Ms. Lenon contended that the main reason she did not answer the door was that her doorbell was not loud enough and she could not hear either it or the knocking on the door. She testified that she bought a second doorbell to solve the problem. That made no difference. She contended also that she was not always present during licensed hours of operation because she had so few children in attendance. It does seem unreasonable to expect her to be there every day, Monday through Saturday from 6:00 A.M. to midnight, if she had no children there much of the time. However there are procedures for her to inform DCF in advance of that situation. Also, when DCF visited the last time they made sure they were at the facility during the time Ms. Lenon had informed them that she had children in attendance. They still did not gain

access. DCF has not been unreasonable; the failure to be allowed access once is arguably grounds to revoke the license. The Department was denied access eight times and sent three warning letters to petitioner before it took this action.

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 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 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 _____, 2011.

Thomas H. Bround
Administrative Law Judge
Division of Hearings and Appeals