



RICK SNYDER
GOVERNOR

State of Michigan
DEPARTMENT OF HUMAN SERVICES
BUREAU OF CHILDREN AND ADULT LICENSING



MAURA D. CORRIGAN
DIRECTOR

June 24, 2014

Deborah Dixon
3730 Lauria Drive
Bay City, MI 48706
and
Leona Wade
3638 Lauria Drive
Bay City, MI 48706

RE: Docket # 13-003196-DHS
License # DG090267975

Dear Deborah Dixon and Leona Wade:

On June 19, 2014 you were mailed a copy of the final decision and order upholding the Summary Suspension and the agency's Notice of Intent to Revoke your license to operate a group child care home. In accordance with that notice your license has been revoked effective June 19, 2014. It is further expected that you not receive children for care now or in the future without being licensed.

Sincerely,

Jerry Hendrick, Acting Director
Child Care Licensing Division
Bureau of Children and Adult Licensing

JH:em

c: Jackie Horton, Area Manager

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Deborah Dixon and Leona Wade,
Petitioner,

v

Bureau of Children and Adult
Licensing,
Respondent.

Docket No. 13-003196-DHS

Agency No. DG 090267975

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 11 day of June, 2014
by

Maura D. Corrigan, Director
Department of Human Services

FINAL DECISION AND ORDER

RECEIVED

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BUREAU OF CHILDREN
AND ADULT LICENSING

This matter began with Respondent's May 13, 2013 summary suspension and notice of intent to revoke (notice of intent) a license to operate a group child care home under the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing regarding the matter at issue was held by Administrative Law Judge Jennifer Isiogu (ALJ) on September 4, 2013. Attorney Edward Czuprynski appeared on Petitioners' behalf. Assistant Attorney General Kelley T. McLean represented Respondent.

Respondent sought to revoke Petitioners' license based on allegations in the notice of intent that Petitioners violated the Act, as well as administrative rules promulgated under the Act. In Count I of the notice of intent, Respondent alleged that Petitioners violated MCL 722.119, which states in relevant part:

. . . If an updated central registry clearance documents that a licensee, registrant, adult household member, licensee designee, chief administrator, staff member, or unsupervised volunteer is named as a perpetrator in a central registry case, he or she may not be present in the child care organization. A child care organization shall comply with this subsection not later than the date on which that child care organization's license or certificate of registration is issued or first renewed after the effective date of the 2010 amendatory act that amended this section. As used in this subsection, "child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622. [MCL 722.119 (3)]

[REDACTED]

In Count II of the notice of intent, Respondent alleged that Petitioner violated R 400.1903, which states in pertinent part:

A caregiver shall be responsible for all of the following provisions:

* * *

Report to the department, within 7 working days, any changes in the household composition . . . [Rule 400.1903 (1)(h)]

The record indicated that Respondent issued Petitioners, Deborah Dixon and Leona Wade, a license to operate a group child care home. On the record, Petitioners admitted to their non-compliance of this rule as the result of their failure to notify Respondent of a change in the household composition, when Ms. Dixon was no longer residing at the day care location as identified in Respondent's Exhibit 2. Therefore, the ALJ determined Petitioners willfully and substantially violated Rule 400.1903(1)(h).

In Count III of the notice of intent, Respondent alleged that Petitioner violated R 400.1903, which states in pertinent part:

The caregiver shall assure that all assistant caregivers shall be of good moral character and be suitable to assure the welfare of children. [Rule 400.1903(5)]

[REDACTED]

[REDACTED] as the result of [REDACTED] actions during [REDACTED] duties as a caregiver demonstrated [REDACTED] lacked good moral conduct and the inability to assure the welfare of children placed in Petitioners' care. Petitioners' failed to assure for the welfare of children as the result of [REDACTED] conduct. Therefore, Petitioners' did not comply with Rule 400.1903(5).

The caregiver shall assure appropriate care and supervision of children at all times. [Rule 400.1911(1)]

[REDACTED]
[REDACTED] Central Registry demonstrated that [REDACTED]

[REDACTED] Petitioners are under a duty to assure the welfare and safety of children placed in their care; Petitioners failed to assure for the welfare of [REDACTED] when this child was subjected to [REDACTED] misconduct. Therefore, I disagree with the ALJ's determination and conclude Petitioners willfully and substantially violated Rule 400.1911(1).

I disagree with the ALJ's conclusion that Respondent's order of summary suspension was not properly issued. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Respondent properly proceeded to summarily suspend in order to assure the safety and welfare of the children placed in Petitioners' care.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

~~by their home, therefore, posing a threat to the safety and health of the community.~~

Therefore, for these reasons I reverse the ALJ's findings in regards to the summary suspension and determine that Respondent properly ordered the summary suspension of Petitioners' license.

All that is required to revoke a license is a finding that one rule violation has occurred. Pursuant to the facts on the record, Petitioners admitted to violating Count II of the notice of intent to revoke, Rule 400.1903(1)(h), therefore, that violation alone would suffice to revoke Petitioners' license.

On January 2, 2014, the ALJ issued and entered a Proposal for Decision (PFD). I concur in the ALJ's findings of fact and conclusions of law as to Count I and II, concluding that Petitioners did willfully and substantially violate MCL 722.119(3) and Rule 400.1903(1)(h). I reverse the ALJs' findings in Count III and Count IV, as sufficient evidence and reasonable inferences therefrom support Petitioners' willful and substantial violation of Rule 400.1903(5) and Rule 400.1911(1). In addition, I reverse the ALJ's conclusion as to Respondent's order of summary suspension and find Respondent properly issued said order. The parties had 14 days to file exceptions and 14 days to file responses to any exceptions. Timely exceptions were filed by both Petitioners and Respondent.

ORDER

NOW THEREFORE, IT IS ORDERED that:

1. To the extent not inconsistent with this Order, the ALJ's Proposal for Decision (PFD) is adopted and is incorporated by reference, and made a part of this Final Decision and Order (see attached PFD).

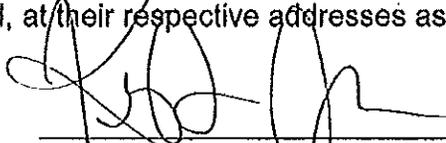
2. The actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. Petitioners' license is REVOKED effective on the date this Final Decision and Order is issued and entered.



Maura D. Corrigan, Director
Department of Human Services

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 11 day of June, 2014.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Deborah Dixon and Leona Wade,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 13-003196-DHS

Case No.: DG 090267975

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 2nd day of January, 2014
by:
Robert H. Mourning
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding was commenced with Deborah Dixon and Leona Wade (collectively called "Petitioner" or "Licensee") filing an appeal from the Order of Summary Suspension and Notice of Intent to Revoke License (Notice of Intent) to operate a group child care home issued by the Bureau of Children and Adult Licensing ("Respondent").

Administrative Law Judge Jennifer Islogu was assigned to conduct the hearing. On or about November 14, 2013, the above-referenced matter was re-assigned to the undersigned Administrative Law Judge in the absence of Administrative Law Judge Jennifer Islogu. In preparing a decision in this matter, the undersigned Administrative Law Judge has reviewed the entire record, including the testimony of witnesses and exhibits admitted into evidence.

On May 20, 2013, a Notice of Hearing was mailed, scheduling a hearing for July 18, 2013 beginning at 9:00 a.m., at the Michigan Administrative Hearing System, Ottawa State Office Building, 2nd Floor, 611 West Ottawa Street, Lansing, Michigan.

On June 14, 2013, the Respondent requested an adjournment of the hearing scheduled for July 18, 2013. On June 24, 2013, an Order Adjourning Hearing and Scheduling Telephone Prehearing Conference was issued, scheduling a telephone prehearing conference for July 1, 2013.

On July 1, 2013, the Administrative Law Judge issued an Order Scheduling Hearing for September 4, 2013.

A hearing was held on September 4, 2013. Attorney Edward Czuprynski appeared on behalf of the Petitioner at the hearing. Assistant Attorney General Kelly McClain appeared on behalf of the Respondent.

Deborah Dixon and Leona Wade testified on their own behalf and offered the testimony of Jennifer Wade and Thomas Norman Wade. In addition, the Petitioner offered the following exhibits, which were admitted into evidence:

Exhibit A: Drawing

Exhibit B: A Compilation of the Number of Children Enrolled in the Petitioner's Day Care between 2005 and 2013.

Giselle Myers, Tracy Swille-Lyons, Amber Smith, Stacy Tomczak, and Victoria Smith testified for the Respondent. The Respondent offered the following exhibits, which were admitted into evidence:

Exhibit 1: Special Investigation Report, May 10, 2013.

Exhibit 2: Child Care Application.

Exhibit 3: [REDACTED]

Exhibit 4: Proof of Service for Notice of Intent, May 13, 2013.

ISSUES AND APPLICABLE LAW

The general issue is whether the Petitioner violated the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq.* and its administrative rules. The specific issues are whether the Respondent violated MCL 722.119(3), 2009 AACCS, R 400.1903(1) and (5), and 2009 AACCS, R 400.1911(1).

MCL 722.119(3) provides:

(3) Except as provided in subsection (5), a licensee, registrant, adult household member, licensee designee, chief administrator, staff member, or unsupervised volunteer may not have contact with a child who is in the care of a child care organization, until the licensee, registrant, adult

household member, licensee designee, chief administrator, staff member, or volunteer provides the child care organization with documentation from the department that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect. Upon request by the department, the licensee, registrant, adult household member, licensee designee, chief administrator, staff member, or unsupervised volunteer shall provide the department with an updated authorization for central registry clearance. If an updated central registry clearance documents that a licensee, registrant, adult household member, licensee designee, chief administrator, staff member, or unsupervised volunteer is named as a perpetrator in a central registry case, he or she may not be present in the child care organization. A child care organization shall comply with this subsection not later than the date on which that child care organization's license or certificate of registration is issued or first renewed after the effective date of the 2010 amendatory act that amended this section. As used in this subsection, "child abuse" and "child neglect" mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

R 400.1903 provides:

- (a) Be present in the home on a daily basis and provide direct care and supervision for the majority of time children are in care, except for any of the following circumstances:
 - (i) When the child care home is in operation, vacation or personal leave shall not exceed 20 days within a calendar year.
 - (ii) Medical treatment and subsequent recovery.
- (b) The exceptions in subrule (1)(a) of this rule do not include other part-time or full-time employment that occurs during the hours of operation of the child care home.
- (c) Provide an adult assistant caregiver with valid CPR and first aid to act as the caregiver when the caregiver is unable or unavailable to provide direct care.
- (d) Shall inform parents when an assistant caregiver is providing care in the absence of the caregiver.
- (e) Maintain a record of the dates of caregiver absences. These records shall be maintained for a minimum of 4 years.

- (f) Have a written and signed agreement with a responsible person who is 18 years of age or older to provide care and supervision for children during an emergency situation.
- (g) Post the current license or certificate of registration in a conspicuous place.
- (h) Report to the department, within 7 working days, any changes in the household composition or when any new or existing member of the household has any of the following:
 - (i) Arrests or convictions.
 - (ii) Involvement in substantiated abuse or neglect of children.
 - (iii) Court-supervised parole or probation of the caregiver or any member of the household.
 - (iv) Been admitted to, or released from, a correctional facility, or hospital, institution, or facility for the treatment of an emotional, mental, or substance abuse problem.
- (i) Provide the department with a written statement verifying a person's personal fitness to care for, or to be associated with, children for any person who lives in a home or who cares for children and who has been treated on an inpatient or outpatient basis for an emotional, mental, or substance abuse problem during the last 2 years. Such statement shall be obtained from the medical or mental health professional who is directly involved in the treatment plan or the administrative director of the mental hospital or mental institution.
- (j) Shall immediately report to children's protective services any suspected child abuse or neglect.
- (2) The caregiver shall assure that a child is released only to persons authorized by the parent.
- (3) The caregiver shall permit parents of enrolled children to visit anytime during hours of operation.
- (4) The caregiver shall cooperate with the department in connection with an inspection or investigation. Cooperation shall include, but not be limited to, both of the following:
 - (a) To enable the department to conduct a thorough investigation, provide access to the assistant caregivers, all records, and materials.
 - (b) Information provided to the department shall be accurate and truthful.
- (5) The caregiver shall assure that all assistant caregivers shall be of good moral character and be suitable to assure the welfare of children.

(6) The caregiver shall have present at all times at least 1 person who can accurately comprehend all of the following information:

(a) In child care home rules, 1973 PA 116, MCL 722.111, and any additional licensing division communications.

(b) On child information cards.

(c) In written directions about the child's care.

(d) On food, cleaning, and chemical labels that can impact a child's well-being.

(e) On written medication directions for any given child.

(f) Needed to effectively implement emergency procedures.

(7) The caregiver shall authorize the department to conduct a criminal history and protective service background check to assess the good moral character and suitability of the child care home family.

(8) The caregiver shall do both of the following:

(a) Assure that smoking does not occur in the child care home and on the premises while children are in care.

(b) Conspicuously post on the premises a notice stating that smoking is prohibited on the premises during child care hours.

(9) The caregiver shall notify parents if smoking occurs in the child care home and on the premises when children are not in care.

R 400.1911 provides:

Rule 11. (1) The caregiver shall assure appropriate care and supervision of children at all times.

(2) A caregiver or adult assistant caregiver shall be present in the home at all times when children are in care.

(3) Caregiving staff shall be up and awake at all times when children are in care except as provided in R 400.1922(2) of these rules.

(4) Caregiving staff shall know the location of each child at all times.

(5) Caregiving staff shall never leave a child unattended or with a minor in a vehicle.

(6) A caregiver or adult assistant caregiver shall at all times directly supervise children who are engaged in water activities or are near collections or bodies of water.

FINDINGS OF FACT

1. On or about December 2, 2004, Deborah Dixon and Leoha Wade were issued a license to operate a group child care home with a capacity of 12 children at 3638 Lauria Road, Bay City, Michigan.

2. [REDACTED]

3. Jennifer Wade supervised the child care children from 1:00 p.m. to 3:00 p.m. daily, including while the children were in the nap room. The two nap rooms used by day care children were monitored by cameras linked to a computer in a separate room (office). Thomas Wade monitored the nap rooms via the computer; however, any problems with children in the nap room were handled by Jennifer Wade.

4. The Petitioner cared for Child A, who was three-years old, from about December 16, 2012 until February 14, 2013. The Petitioner cared for Child A for about 10 hours per week.

5. [REDACTED]

6. [REDACTED]

7. On April 16, 2013, Deborah Dixon admitted to Gezelle Meyers, a licensing consultant, and Tracy Swilling-Lyons, a children's protective services (CPS) worker, that she had not lived in the child care home for the past two years. The Petitioner had not informed the Department of this change in household composition.

8. [REDACTED]

9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon the Respondent to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Petitioner.

1999 AACS, R 400.16001(d) and (e) provides definitions for substantial noncompliance and willful noncompliance as used in 1973 PA 116, as amended:

(d) 'Substantial noncompliance' means repeated violations of the act or act 218 or any administrative rule promulgated under the act or act 218, or noncompliance with the act or act 218, or a rule promulgated under the act or act 218, or the terms of a license or a certificate of registration that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.

(e) 'Willful noncompliance' means, after receiving a copy of the act or act 218, the rules promulgated under the act or act 218 and, for a license, a copy of the terms of a license or a certificate of registration, an applicant or licensee knew or had reason to know that his or her conduct was a violation of the act or act 218, rules promulgated under the act or act 218, or the terms of a license or certificate of registration.

Count I-MCL 722.119(3)

By this charge, the Respondent asserts that the Petitioner cannot operate a group child care home while [REDACTED] name was placed on the central registry for child abuse and/or neglect. It is not disputed that [REDACTED] name was placed on the central registry.

Accordingly, the Petitioner has willfully and substantially violated MCL 722.119(3).

Count II-Rule 400.1903(1)(h)

Deborah Dixon admitted during the hearing that she had moved out of the child care home without giving timely notice to the Respondent regarding the change in household composition.

Accordingly, the Petitioner has willfully and substantially violated Rule 400.1903(1)(h).

Count III-Rule 400.1903(5)

By this charge, the Respondent asserts that the Petitioner failed to assure that all assistant caregivers are suitable to assure the welfare of children. The Respondent has not proven, by a preponderance of the evidence, that the Petitioner failed to meet this obligation under the above rule. In deciding this sub-issue, the Administrative Law Judge gives more weight to the testimony of the Petitioner's witness and little or no weight to the testimony of the Respondent's witnesses. The Respondents' case in chief is nothing more than a collection of hearsay statements that have not been corroborated by credible evidence presented at the hearing. The investigation of the complaint against the group child care home was inadequate and incomplete.

In this case, the Petitioner did not receive a fair hearing. The Petitioner is entitled to a contested case hearing governed by the Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.* A principle that is fundamental to a contested case hearing under the APA is the exclusiveness of the hearing record. The decision maker's conclusion must rely solely on the evidence adduced at the hearing. Unless this principle is observed, the right to a fair hearing becomes meaningless.

The record presented for review falls short of providing the Petitioner with a fair hearing under the standards of the APA. MCL 24.272(4) and MCL 24.274(2). In particular, the Petitioner has not been given an opportunity to examine through an evidentiary hearing the truth or falsity of the statements made by [REDACTED] and the other persons that the Respondent relied on in making its decision.

The Respondent failed to produce law enforcement officers who were involved in this investigation. The Respondent failed to produce [REDACTED] for the hearing so she could be cross-examined by the Petitioner's attorney. Quite often in the past, the Respondent has decided that it will not offer the testimony of child on the basis that it does not want to traumatize a child. That being said, the Respondent should at a minimum be required to produce a videotape, audiotape, or a transcript of the questions asked [REDACTED] and the responses to those questions during the forensic interview. Nothing was provided by the Respondent at the hearing. In essence, the Petitioner is found guilty by the Respondent based on an investigation to which the Petitioner is not privy to the findings and all of the evidence considered by the Respondent.

Accordingly, the Petitioner has not willfully and substantially violated Rule 400.1903(5).

Count IV-Rule 400.1911(1)

By this charge, the Respondent asserts that the Petitioner did not assure appropriate care and supervision of children at all times. For the reasons stated above, there is insufficient evidence on the record to support the charge.

Accordingly, the Petitioner has not willfully and substantially violated Rule 400.1911(1).

Summary Suspension

On May 13, 2013, the Respondent ordered a summary suspension of the Petitioner's license to operate a group child care home. The summary suspension was issued based on the Respondent's determination that, because of the serious nature of the above violations and the potential risk they represent to vulnerable adults in the Petitioner's care, emergency action was required. The Respondent's authority to order a summary suspension is governed by the Administrative Procedures Act (APA), 1969, as amended, MCL 24.201 *et seq.* Section 92 of the APA provides that:

(1) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. Except as otherwise provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, or the regulated occupations support enforcement act, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(2) If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

In this case, it is not clear from the hearing record that the licensing consultant properly provided the Petitioner with technical assistance about the need for [REDACTED] to be removed from the licensed premises of the group child care home. The Petitioner should have been given an opportunity to show that [REDACTED] was no longer a resident of the licensed home before issuing summary suspension. The Respondent has not presented sufficient evidence that shows the continuation of the operation of this group

day care home during the pendency of an appeal posed an immediate and ongoing threat to the safety and welfare of children, if [REDACTED] had moved out of the home. Accordingly, the summary suspension was not properly issued by the Respondent under Section 92 of the APA.

PROPOSED DECISION

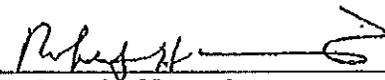
It is proposed that the Director of the Department of Human Services finds and concludes as follows:

(1) That the Petitioner has willfully and substantially violated MCL 722.119(3) and Rule 1903(1)(h); and

(2) That the Petitioner has not willfully and substantially violated Rule 400.1903(5) and Rule 400.1911(1).

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fourteen (14) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Michigan Administrative Hearing System, P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.



Robert H. Mourning
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 2nd day of January, 2014.



Janice K. Atkins
Michigan Administrative Hearing System

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