

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Esther and Lee Tran,

Petitioners,

v

Bureau of Children and Adult
Licensing,

Respondent.

Docket No. 14-004921-DHS

Agency No. DG 500294080

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 15 day of January, 2015
by
Nick Lyon, Interim Director
Department of Human Services

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BUREAU OF CHILDREN
AND ADULT LICENSING

FINAL DECISION AND ORDER

This matter began with Respondent's January 31, 2014 Notice of Intent to Revoke (notice of intent) regarding Petitioners' 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 David M. Cohen (ALJ) on April 10, 2014 and April 11, 2014. Attorney James Thomas and Attorney Regina Triplett represented Petitioners. Assistant Attorney General Kelley 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 R 400.1913, which states in relevant part:

Developmentally appropriate positive methods of discipline which encourage self-control, self-direction, self-esteem, and cooperation shall be used. [Rule 400.1913 (2)]

The record established that Petitioners used corporal punishment as a method to encourage discipline of the children in care at Petitioners' childcare group home. Petitioners utilized paint sticks to strike misbehaved children. Petitioners failed to use appropriate methods of discipline that encouraged self-control, self-direction, self-esteem, or a child's cooperation in a positive manner. The methods used by Petitioners promoted humiliation as said methods were conducted in the presence of a child's peers. Therefore, the ALJ properly determined Petitioners willfully and substantially violated of Rule 400.1913 (2).

In Count II of the notice of intent, Respondent alleged that Petitioners violated R 400.1913, which states in pertinent part:

Caregiving staff shall not do any of the following:

Hit, spank, shake, bite, pinch, or inflict other forms of corporal punishment. [Rule 400.1913 (3) (a)]

There is no dispute that Petitioners inflicted physical discipline on children entrusted to their childcare group home. While Petitioners attempted to argue that the parents of these children approved of their disciplinary methods, but the rules clearly do not allow for any form of corporal punishment. The record established Petitioners willfully hit children with a paint stick in order to discipline them. Therefore, the ALJ properly determined Petitioners willfully and substantially violated Rule 400.1913 (3) (a).

In Count III of the notice of intent, Respondent alleged that Petitioners violated R 400.1907, which states in pertinent part:

Prior to initial attendance, the caregiver shall obtain the following documents:

A completed child information card on a form provided by the department or a comparable substitute approved by the department. [Rule 400.1907 (1) (a)]

Petitioners failed to maintain the required child information cards for several children in care at their childcare group home. On October 17, 2013, Petitioners failed to have properly completed information cards for six children in attendance. Petitioners' failure to maintain said information cards on file was a recurring issue at the childcare group home. Petitioners' actions to properly maintain said information cards would impact the ability to provide proper care in the event of an emergency. Therefore, the ALJ properly determined Petitioners willfully and substantially violated Rule 400.1907 (1) (a).

In Count IV of the notice of intent, Respondent alleged that Petitioners violated R 400.1911, which states in pertinent part:

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

On October 17, 2013 during an onsite inspection, Licensing Consultant Latonya Kegler asked Petitioner Esther Tran the number of children in attendance at her childcare group home; Petitioner responded that she was unaware of the number of children in attendance. It was determined that a total of 16 children were in care. Petitioners were not in compliance with the 12 child maximum requirement as permitted by her license.

In addition, several infants were observed sleeping in bouncers, a toddler was observed sleeping in an infant swing, and nine older children were sleeping with blankets on the hardwood floor of the living room. Petitioners failed to provide adequate sleeping equipment for the infants in their care. Also, the child to adult ratio was exceeded when there were 16 children in care with only 2 caregivers; this violation led to Petitioners' non-compliance of the 1 caregiver to 6 children ratio requirement, this further demonstrates Petitioners' failure to assure appropriate care and supervision. These violations along with Petitioners use of physical discipline substantiate the ALJ's findings. Therefore, the ALJ properly determined Petitioners willfully and substantially violated Rule 400.1911 (1).

In Count V of the notice of intent, Respondent alleged that Petitioners violated R 400.1908, which states in pertinent part:

The group child care licensee shall assure that the actual number of unrelated children in care at any 1 time does not exceed the number of children for which the home is licensed, not to exceed a total of 12. [Rule 400.1908 (2)]

Petitioners failed to assure that the number of unrelated children in care at any 1 time did not exceed the number of children for which the home is licensed. On October 17, 2013, Petitioners childcare group home failed to comply with the required number of children in care. It was determined that Petitioners had 16 children in care when their home is licensed for a maximum of 12. Therefore, the ALJ properly determined Petitioners willfully and substantially violated Rule 400.1908 (2).

In Count VI of the notice of intent, Respondent alleged that Petitioners violated R 400.1916, which states in pertinent part:

Infants, birth to 12 months of age, shall rest or sleep alone in an approved crib or porta-crib. A crib shall have all of the following:

- a. A firm, tight fitting mattress.
- b. No loose, missing, or broken hardware or slats.
- c. Not more than 2 3/8" between slats.
- d. No corner posts over 1/16" high.
- e. No cutout designs in the headboard or footboard.
- f. A tightly fitted bottom sheet shall cover a firm mattress with no additional padding placed between the sheet and mattress. [Rule 400.1916 (5) (a)-(f)]

Petitioners failed to maintain the required age-appropriate sleeping equipment for infants. The record established that Petitioners allowed two infants less than 12 months, to sleep on the floor rather as required in approved sleeping equipment (Respondent's Exhibit R, page 23). Therefore, the ALJ properly determined Petitioners willfully and substantially violated Rule 400.1916 (5) (a)-(f).

In Count VII of the notice of intent, Respondent alleged that Petitioners violated MCL 722.115d, which states in pertinent part:

Before a child care organization makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care organization, the child care organization, the child care organization shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT) or equivalent check on that person from the state or province of residence. [MCL 722.115d (1)]

Petitioners failed to perform a criminal history check prior to making an offer of employment. During the onsite inspection conducted on October 17, 2013, an individual employed at Petitioners' childcare group home as an assistant caregiver did not complete a criminal history check prior to being employed (Respondent's Exhibit R,

[REDACTED]

[REDACTED]

On November 7, 2014, the ALJ issued and entered a Proposal for Decision (PFD) that concluded Petitioners had willfully and substantially violated Rule 400.1913 (2) & (3)(a); Rule 400.1907 (1)(a); Rule 400.1911 (1); Rule 400.1908 (2); Rule 400.1916 (5)(a)-(f); MCL 722.115d (1); Rule 400.1944 (1); and MCL 722.119 (3). Parties had 14 days to file exceptions and 14 days to file responses to any exceptions. No exceptions were filed.

Upon review and to the extent not inconsistent with this Order, I agree with the ALJ's findings of fact and conclusions of law in this case.

ORDER

NOW THEREFORE, IT IS ORDERED that:

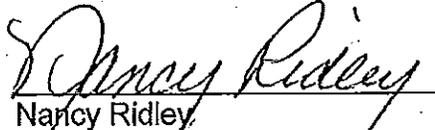
1. To the extent not inconsistent with this Order, the ALJ's Proposal for Decision (PFD) is adopted and is incorporated by reference, and made a part of this Final Decision and Order (see attached PFD).
2. The actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. Petitioners' license is REVOKED effective on the date this Final Decision and Order is issued and entered.



Nick Lyon, Interim 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 16th day of January, 2015.


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