



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH CARE SERVICES

MIKE ZIMMER
DIRECTOR

June 10, 2015

Elnor Toplin
40166 Sara Rose
Clinton Township, MI 48038

RE: Docket # 14-021888-DHS
Lic # AF500271183:

Dear Ms. Toplin:

On or about April 17, 2015 you were mailed a copy of the final order upholding the Agency's Notice of Intent to Revoke your license to operate an adult foster care family home. In accordance with that notice, your license has been revoked effective April 9, 2015. It is further expected that you not receive adults for care now or in the future without being licensed.

A handwritten signature in cursive script, appearing to read "Jay Calewarts".

Jay Calewarts, Acting Director
Adult Foster Care Division
Office of Children & Adult Licensing

JC:sb

cc: Denise Nunn, Licensing Supervisor

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Docket No. 14-021888-DHS

Elnor Toplin,

Case No. AF 500271183

Petitioner,

Agency: Department of
Human Services

v

Bureau of Children and Adult
Licensing,

Case Type: DHS BCAL

Respondent.

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BUREAU OF CHILDREN
AND ADULT LICENSING

Issued and entered
this 9 day of April, 2015
by
Nick Lyon, Interim Director
Department of Human Services

FINAL DECISION AND ORDER

This matter began with Respondent's July 8, 2014 notice of intent to revoke license (notice of intent), regarding Petitioner's license to operate an adult foster care family home under the Adult Foster Care Facility Act (Act), 1979 PA 218, as amended, MCL 400.701 *et seq.* A properly noticed hearing regarding the matter at issue was held by Administrative Law Judge Zainab A. Baydoun (ALJ) on December 17, 2014. Attorney Robert Dubin and Attorney Chase Dehne represented Petitioner. Assistant Attorney General Kelley McLean appeared on behalf of Respondent.

Respondent seeks to revoke Petitioner's license based on allegations in the notice of intent that Petitioner violated the Act and administrative rules promulgated

under the Act. Respondent alleged in Count I of the notice of intent that Petitioner's conduct violated MCL 400.722 which states in pertinent part as follows:

The department may deny, suspend, revoke, or refuse to renew a license, modify a regular license to a provisional license, if the licensee falsifies information on the application for license or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license.
[MCL 400.722 (1)]

* * *

[Note: MCL 400.703 (5):

"Adult foster care family home" means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family licensee shall be a member of the household, and an occupant of the residence.]

On or about October 8, 2012, Respondent determined Petitioner was not residing in the adult foster care family home. The following day, Petitioner submitted written verification that indicated her driver's license address corresponded with the address of the adult foster care family home so as to demonstrate where she resides.

During an onsite investigation, Respondent concluded Petitioner was not residing in the adult foster care family home. A staff member of the home indicated that Petitioner did not live in the adult foster care family home, but rather lived in a home directly behind the property (Respondent's Exhibit A). The information was supported by the lack of Petitioner's belongings in the adult foster care family home. While Petitioner alleged she resided in the home a few days a week, the record established that Petitioner was not a member of the household or occupant as required by the Act. Therefore, the ALJ properly concluded Petitioner willfully and substantially violated MCL

400.722 (1) referencing MCL 400.703 (5).

Respondent also alleged in Counts II of the notice of intent that Petitioner violated R 400.1404, which states in pertinent part as follows:

* * *

A licensee or responsible person shall possess all of the following qualifications:

- (a) Be of good moral character to provide for the care and welfare of the residents.
- (b) Be suitable to meet the physical, emotional, social, and intellectual needs of each resident. [Rule 400.1404 (3)(a)(b)]

* * *

Petitioner failed to be of good moral character when she misrepresented that she fully resided in the adult foster care family home. On more than one occasion Respondent advised Petitioner to apply for a different license that would not require that she be an occupant and household member of the home. Respondent provided Petitioner with notice of the licensure requirements (Respondent's Exhibit B). On May 8, 2013, Petitioner acknowledged that she would comply with the Act and the rules promulgated thereunder in her license application (Respondent's Exhibit C).

Petitioner's actions demonstrated that she lacked the good moral character to provide for the care and welfare of the adults placed in her care; and that she lacked the suitability to meet the physical, emotional, social, and intellectual needs of each resident as the result of her absence in the home.

The record established that Petitioner did not reside in the home which was required by her licensure (Respondent's Exhibit A). Therefore, the ALJ properly

concluded that Respondent had shown by a preponderance of the evidence that Petitioner willfully and substantially violated Rule 400.1404 (3)(a)(b).

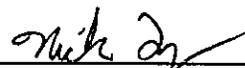
On January 27, 2015, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioner had willfully and substantially violated MCL 400.722 (1) referencing MCL 400.703 (5) and Rule 400.1404 (3)(a)(b). The parties had 14 days to file exceptions and 14 days to file responses to any exceptions.

Upon review 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. Petitioner's license is REVOKED effective on the date this Final Decision and Order is issued and entered.



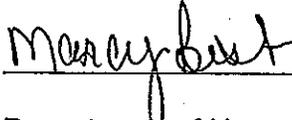
**Nick Lyon, Interim Director
Department of Human Services**

The above decision and order may be appealed to the circuit court for the county in which the person resides within 30 days after receipt of the decision and order.

[Authority: MCL 722.122; Mich Admin Code, R 792.11025.]

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 17th day of April, 2015.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Elnor Toplin,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 14-021888-DHS

Case No.: AF500271183

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 27th day of January, 2015
by: Zainab A Baydoun
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This matter was initiated on July 8, 2014, with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing a Notice of Intent to Revoke License, regarding the license of Elnor Toplin (Licensee or Petitioner) to operate an adult foster care family home pursuant to the authority of the Adult Foster Care Facility Licensing Act (the Act), 1979 PA 218, as amended, MCL 400.701 et seq. On or around July 28, 2014, Petitioner requested a hearing to appeal the action.

On September 5, 2014, the Michigan Administrative Hearing System issued a Notice of Hearing, scheduling a hearing for October 22, 2014. On October 13, 2014, Respondent filed a request for adjournment. On October 16, 2014, an Order Granting Adjournment was issued, rescheduling the hearing to December 17, 2014.

The hearing commenced as scheduled on December 17, 2014, at 10:00 a.m. Petitioner was present at the hearing and was represented by her attorneys, Robert Dubin and Chase Dehne. Petitioner offered testimony on her own behalf. Assistant Attorney General Kelley McLean represented Respondent at the proceeding. Respondent solicited testimony from Maureen Fisher, BCAL Licensing Consultant. Respondent requested that a subpoena be issued in order to solicit testimony from Crystal Adams; however, Ms. Adams did not appear for the hearing and did not provide any testimony. There were no additional witnesses and the record closed at the conclusion of the hearing on December 17, 2014.

SUMMARY OF EXHIBITS

RESPONDENT EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A.	A May 5, 2014, Michigan Department of Human Services Bureau of Children and Adult Licensing Special Investigation Report
B.	An October 9, 2012, Letter to Petitioner concerning noncompliance with applicable licensing rules
C.	A May 2013 Adult Foster Care License Individual Application

PETITIONER EXHIBITS

Petitioner did not offer any exhibits for admission into evidence.

ISSUES AND APPLICABLE LAW

As set forth in Counts I and II of the Notice of Intent, the issues presented are whether Petitioner has committed willful and substantial violations of the Act, or rules promulgated under the Act, or more specifically, MCL 400.703 (5), Rule 400.1404 (3)(a), and Rule 400.1404 (3)(b) of the Licensing Rules for Adult Foster Care Family Homes, such that grounds exist to revoke Petitioner's license to operate an adult foster care family home or to take other action under Section 22 (1) of the Act.

The Act provides in pertinent part as follows:

Sec. 3(5) "Adult foster care family home" means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee shall be a member of the household, and an occupant of the residence. MCL 400.703

* * *

Sec. 22 (1) The department may deny, suspend, revoke, or refuse to renew a license, or modify a regular license to a provisional license, if the licensee falsifies information on the application for license or *willfully and substantially* violates this act, the rules promulgated under this act, or the terms of the license. * * * MCL 400.722. (Emphasis supplied).

Rule 400.1401 Definitions. (Rule 1) provides in pertinent part as follows:

(h) "members of the household" means all persons living in the home, exclusive of residents

(i) "occupants" means all persons living in the home.

R. 400.1404 Licensee, responsible person, and member of the household; qualifications (Rule 4) provides in pertinent part as follows:

(3) A licensee or responsible personal shall possess all of the following qualifications:

(a) Be of good moral character to provide for the care and welfare of the residents.

(b) Be suitable to meet the physical, emotional, social, and intellectual needs of each resident.

SUMMARY OF EVIDENCE

The following is intended only as a brief summary drawn from the relevant evidence presented at the December 17, 2014, proceeding. The present matter involves Petitioner's appeal of Respondent's Notice of Intent to Revoke License to operate an adult foster care family home.

The hearing record indicates that on or around January 21, 2005, Petitioner was issued a license to operate an adult foster care family home located at 40166 Sara Rose, Clinton Township, Michigan 48038, which is currently operating under the name Care Plus Home. (Exhibit A, at p.2).

On or around October 8, 2012, Licensing Consultant Karen LaForest initiated a special investigation of the Licensee's adult foster care family home. At the conclusion of this investigation, Ms. LaForest determined that the Licensee was not residing in the adult foster care family home, in violation of MCL 400.703(5) of the Adult Foster Care Facility Licensing Act, which requires that a licensee reside in the adult foster care family home. Prior to the October 2012 investigation, Licensee was residing at 40169 Vencenzia, Clinton Township, Michigan.

On October 9, 2012, Ms. LaForest contacted Licensee in writing concerning Licensee's residing outside of the adult foster care family home address and directed the Licensee to either apply for an adult foster care group home license (which does not require that a Licensee reside in the home) or provide written proof that she resided in the adult foster care family home on a full-time basis. (Exhibit B). The hearing record indicates that in response to the October 9, 2012, letter, Petitioner Toplin submitted written

verification to Respondent that she had changed the home address on her driver's license to reflect the address of the adult foster care family home on Sara Rose in order to comply with the requirements of MCL 400.703(5). At that time, BCAL determined that the change of address on Ms. Toplin's driver's license sufficiently demonstrated compliance with the requirements of MCL 400.703(5). (Exhibit A, at p. 5).

Respondent presented for review at the hearing Petitioner's signed May 8, 2013, Adult Foster Care License Individual Application. (Exhibit C). A review of the application establishes that in signing the application, Petitioner acknowledged that she has "read [the Adult Foster Care Facility Licensing Act] 1979 PA 218, and the Administrative Rules regulating the operation of Adult Foster Care facilities" and "[i]f granted a license [she] will comply with the Act and these Rules." (Exhibit C, at p. 4). Petitioner's application was subsequently approved.

On or around May 1, 2014, BCAL received a complaint alleging that staff members of Care Plus Home were cursing and yelling at residents, have threatened to beat up residents, and allow residents access to their own medications. (Exhibit A, at pp. 2-3). Ms. Fisher testified that she was assigned to conduct an investigation based on the complaint received. Ms. Fisher testified that she conducted interviews with each of the residents of the home concerning the allegations. Ms. Fisher further stated that while Resident A indicated staff had threatened to beat her up and that residents sometimes take their own medications without supervision, the other residents who were interviewed did not corroborate Resident A's statements. (Exhibit A, at pp. 2-4). Based on the interviews conducted and the unannounced onsite inspection that took place on May 2, 2014, Ms. Fisher concluded that the allegations in the initial complaint could not be substantiated or established. (Exhibit A, at pp. 2-4).

Ms. Fisher testified that although the initial allegations were not established, during the course of the investigation, it was discovered that Petitioner was residing outside of the adult foster care family home. The Special Investigation Report indicates that during the May 1, 2014, interview of Resident A, the Resident made references to Crystal Adams and Kiara Adams being live-in staff and indicated that Ms. Toplin lives in the home directly behind the adult foster care family home on Sara Rose. Resident A described an opening in the fence between the two backyards as the way Ms. Toplin goes between the two residences. (Exhibit A, at pp.4-5). According to the Special Investigation Report and Ms. Fisher's testimony, Ms. Fisher conducted a property ownership search on the Clinton Township property and assessing website which identified three properties in Clinton Township co-owned by Ms. Toplin including 40169 Vencenzia and the Care Plus Home on Sara Rose. (Exhibit A, at p. 5).

Ms. Fisher stated that while conducting the unannounced onsite inspection of Care Plus Home on May 2, 2014, she interviewed staff member Crystal Adams who informed Respondent that she lived in the home and that sometimes her daughter (Kiara Adams)

lived there too. The Special Investigation Report indicates that Crystal Adams stated she has worked at the facility for one and a half years and works 24 hours a day, 12 out of 14 days every two weeks and that she has a bedroom in the home that her daughter Kiara uses when Kiara covers for her occasionally. (Exhibit A, at p. 5). Ms. Fisher observed the bedroom identified to be occupied by Crystal Adams, as well as the basement of the home which was unfurnished. Further during the interview, Ms. Adams stated that the other occupants of the home are the six residents, and that while she did not know where Ms. Toplin lived, she indicated that Ms. Toplin does not live in the adult foster care family home on Sara Rose. (Exhibit A, p. 5).

During the onsite inspection, interviews were also conducted with the residents of the home who indicated to Ms. Fisher that Ms. Toplin lives near the facility, residing in a home directly behind the facility and motioned to the home on Vencenzia. (Exhibit A, at p. 5). Ms. Fisher observed the opening in the chain link fence that connected the yards of the Sara Rose home and the Vencenzia home. Ms. Fisher recalled that the residents were able to answer questions in an intelligible manner and that their responses were clear.

Ms. Fisher testified that Ms. Toplin was not onsite at the facility at the start of the inspection on May 2, 2014, but that she arrived shortly thereafter. Ms. Fisher stated that she interviewed Ms. Toplin concerning her residency, to which Ms. Toplin responded "right now I'm going between the two houses (the Sara Rose and Vencenzia homes) because I'm going to remodel the basement." (Exhibit A, at p. 5). According to the Special Investigation Report, Ms. Toplin informed Ms. Fisher that she could move into the basement or have staff stop staying overnight so that she could move back into the facility. (Exhibit A, at p. 5). Ms. Fisher indicated that she looked at Ms. Toplin's driver's license which reflected the Sara Rose address; however, during the inspection, she did not observe any personal items belonging to Ms. Toplin.

Prior to concluding her investigation, Ms. Fisher stated that she reviewed the licensing file pertaining to the Care Plus Home facility and discovered the October 9, 2012, letter concerning Petitioner's violation of Section 400.703(5) and her failure to reside in the adult foster care family home. (Exhibit B).

Ms. Fisher testified that based on the interviews conducted with the residents, staff, and Petitioner, as well as her own personal observations, she recommended revocation of the license on the basis that the same violation had occurred more than once and that Petitioner was knowingly noncompliant with the rules by not living in the adult foster care family home. (Exhibit A, at pp. 5-7).

At the hearing, Petitioner testified that prior to hiring Crystal Adams as a staff member she was the sole caregiver in the home and slept in the home every night. Petitioner testified that she hired Crystal Adams to help assist with the caregiving duties but not to

replace her. Petitioner admitted that she is the co-owner of the home on Vencenzia. Ms. Toplin also stated that her family and children live in the Vencenzia home, and indicated that she maintains and pays bills for both properties (Vencenzia and Sara Rose).

Petitioner further testified that prior to the May 2014 BCAL investigation, she would spend nights in the adult foster care family home on Sara Rose three to four times per week and on the nights in which she did not sleep there, she came to the home around 6:00 AM to start work and stayed until around 4:00 or 5:00 PM. Petitioner recalled the daily activities of the home and stated that she lives at the Sara Rose home and visits with her family at the Vencenzia home. Petitioner confirmed that on the nights she stayed at the Vencenzia home, Crystal Adams was sleeping at the Sara Rose home.

Petitioner stated that at some point in 2014, the adult foster care family home had a bed bug infestation and she had to hire an exterminator to resolve the issue who recommended that she dispose of all the furniture in the home. Petitioner indicated that she could only afford to replace the residents' bedroom furniture and was not able to purchase any furniture for the bedroom in the basement which is why Ms. Fisher observed the basement unfurnished. Petitioner stated that she slept on the couch in the home until she was able to purchase a new bedroom set for herself in May 2014, after the conclusion of the BCAL investigation. Although Petitioner offered this testimony, there was no documentary evidence presented in support and Respondent argued that this information or explanation was never provided to Ms. Fisher during the interviews or inspection.

Petitioner's attorney called into question the credibility of the statements made by Crystal Adams, as she was subpoenaed to testify but failed to appear, as well as the statements of the residents who are aged and have diagnosed mental illness. Petitioner's attorney solicited testimony to show that Ms. Fisher did not ask the residents, Ms. Adams, or Ms. Toplin specific questions about whether Ms. Toplin ate or bathed in the home, whether she ever stayed nights in the home, or whether Ms. Toplin had any personal belongings in the home.

In closing, Petitioner's attorney asserted that Section 400.703 does not offer a definition of "residency" and maintained that by any interpretation, it is clear that in everyday living and everyday experiences, people can occupy two different places at the same time and that they can reside in two different places at the same time. Petitioner's attorney argued that the Act and Rules do not set forth a requirement that there can only be one residence for a licensee and stated that Petitioner was honest about owning, caring for, and maintaining two residences. Petitioner's attorney further asserted that the intent behind the statute is to ensure that someone was there predominately to oversee the operations of the facility and indicated that Petitioner has satisfied that requirement.

FINDINGS OF FACT

Based on the entire record in this matter, including the admitted exhibits and witness testimony, the following findings of fact are established:

1. Petitioner co-owns and maintains two properties located at 40169 Vencenzia, Clinton Township, Michigan 48038 and 40166 Sara Rose, Clinton Township, Michigan 48038. (Exhibit A, at p.5)
2. On or around January 21, 2005, Petitioner was issued a license to operate an adult foster care family home located at 40166 Sara Rose, Clinton Township, Michigan 48038, which is currently operating under the name Care Plus Home. (Exhibit A, at p.2)
3. On or around October 8, 2012, Licensing Consultant Karen LaForest initiated a special investigation of Licensee's adult foster care family home, at the conclusion of which it was determined that Licensee was not residing in the adult foster home, in violation of MCL 400.703(5) of the Adult Foster Care Facility Licensing Act.
4. Prior to the 2012 investigation, Licensee was residing at 40169 Vencenzia, Clinton Township, Michigan.
5. On October 9, 2012, Ms. LaForest contacted Licensee in writing concerning her residence outside the adult foster care family home and directed Licensee to either apply for an adult foster care group home license, or provide written proof that she resided in the family home on a full-time basis. (Exhibit B)
6. In response to the October 9, 2012, letter, Licensee submitted written verification that she had changed the address on her driver's license to reflect the address of the adult foster care family home on Sara Rose in order to comply with the requirements of MCL 400.703(5). (Exhibit A, at p. 5)
7. On May 8, 2013, Petitioner submitted an Adult Foster Care License Individual Application on which she acknowledged that she had read the Adult Foster Care Facility Licensing Act and applicable licensing rules and agreed to comply with the Act and Rules should her license be approved. Petitioner's application was subsequently approved. (Exhibit C)
8. On or around May 1, 2014, BCAL received a complaint alleging staff mistreatment of residents and staff allowing residents access to their own medications. Licensing Consultant Maureen Fisher initiated a special

investigation concerning the allegations in the complaint. (Exhibit A, at pp. 2-3)

9. The initial allegations were unsubstantiated, however, after conducting interviews, an unannounced onsite inspection and additional research, Ms. Fisher determined that Licensee was once again not residing in the adult foster care family home on Sara Rose, but rather at her other home located at 40169 Vencenzia. (Exhibit A, at pp. 2-6)
10. Petitioner confirmed that she lives in between the two houses and that she stays overnight at the Care Plus Home located at Sara Rose three to four times per week, with Crystal Adams staying in the home the remaining nights. (Exhibit A, at p. 5 and Petitioner's hearing testimony)

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative proceedings. The burden of proof is on the Respondent to prove, by a preponderance of the evidence, that Petitioner has violated the administrative rules promulgated under the Act as alleged in the Notice of Intent to Revoke License. A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270 (1948).

In this case, Respondent alleged that Petitioner/Licensee committed a willful and substantial violation of the Act, more specifically, MCL 400.703 (5), Rule 400.1404 (3)(a), and Rule 400.1404 (3)(b) of the Licensing Rules for Adult Foster Care Family Homes, such that grounds exist to revoke Petitioner's license to operate an adult foster care family home under Section 22 (1) of the Act.

The Administrative Law Judge (ALJ) evaluates the testimony and the evidence elicited at the hearing and renders a proposed decision setting forth an opinion as to whether the Petitioner/Licensee has in fact committed a willful and substantial violation of the Act, rules or terms of the license. If a willful and substantial violation is determined, the Director of the Department is statutorily empowered to take appropriate adverse action against the license. Thus, the words "willful and substantial" must be evaluated.

Rule 1 of the Administrative Rules for Adult Foster Care Facility Licensing and Child Care Organizations contested case hearings provides the following pertinent definitions:

R400.16001

Rule 1. (1) As used in these rules:

(a) "Act" means Act No. 116 of the Public Acts of 1973, as amended, being §722.111 et seq. of the Michigan Compiled Laws.

* * *

(c) "Noncompliance" means a violation of the act or act 218, an administrative rule promulgated under the act or act 218, or the terms of a license or a certificate of registration.

(d) "Substantial noncompliance" means repeated violations of the act or act 218 or an 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 a certificate of registration.

* * *

In the present case, the Notice of Intent to Revoke License sets forth two counts asserting allegations against Petitioner Toplin.

COUNT I and COUNT II- MCL 400.703(5); MCL 400.722(1) and R400.1404(3)(a)&(b)

In Count I, Respondent alleges that Petitioner has acted contrary to MCL 400.703(5) such that revocation of her license is appropriate under MCL 400.722(1), both of which provide in pertinent part as follows:

Sec. 3(5) "Adult foster care family home" means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee *shall* be a member of the

household, and an occupant of the residence. MCL 400.703 (Emphasis supplied)

Sec. 22 (1) The department may deny, suspend, revoke, or refuse to renew a license, or modify a regular license to a provisional license, if the licensee falsifies information on the application for license or *willfully and substantially* violates this act, the rules promulgated under this act or the terms of the license. * * * MCL 400.722. (Emphasis supplied).

In Count II, Respondent alleges that Petitioner has acted contrary to (Rule 4) R.400.1404 (3)(a) & (3)(b), which state:

R. 400.1404 Licensee, responsible person, and member of the household; qualifications

(3) A licensee or responsible personal shall possess all of the following qualifications:

(a) Be of good moral character to provide for the care and welfare of the residents.

(b) Be suitable to meet the physical, emotional, social, and intellectual needs of each resident.

* * *

By these charges, Respondent asserts that Petitioner/Licensee was not a member of the household and occupant of the residence as required by the Act, and as a result, lacked moral character and/or was otherwise not suitable to provide for the residents and meet their needs, under the licensing rules. Based upon the above findings of fact, the evidence presented and the hearing record, it is concluded that a violation of MCL 400.703(5); MCL 400.722(1) and R400.1404 (3)(a)&(3)(b) has been established by a preponderance of the evidence.

It was undisputed at the hearing that Petitioner co-owns and maintains two properties located at 40169 Vencenzia, Clinton Township, Michigan 48038 and 40166 Sara Rose, Clinton Township, Michigan 48038 and that Petitioner was licensed to operate Care Plus Home at the Sara Rose address. (Exhibit A, at pp.2,5). The hearing record established that the homes were situated directly behind each other, and that they shared a chain link fence which had an opening making it easy for the Petitioner to travel between both properties.

During the course of the investigation, Ms. Fisher conducted interviews with residents of Care Plus Home and staff member Crystal Adams who indicated that Ms. Toplin did not live in the home on Sara Rose. Although Ms. Adams did not identify where Petitioner lived, Residents B, D, and E informed Ms. Fisher that Petitioner lived in the home

behind the facility. (Exhibit A, at pp. 4-5). While Petitioner's attorney argued that during her interviews and investigation Ms. Fisher failed to ask staff, residents, and Petitioner specific questions concerning Petitioner's daily activities and whether Petitioner stayed any nights in the facility, this proved to be immaterial, as Petitioner's own statements at the hearing and during her interview with Ms. Fisher establish that she was only living in the Sara Rose property on a part time basis. Therefore, the dispute in this case amounts to whether Petitioner's presence in the home on a part time basis is sufficient to show compliance with the Act and Rules.

Although Petitioner stated that she was going in between the two houses and that she stayed at Sara Rose three to four nights per week, with Crystal Adams being in the home at all other times, observations by Ms. Fisher at the unannounced onsite inspection suggest otherwise, as there were no personal belongings of Ms. Toplin in the home and the basement bedroom was unfurnished. Petitioner did not provide Respondent with an explanation for the unfurnished home at the time of the interview and never informed Respondent that she recently had a bed bug infestation in the home. Thus, Petitioner's testimony that she was a part time occupant and member of the household was unsupported by any other evidence in the record. Regardless of this however, part time occupancy or membership in a household is not the equivalent of occupancy or membership as defined in the Rules; and a thorough review of the evidence supports the finding that Petitioner was not a member of the Sara Rose household and an occupant of the residence as required by MCL 400.703(5).

It is further concluded that Petitioner's violation was "willful" as defined by R 400.16001(1)(e). The October 2012 investigation found that Petitioner was in non-compliance with MCL 400.703 (5), as it was determined that Petitioner was not residing in the home, in violation of the Act: (Exhibit B). Respondent sent Petitioner a letter to the Care Plus Home address on October 9, 2012, informing her of the violation. (Exhibit B). Specifically, the letter states,

"[i]f you no longer reside in the home 24 hours a day, seven days a week, and you are staffing with live-in staff, you then need to change the status of the home from a family home to a small group home. You can obtain an application on our website at www.michigan.gov/dhs and look for the original small group home application for individuals. If you are residing in the family home as required, you will need to provide me with written proof, that this is your personal residence in order to maintain the home as a family home. This is a required component of keeping the home licensed as a family home." (Exhibit B).

Petitioner disputed receiving this letter and indicated that the first time she saw the letter was at the hearing held on December 17, 2014; however, the proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). A review of the letter establishes that it was addressed to Petitioner at the correct address on Sara Rose and Petitioner testified that she recalled having a conversation with licensing consultant Ms. LaForest in 2012 and being informed to submit utility bills and an updated driver's license to show compliance with the rules. (Exhibit B). Furthermore, it was established that in response to Respondent's communications, Petitioner changed the address on her driver's license to reflect that of Sara Rose and submitted written verification of such change to Respondent. Therefore, Petitioner has not presented sufficient evidence to rebut the presumption that she received the October 9, 2012, letter.

In addition, Petitioner completed a May 8, 2013, Adult Foster Care License Individual Application, a review of which establishes that in signing the application, Petitioner has acknowledged that she read the Adult Foster Care Facility Licensing Act and applicable licensing rules and agreed to comply with the Act and Rules should her license be approved, which it subsequently was. (Exhibit C).

Therefore, as a licensee who has been notified of the applicable rules on more than one occasion, Petitioner knew or had reason to know that she was required to be a member and occupant of the adult foster care family home on a full time basis and willfully failed to do so.

Furthermore, Petitioner's failure to comply with the Act and Rules also constituted "substantial" noncompliance under R400.16001(d), in that her noncompliance with the rules was likely to jeopardize the health, safety, care, treatment, maintenance, or supervision of the residents of Care Plus Home. The evidence presented established that in October 2012, not unlike May 2014, Petitioner was found to have violated Section 400.703(5), after it was discovered that Petitioner had employed a live-in staff member "who work[ed] 14 days in a row, 24 hours each day, and then has 3 days off" at the Care Plus Home. (Exhibit B). As a result of the October 2012 investigation, Petitioner showed compliance with the Act and Rules by returning to the residence as required and providing Respondent with written verification she had done so. Thus, a subsequent violation of the same rule is sufficient to establish substantial noncompliance.

As referenced above, Petitioner's attorney argued that a person can live in and be a member and occupant of more than one residence at the same time and the Act and Rules do not require that licensee only have one residence. While it may be possible under certain circumstances that a person may occupy or be a member of more than one residence at the same time, for purposes of being the licensee of an adult foster

care family home, this Administrative Law Judge agrees with Respondent's interpretation of the Act and Rules and find that the licensee of an adult foster care family home must reside in the home seven days a week and that staffing with live-in staff is not acceptable. (Exhibit B). Additionally, Petitioner was informed that should she decide that she does not want to reside in the Care Plus Home on a full time basis that she had the option of changing the status of her home to a small group home that allows for live-in staff. (Exhibit B and hearing testimony of Ms. Fisher). Thus, the specific type of home that Petitioner was licensed to operate required that she be present in the home on more than just a part time basis.

With respect to the allegations in Count II that Petitioner acted contrary to Rule 400.1404 (3)(a) and Rule 400.1404 (3)(b), and referring to the Notice of Intent, it appears that this charge is predicated on the issue of Petitioner's failure to reside in the adult foster care family home as required. Based on the Notice of Intent, Respondent asserts that because Petitioner did not reside in the facility in violation of the Act, Petitioner lacked the moral character necessary to provide for the care and welfare of the residents and was not suitable to meet the physical, emotional, social, and intellectual needs of each resident.

In completing her application for licensure, Ms. Toplin herself, was evaluated as an applicant and issued a license to operate an adult foster care family home and agreed to comply with the licensing Rules and the Act, not Crystal Adams or other staff members. Petitioner's attorney asserted that the intent behind the statute was to ensure that someone was present in the facility predominately to oversee the operations of the home and argued that the time Petitioner spent there was sufficient to fulfill that requirement. However, this Administrative Law Judge is not persuaded by Petitioner's attorney's argument. It should be noted that of particular importance in this case is that Care Plus Home was licensed to provide services for adults in need of care due to age and/or mental illness or individuals who require special attention. In order for Petitioner to be suitable to provide for the care and welfare of the residents and to meet their needs, Petitioner has to be present in the home and reside there on a full time basis, which she admittedly was not in this case.

Accordingly, Respondent has established by a preponderance of the evidence a willful and substantial violation of Rule 400.1404 (3)(a) and Rule 400.1404 (3)(b), as Petitioner's actions did not demonstrate that she had the moral character necessary to provide for the care and welfare of the residents or that she was suitable to meet the physical, emotional, social, and intellectual needs of each resident. Petitioner knew or should have known that being a member and occupant of the household was required in order to provide for the proper care and welfare of the residents, as well as to be suitable to meet the needs of each resident as required by the Rules. Furthermore, it was established that this violation was repeated, thus amounting to substantial

noncompliance in that it was likely to jeopardize the health, safety, care, treatment, maintenance, or supervision of the residents in Petitioner's care.

Based on the totality of the record in this case, the undersigned Administrative Law Judge concludes that Respondent has met its burden of proof as to the violations alleged in Count I and Count II of the Notice of Intent to Revoke License. Respondent has proven by a preponderance of the evidence that Petitioner's conduct, as set forth in the above analysis evidences a violation of MCL 400.703(5) and MCL 400.722(1), as well as Rule 400.1404 (3)(a) and Rule 400.1404 (3)(b).

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Director adopt the above findings of fact and conclusions of law, conclude that Petitioner has committed willful and substantial violations of MCL 400.703(5), MCL 400.722(1), Rule 400.1404 (3)(a) and Rule 400.1404 (3)(b) and take action on the Notice of Intent as deemed appropriate under the Act.

EXCEPTIONS

If any 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 served on all parties to the proceeding and filed with the:

Michigan Administrative Hearing System
Cadillac Place
3026 West Grand Blvd, 2nd Floor, Suite 2-700
Detroit, Michigan 48202
Fax: (313) 456-3681



Zainab A Baydoun
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 27th day of January, 2015.

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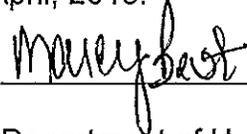
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PROOF OF SERVICE

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 17th day of April, 2015.



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