



STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
INTERIM DIRECTOR

April 9, 2015

Mr. Joseph Fecher
First Friends Daycare Center, L.L.C.
8031 E. Court St., Building 1
Davison, MI 48423

Re: License DC250302373

Dear Mr. Fecher:

On or about March 26, 2015 you were certified mailed a copy of the Final Decision and Order upholding the Department of Human Services' intention to revoke your license to operate a child care center. In accordance with that Final Decision and Order, your license is revoked and is now no longer in effect as of April 6, 2015. It is further understood that you will not receive children for care now, or in the future, without being legally licensed to do so.

Sincerely,

A handwritten signature in cursive script that reads "Jay Calewarts".

Jay Calewarts, Acting Director
Child Care Licensing Division
Bureau of Children & Adult Licensing

JH:kam

cc: Scott Bettys, Licensing Supervisor
Catherine S. Edgar, Licensing Consultant

CERTIFIED MAIL- Return Receipt Requested

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Docket No.: 14-026421-DHS

Joseph Fecher/
First Friends Daycare Center, LLC,

Case No.: DC 250302373

Petitioner

Agency: Department of
Human Services

v

Case Type: DHS BCAL

Bureau of Children and Adult Licensing,

Filing Type: Sanction

Respondent

RECEIVED

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BUREAU OF CHILDREN
AND ADULT LICENSING

Issued and entered
this 23 day of March, 2015
by

Nick Lyon, Interim Director
Department of Human Services

FINAL DECISION AND ORDER

This matter began on July 2, 2014 with Respondent's Notice of Intent to Refuse to Renew License (notice of intent) regarding Petitioner Joseph Fecher/First Friends Daycare Center, LLC's license to operate a child care center pursuant to the Child Care Organization Act, 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing was held by Administrative Law Judge Peter L. Plummer (ALJ) on December 3, 2014. Departmental Analyst Kelly Maltby appeared on behalf of Respondent. Neither Petitioner nor an attorney appeared on his behalf.

Upon Petitioner's failure to appear and at the request of Respondent, the ALJ entered a Default Judgment against Petitioner pursuant to Sections 72(1) and 78(2) of the Administrative Procedures Act of 1969, as amended, MCL 24.201 *et seq.* (APA).

The notice of intent being incorporated into the hearing as a part of Respondent's pleadings and as a result of Petitioner's failure to appear at the hearing to contest the facts placed on the record as presented in the notice of intent, the ALJ found the facts as alleged by Respondent to be true and accurate. Therefore, the ALJ properly concluded that Petitioner violated the rules as alleged by Respondent.

On January 26, 2015, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioner willfully and substantially violated Rule 400.8110 (1)(b) & (d); Rule 400.8125 (4), (7), (8), & (10); Rule 400.8131 (2); Rule 400.8131 (7); Rule 400.8143 (10); Rule 400.8161 (2)(a), (b), & (c); Rule 400.8182 (2), (3)(a), (b), & (8); Rule 400.8325 (1); Rule 400.8335 (1); and Rule 400.8510 (4). No exceptions were filed.

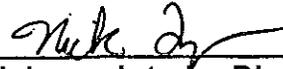
I concur in the ALJ's findings of fact and conclusions of law.

ORDER

NOW THEREFORE, IT IS ORDERED:

1. That the ALJ's Proposal for Decision (PFD) is adopted in its entirety and is incorporated by reference and made a part of this Final Decision and Order (see attached PFD).
2. That the actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. That Petitioner's renewal license is REFUSED, effective on the date this Final Decision and Order is issued and entered.

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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 below this 26 day of March, 2015.



Michigan Administrative Hearing System

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 14-026421-DHS

Joseph Fecher/
First Friends Daycare Center, LLC,
Petitioner

Case No.: DC 250302373

Agency: Department of
Human Services

v

Bureau of Children and Adult Licensing,
Respondent

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
This 21st day of January, 2015
By Peter L. Plummer
Administrative Law Judge

PROPOSAL FOR DECISION

Procedural History

This matter commenced on July 2, 2014, with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing a Notice of Intent to Refuse to Renew License regarding the license of First Friends Daycare Center, LLC, (Licensee or Petitioner) to operate a Child Care Center pursuant to the authority of the Child Care Organization Act, 1973 PA 116 (Act), as amended, MCL 722.111 *et seq.* August 8, 2014, Licensee filed an appeal of the above Notice.

October 17, 2014, Respondent sent a request for hearing to the Michigan Administrative Hearing System (MAHS). On October 20, 2014, MAHS sent a notice of hearing to all parties scheduling this matter for hearing December 3, 2014, beginning at 9:00 am.

The hearing was conducted on December 3, 2014, and was held at the Michigan Administrative Hearing System offices located at 611 W. Ottawa Street, Lansing, Michigan.

Appearances:

Ms. Kelly Maltby, Department Analyst, appeared on behalf of Respondent, BCAL. Section 9(2) of the Social Welfare Act allows a duly authorized employee or agent of the state department to represent the department in this hearing. Social Welfare Act, 1939 PA 280, as amended, MCL 400.9(2).

Petitioner, Joseph Fecher/First Friends Daycare Center, LLC, did not appear at the hearing nor did an attorney on behalf of Petitioner.

At the hearing, Respondent's representative requested that the Respondent be allowed to proceed in the Petitioner's absence pursuant to Section 72 of the APA and that a default be granted on behalf of the Respondent pursuant to Section 78 of the APA.

Section 72 of the APA states in pertinent part:

- (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states in pertinent part:

- (2) Except as otherwise provided by law, disposition may be made of a contested case by . . . default

The Respondent's motion for default was granted on the record and is affirmed in this Decision. Proof of Service of the Notice of hearing in this matter is sufficient. As a result of the default, the factual allegations contained in the Respondent's Notice of Intent to Refuse to Renew License dated July 2, 2014, are deemed true and accurate on the record.

Exhibits

The Notice of Intent to Refuse to Renew License is considered a part of the record in this matter.

The following items were submitted by Respondent and admitted to the record on December 3, 2014:

- A) **Exhibit A** – A seven (7) page Licensing Study Report regarding License # DC250302373 with a cover letter dated May 5, 2014.
- B) **Exhibit B** – An eleven (11) page Special Investigation Report regarding License # DC250302373 with a cover letter dated September 5, 2013, along with a September 25, 2013 letter requiring a corrective action plan to be filed in five days. The above is accompanied by a one (1) page form, OCAL-259B (REV. 12/03) dated October 12, 2013 and authored by Toni L. Stagray, Licensing Consultant, as well as a letter dated October 7, 2013, from Ms. Stagray to the above licensee acknowledging receipt and

approval of a corrective action plan filed by the Licensee on October 2, 2013.

- C) **Exhibit C** – A seven (7) page Licensing Study Report regarding License # DC250302373 with a cover letter dated February 4, 2011 and a two (2) page response from Mr. Fecher dated February 11, 2011.
- D) **Exhibit D** - A seven (7) page Licensing Study Report regarding License # DC250302373 with a cover letter dated September 9, 2011, a one (1) page response from Mr. Fecher dated October 7, 2011, a one (1) page letter dated September 30, 2011 from Jonalyn S. Rustem, Licensing Consultant to Mr. Fecher and a one (1) page letter dated September 23, 2011, from Mr. Fecher to Ms. Rustem in regard to the review dated September 9, 2011.
- E) **Exhibit E** – A twelve (12) page Special Investigation Report regarding License # DC250302373 with a cover letter dated July 12, 2010, along with a two (2) page undated letter from Mr. Fecher to Ms. Stagray, beginning with the words, "The following is the corrective action plan for investigation #2010D0124013....". The above is accompanied by a one (1) page form, OCAL-259B (REV. 12/03) dated August 2, 2010 and authored by Toni L. Stagray, Licensing Consultant, as well as a letter dated August 2, 2010, from Ms. Stagray to the above licensee acknowledging receipt and approval of a corrective action plan filed by the Licensee on August 2, 2010 as well as advising the licensee that the license had, "been modified to a six-month provisional."

Petitioner did not submit items for admission to the record.

Witnesses

There were no witnesses called by either party in this matter.

Issues and Applicable Law

The issue is whether the Respondent, BCAL, has met its burden of proving by a preponderance of the evidence that Petitioner failed to meet the requirements to operate a Child Care Center as defined by the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111 *et seq.* and the relevant administrative rules.

Respondent claims that the conduct of the applicants as shown by the evidence presented supports a finding of a violation of the following rules promulgated under 1973 PA 116, the Child Care Organizations Act and Executive Reorganization Orders No. 1996-1, No. 1996-2, 2003-1 and 2004-4, MCL 722.112, 722.115, 722.120, 722.124, 330.3101, 445.2001, 445.2011 and 400.226 of the Michigan Compiled Laws):

Count I: R 400.8110(1)(b) and (d).
Count II: R 400.8125(4),(7),(8) and (10).
Count III: R 400.8131(2)
Count IV: R 400.8131(7)
Count V: R 400.8143(10)
Count VI: R 400.8161(2)(a),(b) and (c).
Count VII: R 400.8182(2); (3)(a) and (b); (8)
Count VIII: R 400.8325(1)
Count IX: R 400.8335(1)
Count X: R 400.8510(4)

Findings of Fact

Based upon the entire record in this matter, including the pleadings, testimony and exhibits admitted to the record, the following findings of fact are made:

1. The facts as stated in the agency's Notice of Intent to Refuse to Renew License are taken as proven and true due to the default of the Licensee.
2. Respondent's Exhibits A through E also provide competent, material and substantial evidence that Petitioner's child care center license should not be renewed.

Conclusions of Law

The burden of proof falls upon the Respondent to show, by a preponderance of evidence that Petitioner's child care center license should not be renewed. In the instant matter, the allegations in the Notice of Intent to Refuse to Renew License are substantially proven as the agency has shown by a preponderance of evidence that Petitioners failed to comply with the rules cited in Counts I-X.

In conclusion, Respondent BCAL submitted substantial and material evidence, based upon the entire record, to support denial of renewal of Petitioner's child care center license under the rules cited in Counts I-X by a preponderance of evidence.

Petitioner failed to establish that it otherwise qualified for licensure under the Act.



Peter L. Plummer
Administrative Law Judge

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (14) days after the Proposal for Decision is issued and entered. If

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an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after the 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.

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 26th day of January, 2015.



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