



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

May 1, 2015

Lee Green
910 Merritt St. SE
Grand Rapids, MI 49507

Re: License DF410072806

Dear Lee Green:

On or about April 9, 2015, you were certified mailed the Final Decision and Order of the Michigan Department of Human Services wherein the Department intent to refuse to renew your certificate of registration to operate a family child care home was affirmed. In accordance with the Final Decision and Order, please be advised that the renewal of your certificate or registration is refused, effective April 28, 2015.

It is further our understanding that you will not be receiving children for care now, or in the future, until such time as you are legally licensed.

Sincerely,

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

Jay Calewarts, Acting Director
Child Care Licensing Division
Licensing and Regulatory Affairs

JC:kam

cc: Scott Bettys, Licensing Supervisor
Vickie C. Davison, Licensing Consultant

Certified Mail- Return Receipt Requested

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Lee Green,

Petitioner,

V

Bureau of Children and Adult
Licensing,

Respondent.

Docket No. 14-024351-DHS

Agency No. DF 410072806

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

RECEIVED

APR 21 2015

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 August 7, 2014 Notice of Intent to Refuse to Renew Certificate of Registration (notice of intent) for Petitioner to operate a family 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 Lauren G. Van Steel (ALJ) on November 25, 2014. Petitioner appeared on her own behalf. Departmental Analyst Joshua Hargrove represented Respondent.

Respondent sought to refuse to renew Petitioner's certificate of registration based on allegations in the notice of intent that Petitioner violated the Act, as well as

administrative rules promulgated under the Act. In Count I of the notice of intent, Respondent alleged that Petitioner violated R 400.1905, which states in relevant part:

The caregiver shall complete not less than 10 clock hours of training each year related to child development, program planning, and administrative management for a child care business, not including CPR, first aid, and blood borne pathogen training. [Rule 400.1905 (1)]

The record established Petitioner did not complete the required training. Petitioner acknowledged that she did not have the 10 hours of approved training and did not produce evidence of completing the training. Therefore, the ALJ properly determined Petitioner willfully and substantially violated of Rule 400.1905 (1).

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

All the time of initial attendance, the caregiver shall obtain the following documents:

A child in care statement/receipt using a form provided by the department and signed by the parent certifying the following:

- (i) Receipt of a written discipline policy.
- (ii) Condition of the child's health.
- (iii) Receipt of a copy of the family and group child care home rules.
- (iv) Agreement as to who will provide food for the child.
- (v) Acknowledgement that the assistant caregiver is 14 to 17 years of age, if applicable.
- (vi) Acknowledgement that firearms are on the premises, if applicable.
- (vii) If the child care home was built prior to 1978, then the caregiver shall inform the parents of each child in care and all assistant caregivers of the potential presence of lead-based paint or lead dust hazards, unless the caregiver maintains documentation from a lead testing professional that the home is lead safe. [Rule 400.1907 (1)(b)(i)-(vii)]

Petitioner did not have "Child in Care Statements" for two children in care at her home. In addition, the "Child in Care Statements" that were available for other children in Petitioner's care failed to have the required parent acknowledgement (Respondent's Exhibit 1 and Exhibit 10). Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1907 (1)(b)(i)-(vii).

In Count III of the notice of intent, Respondent alleged that Petitioner 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 June 10, 2014, Petitioner failed to properly assure appropriate care and supervision of the children in her care when she allowed a toddler to remain unsupervised while she was inside the house preparing lunch. Although Petitioner's 12-year-old child was outside with the children, his presence did not satisfy the requirement of appropriate care and supervision. Petitioner acknowledged that the entire yard was not visible from the window where she stood preparing lunch (Petitioner's Exhibit C). Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1911 (1).

In Count IV of the notice of intent, Respondent alleged that Petitioner violated Rule 400.1944, which states in pertinent part:

Operable smoke detectors approved by a nationally recognized testing laboratory shall be installed and maintained on each floor of the home, including the basement, and in all sleeping areas and bedrooms used by children in care. [Rule 400.1944 (1)]

The record established that during Respondent's inspection of Petitioner's basement (an approved child care area), she observed that there were no operable smoke detectors. In addition, Petitioner acknowledged that she did not have the required smoke detectors in the basement of the child care area. Therefore, the ALJ determined Petitioner willfully or substantially violated Rule 400.1944 (1).

In Count V of the notice of intent, Respondent alleged that Petitioner violated R 400.1934, which states in pertinent part:

A carbon monoxide detector, bearing a safety certification mark of a recognized testing laboratory such as UL (Underwriters Laboratories) or ETL (Electrotechnical Laboratory), shall be placed on all levels approved for child care. [Rule 400.1934 (3)]

The record established that during Respondent's inspection of Petitioner's basement (an approved child care area) she observed that there were no operable carbon monoxide detectors. In addition, Petitioner acknowledged that she did not have the required carbon monoxide detector in the basement of the child care area. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1934 (3).

In Count VI of the notice of intent, Respondent alleged that Petitioner violated R 400.1945, which states in pertinent part:

A written plan for the care of children shall be established and posted for each of the following emergencies:

- (a) Fire evacuation.
- (b) Tornado watches and warnings.
- (c) Serious accident or injury.
- (d) Water emergencies, if applicable. [Rule 400.1945 (1)]

Petitioner failed to post a written emergency plan as required. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1945 (1).

In Count VII of the notice of intent, Respondent alleged that Petitioner violated R 400.1945, which states in pertinent part:

Fire drills shall be practiced at least once a month and a written record that includes the date and time it takes to evacuate shall be maintained. [Rule 400.1945 (3)]

Petitioner failed to conduct fire drills every month and failed to have any written record of said fire drills. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1945 (3).

In Count VIII of the notice of intent, Respondent alleged that Petitioner violated R 400.1914, which states in pertinent part:

The use of television, video tapes, movies, electronic devices and computers by children in care shall be suitable to the age of the child in terms of content and length of use. [Rule 400.1914 (6)]

During the June 10, 2014 inspection, Respondent observed a 5-year-old child in Petitioner's day care watching her 12-year-old son play a video game rated "mature for ages 17 and older". Petitioner acknowledged that the videogame was not age appropriate for anyone less than 17 years of age. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1914 (6).

On February 5, 2015, the ALJ issued and entered a Proposal for Decision (PFD) that concluded Petitioner had willfully and substantially violated Rule 400.1905 (1); Rule 400.1907 (1)(b)(i)-(vii); Rule 400.1911 (1); Rule 400.1944 (1); Rule 400.1934 (3); Rule 400.1945 (1); Rule 400.1945 (3); and Rule 400.1914 (6). Parties had 14 days to file

exceptions and 14 days to file responses to any exceptions. Petitioner filed exceptions and no response was filed by Respondent.

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 certificate of registration is REFUSED effective on the date this Final Decision and Order is issued and entered.



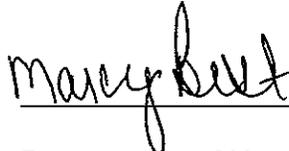
**Nick Lyon, Interim Director
Department of Human Services**

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.



Department of Human Services

✓ Jason Scheeneman
Bureau of Children & Adult Licensing
201 N. Washington Square, 4th Fl.
P.O. Box 30650
Lansing, Michigan 48909

Joshua Hargrove
Bureau of Children & Adult Licensing
201 N. Washington Square, 4th Fl.
P.O. Box 30650
Lansing, Michigan 48909

Scott Bettys
Bureau of Children & Adult Licensing
4809 Clio Road
Flint, MI 48504

Vicki C. Davison
Bureau of Children & Adult Licensing
350 Ottawa, NW, Unit 13, 7th Fl
Grand Rapids, MI 49503

Jerry Hendrick
Bureau of Children & Adult Licensing
350 Ottawa, NW, Unit 13, 7th Fl
Grand Rapids, MI 49503

Lee Green
910 Merritt Street SE
Grand Rapids, MI 49507

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Lee Green,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 14-024351-DHS

Case No.: DF 410072806

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 5th day of February 2015
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Lee Green, Petitioner, appeared on her own behalf. Joshua Hargrove appeared as representative on behalf of the Bureau of Children and Adult Licensing within the Michigan Department of Human Services, Respondent.

This matter concerns a Notice of Intent to Refuse to Renew Certificate of Registration (hereafter "Notice of Intent") issued by Respondent on August 7, 2014, regarding Petitioner's registration to operate a family child care home under the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111. *et seq.* (hereafter "Act").

On September 26, 2014, Respondent filed a request for hearing with the Michigan Administrative Hearing System. On September 30, 2014, the Michigan Administrative Hearing System issued a Notice of Hearing that scheduled a contested case hearing on for October 30, 2014. On October 3, 2014, the undersigned issued an Order Granting Adjournment, rescheduling the hearing to November 25, 2014.

On November 25, 2014, the hearing was held as scheduled. Respondent called Vicki Davison, Child Care Licensing Consultant, to testify as a witness. Petitioner testified on her own behalf.

At the conclusion of the hearing, the record was held open until December 5, 2014, for the filing of additional exhibits by Petitioner, and any objection from Respondent by December 12, 2014. On December 5, 2014, Petitioner filed additional proposed exhibits: Petitioner's Exhibits D & E. Respondent did not file an objection to the additional proposed exhibits by the due date, and the exhibits were then admitted. The record was closed as of December 12, 2014.

The following exhibits were offered by Respondent and admitted into the record as evidence:

1. Respondent's Exhibit 1 is a copy of a Renewal Inspection Report, dated June 25, 2014, with BCAL – Code sheet (redacted).
2. Respondent's Exhibit 2 is a copy of a letter from Respondent to Petitioner, dated January 7, 2008.
3. Respondent's Exhibit 3 is a copy of a Corrective Action Plan, signed January 10, 2008.
4. Respondent's Exhibit 4 is a copy of a letter from Respondent to Petitioner, dated March 15, 2011.
5. Respondent's Exhibit 5 is a copy of a Corrective Action Plan, signed March 21, 2011.
6. Respondent's Exhibit 6 is a copy of online information regarding a computer game, "Resistance: Fall of Man", printed November 20, 2014.
7. Respondent's Exhibit 7 is a copy of online information regarding a computer game, "Resistance 2", printed November 20, 2014.
8. Respondent's Exhibit 8 is a copy of online information regarding a computer game, "Resistance 3", printed November 20, 2014.
9. Respondent's Exhibit 9 is a copy of the Entertainment Software Rating Board (ESRB) Ratings Guide, printed November 20, 2014.
10. Respondent's Exhibit 10 is a copy of a blank Child in Care Statement/Receipt, BCAL-3900 (Rev. 2-14) form.

Petitioner offered the following exhibits that were admitted into the record as evidence:

1. Petitioner's Exhibit A is a copy of a Heartsaver CPR card issued to Petitioner on February 7, 2011.
2. Petitioner's Exhibit B is a copy of a Child and Adult Care Food Program Training Certificates, dated August 27, 2012; August 29, 2013; and September 30, 2014.
3. Petitioner's Exhibit C contains photographs of the interior of Petitioner's home taken by Petitioner in June 2014, after the renewal inspection.
4. Petitioner's Exhibit D is a faxed copy of photographs of the interior and exterior of Petitioner's home (undated).
5. Petitioner's Exhibit E is a faxed copy of a statement from Petitioner, dated December 4, 2014, and the table of contents for a book, Skills Training for Struggling Kids by Bloomquist (2013), and worksheet.

ISSUES AND APPLICABLE LAW

As set forth in Counts I to VIII of the Notice of Intent, the issues presented are whether Petitioner has willfully and substantially violated Rules 5(1); 7(1)(b); 11(1); 14(6); 34(3); 44(1); 45(1) and 45(3) of the Licensing Rules for Family and Group Child Care Homes, 2005 and 2009 AACRS, R400.1901 *et seq.*, such that grounds exist to refuse to renew Petitioner's registration to operate a family child care home or to take other action under Section 11(2) of the Act.

The Act and applicable rules provided at times relevant to the Notice of Intent in pertinent part:

Sec. 11(2) The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee, registrant, or applicant falsifies information on the application or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license or certificate of registration. The department may modify to a provisional status a license of a child care organization when the licensee willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license. * * *. MCL 722.121(2). (Emphasis supplied).

Rule 5. (1) The caregiver shall complete not less than 10 clock hours of training each year related to child development, program planning, and administrative management for a child care business, not including CPR, first aid and blood borne pathogen training. 2009 AACS, R400.1905(1).

Rule 7. (1) Prior to initial attendance, the caregiver shall obtain the following documents: * * *

(b) A child in care statement/receipt using a form provided by the department and signed by the parent certifying the following:

- (i) Receipt of a written discipline policy.
- (ii) Condition of the child's health.
- (iii) Receipt of a copy of the family and group child care home rules.
- (iv) Agreement as to who will provide food for the child.
- (v) Acknowledgement that the assistant caregiver is 14 to 17 years of age, if applicable.
- (vi) Acknowledgement that firearms are on the premises, if applicable.
- (vii) If the child care home was built prior to 1978, then the caregiver shall inform the parents of each child in care and all assistant caregivers of the potential presence of lead-based paint or lead dust hazards, unless the caregiver maintains documentation from a lead testing professional that the home is lead safe. 2009 AACS, R400.1907(1)(b).

Rule 11. (1) The caregiver shall assure appropriate care and supervision of children at all times. 2005 AACS, R400.1911(1).

Rule 14. (6) The use of television, video tapes, movies, electronic devices, and computers by children in care shall be suitable to the age of the child in terms of content and length of use. 2009 AACS, R400.1914(6).

Rule 34. (3) A carbon monoxide detector, bearing a safety certification mark of a recognized testing laboratory such as UL (Underwriters Laboratories) or ETL (Electrotechnical Laboratory), shall be placed on all levels approved for child care. 2009 AACS, R400.1934(3).

Rule 44. (1) Operable smoke detectors approved by a nationally recognized testing laboratory shall be installed and maintained on each floor of the home, including the basement, and in all sleeping areas and bedrooms used by children in care. 2009 AACS, R400.1944(1).

Rule 45. (1) A written plan for the care of children shall be established and posted for each of the following emergencies:

- (a) Fire evacuation.
- (b) Tornado watches and warnings.
- (c) Serious accident or injury.
- (d) Water emergencies, if applicable. 2005 AACS, R400.1945(1).

Rule 45. (3) Fire drills shall be practiced at least once a month and a written record that includes the date and time it takes to evacuate shall be maintained. 2009 AACS, R400.1945(3).

Rule 1 of the Administrative Rules for Child Care Organizations contested case hearings provides the following pertinent definitions:

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 . . . , an administrative rule promulgated under the act . . . , or the terms of a license or a certificate of registration.

(d) "Substantial noncompliance" means repeated violations of the act . . . or an administrative rule promulgated under the act . . . or noncompliance with the act . . . or a rule promulgated under the act . . . , 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 . . . , the rules promulgated under the act . . . 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 . . . , rules promulgated under the act . . . , or the terms of a license or a certificate of registration. * * *. 1998-2000 AACS, R 400.16001. (Emphasis supplied).

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. Lee Green; Petitioner (termed "Registrant" in the Notice of Intent), is the mother of eight children, ages 9 to 34 years old. Her educational background includes graduation from high school in 1982 and one year of college at ITT Technical and certification as a legal secretary, per Petitioner's credible testimony.
2. Petitioner currently resides with her significant other, Rodney Massey, and seven of her eight biological children at 910 Merritt Street SE in Grand Rapids, Michigan.
3. In or around 1995, Petitioner became registered to operate a family child care home on Godwin Street in Grand Rapids, Michigan, per Petitioner's credible testimony.
4. On or about August 15, 1996, Petitioner was issued a certificate of registration to operate a family child care home, with a current registered capacity of 6 children, at her current address of 910 Merritt Street SE in Grand Rapids, Michigan. [Resp. Exh. 1]. Mr. Massey, who works the night shift, is not a designated child care assistant for purposes of Petitioner's registration, although he occasionally assists her in watching the children.
5. Petitioner operates the family child care home in daytime hours, Monday through Friday. She has nine children in enrollment, who attend on two shifts per Petitioner's credible testimony.

6. On or about January 7, 2008, a Licensing Study Report was completed and Petitioner was cited with a violation of Rule 5(1), R400.1905(1), for failing to "complete not less than 10 clock hours of training each year related to child development . . ." [Resp. Exh. 2].
7. On January 24, 2008, Petitioner's Corrective Action Plan to show compliance with R400.1905(1) was approved. [Resp. Exh. 3].
8. On or about March 15, 2011, a Licensing Study Report was completed and Petitioner was cited with a violation of R400.1905(1) for failing to "complete not less than 10 clock hours of training each year related to child development . . ." [Resp. Exh. 4].
9. On March 31, 2011, Petitioner's Corrective Action Plan to show compliance with R400.1905(1) was approved. [Resp. Exh. 5].
10. On June 10 and 11, 2014, Licensing Consultant Vicki Davison conducted a renewal inspection of Petitioner's child care home and cited Petitioner with 33 licensing rule violations. Ms. Davison completed a portion of the inspection on June 10, 2014, and Petitioner asked her to leave after a short time. Ms. Davison returned to the home on June 11, 2014, and completed the inspection. [Resp. Exh. 1].
11. Ms. Davison credibly testified that Petitioner did not provide any documentation of having completed 10 clock hours of training for each of the three years (30 hours required) included in the renewal inspection.
12. Petitioner acknowledged that she did not have 10 clock hours of approved training for each of the three years, but indicated she thought that she could substitute reading materials related to child care that she had chosen as self-training. Petitioner did not have any certification for her self-training. She did not produce evidence of having completed the required training at hearing, but rather an expired CPR card, food-program training and a copy of a book she is reading about childcare, with completed worksheet. [Pet. Exh. A, B and E].
13. Ms. Davison credibly testified that the Petitioner's substitution of her own reading materials did not meet the rule requirements for training, including an assessment of knowledge.
14. Ms. Davison credibly testified that Petitioner's failure to provide documentation of having completed 10 hours of training per year constituted a violation of Rule 5(1), and was a repeat of the prior cited

violations in 2008 and 2011. Petitioner had previously acknowledged in the 2008 and 2011 Corrective Action Plans that she was required to complete 10 hours of training per year. [Resp. Exh. 2-5].

15. When Ms. Davison came to Petitioner's family child care home for an unannounced visit to conduct the renewal inspection during the afternoon of June 10, 2014, she observed at least four toddler or preschool-age child care children playing outside in a fenced area with Petitioner's 12-year-old son, J.M. (DOB 3/13/2002), supervising the children, per Ms. Davison's credible testimony.
16. Petitioner contends that the children were not outside on that date, but were downstairs when Ms. Davison first arrived. Ms. Davison's detailed testimony on this point is found to be more likely accurate and is consistent with her written report. [Resp. Exh 1].
17. Petitioner's son, J.M., likely assisted her in keeping eyes on the child care children as an "extra set of eyes", but he was not an approved assistant child care provider for purposes of Petitioner's family child care home registration.
18. When Ms. Davison knocked on the door on June 10, 2014, Petitioner's adult daughter likely came to the door and said that Petitioner was upstairs, per Ms. Davison's credible testimony. Petitioner then came to the door after several minutes, per Ms. Davison's credible testimony, although Petitioner testified at hearing that she was downstairs with the children at the time that Ms. Davison arrived, and that she personally answered the door.
19. Petitioner later told Ms. Davison that she had visual contact with the children playing outside through a back door window off the laundry room next to the kitchen, while she was fixing grilled-cheese sandwiches and tomato soup for lunch for about 20 minutes. Ms. Davison credibly testified that she looked out the back window herself and could not see the entire backyard from the window. Petitioner acknowledged in her testimony that she could not see the full backyard from the back window; she could see the children on the wood-chipped playground area, but not on the concrete area of the backyard.
20. Petitioner acknowledged in her testimony that one of the child care children who were outside when observed by Ms. Davison was about 14 months old and walked in a "pushcart" or walker. See the BCAL Code Sheet. [Resp.Exh. 1].

21. The required level of supervision for children playing outside was greater for toddler and preschool-age children, as opposed to school-age children, per Ms. Davison's credible testimony.
22. It is likely that Petitioner could not have seen the entire backyard from the back window while she was fixing lunch, and that simply observing the toddler and preschool-age children through the back window was not sufficient supervision. [Pet. Exh. C].
23. It is more likely than not that Petitioner was not properly supervising the four child care children who were playing outside on June 10, 2014, and that she could not properly use her 12-year-old son to supervise the children.
24. Ms. Davison credibly testified that Petitioner's actions constituted a violation of Rule 11, which requires that a caregiver assure appropriate care and supervision of children at all times.
25. Ms. Davison credibly testified that she inspected the basement of the family child care home because it was included as approved child care space. There was neither an operable smoke detector nor an operable carbon monoxide detector in the basement level child care space of the home.
26. The rules require an operable smoke detector and operable carbon monoxide detector on each level of the home and in each room where children sleep or nap that is approved for child care space, per Ms. Davison's credible testimony.
27. When Ms. Davison questioned Petitioner about the detectors, Petitioner said that there was a combination smoke detector/carbon monoxide detector in the furnace room next to the room where children sleep or nap in the basement. When they checked the furnace room, however, it was not there and Petitioner said that the combination smoke detector/carbon monoxide detector was upstairs and needed a battery replacement. Petitioner stated that she knew that Ms. Davison was coming; Ms. Davison had made a prior attempt to conduct an inspection when Petitioner was not home and they had a conversation that she would be coming for a renewal inspection.
28. Petitioner acknowledged in her testimony that at the time of the renewal inspection there was not an operable smoke/carbon monoxide detector in the basement child care space. She had taken the smoke/carbon

monoxide detector out of the furnace room on June 10th to change a battery, and she later found it under her son's bed in July 2014.

29. Ms. Davison observed an extension cord running from one side of the room to the other in the basement to operate a television/videogame.
30. During her inspection Ms. Davison observed Petitioner's 12-year-old son, J.M., playing a videogame in the approved child care space on the basement level of the home. There was a 5-year-old child care child sitting with J.M. watching the game. The videogame, "Resistance" was likely rated "Mature" for ages 17 and older, and was not appropriate for viewing by a 5-year-old child. Petitioner acknowledged in her testimony that the videogame was rated "mature" for "blood" in "alien army" scenes, but stated that the game did not contain bad language or sexual scenes.
31. Although Petitioner contended at hearing that the "big" television/videogame area was around the corner of the basement that was not a part of the child care space and that her son had headphones on, she acknowledged that there was no wall or physical separation from the child care space and the 5-year-old child was able to go over to the television/videogame area. [Pet. Exh. D; Resp. Exh. 6-9].
32. Ms. Davison credibly testified that Petitioner was required to conduct a fire drill in the family child care home on a monthly basis and to have written documentation of the dates of the fire drill and time necessary for children to leave the home. Petitioner told her that she had conducted fire drills, but had no documentation of them. Petitioner acknowledged in her testimony that she did not have fire drills every month, and that she did not write down fire drill information.
33. Ms. Davison credibly testified that Petitioner was required to post a written emergency plan. At the renewal inspection, Petitioner had no written emergency plan posted, and such a plan was not located by Petitioner at the time of the inspection. Petitioner acknowledged in her testimony that she last posted a written emergency plan in 2010, and had not rewritten it.
34. Ms. Davison credibly testified that Petitioner did not have any "Child in Care Statements" for two children who were in her care. Petitioner also had "Child in Care Statements" that were signed and dated for six other children, but without the required acknowledgements by parents. Child care providers are required to have reviewed such statements with parents and have them acknowledged. [Attachment to Resp. Exh. 1; Resp. Exh. 10].

35. Petitioner acknowledged that she is "just bad with paperwork" and that the "Child in Care Statements" were not filled out correctly. Also, she had a flood in her house from when a water heater exploded and she did not re-do files that were lost.

CONCLUSIONS OF LAW

Respondent Bureau has the burden of proof in this matter to show by a preponderance of evidence that Petitioner has violated administrative rules promulgated under the Act as alleged in the Notice of Intent. The principles that govern judicial proceedings also apply to administrative proceedings. 8 *Callaghan's Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).

Further, for purposes of imposing a sanction under Section 11(2) of the Act, Respondent must show that the alleged violations constituted "willful" and "substantial" noncompliance with the rules, as those terms are defined in 1999 AACS, R 400.16001(1).

The specific allegations of rule violations set forth in Notice of Intent are addressed as follows:

Count I – R400.1905(1)

In Count I, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(c) of the Notice of Intent, evidences violation of Rule 5(1), which states:

Rule 5. (1) The caregiver shall complete not less than 10 clock hours of training each year related to child development, program planning, and administrative management for a child care business, not including CPR, first aid and blood borne pathogen training. 2009 AACS, R400.1905(1).

Based on the above findings of fact, it is concluded that a violation of Rule 5(1) has been established by a preponderance of the evidence, in that at the time of the renewal inspection Petitioner had not completed 10 clock hours of training as required.

Further, it is concluded that Petitioner's violation of Rule 5(1) was both "willful" and "substantial" noncompliance, as those terms are defined by 1999 AACS, R 400.16001(1). As a licensee who has been trained in the applicable rules, Petitioner knew or had reason to know that she was required to have 10 clock hours of training each year. Further, Petitioner's noncompliance with the rule was likely a repeat violation from prior inspections in 2008 and 2011.

Count II – R 400.1907(1)(b)

In Count II, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(h) of the Notice of Intent, evidences a violation of Rule 7(1)(b), which states:

- Rule 7. (1) Prior to initial attendance, the caregiver shall obtain the following documents: * * *
- (b) A child in care statement/receipt using a form provided by the department and signed by the parent certifying the following:
 - (i) Receipt of a written discipline policy.
 - (ii) Condition of the child's health.
 - (iii) Receipt of a copy of the family and group child care home rules.
 - (iv) Agreement as to who will provide food for the child.
 - (v) Acknowledgement that the assistant caregiver is 14 to 17 years of age, if applicable.
 - (vi) Acknowledgement that firearms are on the premises, if applicable.
 - (vii) If the child care home was built prior to 1978, then the caregiver shall inform the parents of each child in care and all assistant caregivers of the potential presence of lead-based paint or lead dust hazards, unless the caregiver maintains documentation from a lead testing professional that the home is lead safe. 2009 AACS, R400.1907(1)(b).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has violated Rule 7(1)(b), in that she failed to have two "Child in Care Statements" for two children, and failed to have fully completed "Child in Care Statements" for six children at the time of the renewal inspection.

It is further concluded that the violation of Rule 7(1)(b) was both "willful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with the rule and failed to do so. Therefore, the violation was "willful" under 1999 AACS, R 400.16001(1)(e).

Further, Petitioner's failure to comply with Rule 7(1)(b) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that the noncompliance likely jeopardized the health, safety and care of children in the family child care home by failing to ensure required information was readily available if needed in an emergency.

Count III – R 400.1911(1)

In Count III, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(gg) of the Notice of Intent, evidences a violation of Rule 11(1), which states:

Rule 11. (1) The caregiver shall assure appropriate care and supervision of children at all times. 2005 AACS, R400.1911(1).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has likely violated Rule 11(1), as specified in Notice of Intent. It is more likely than not that Petitioner could not adequately supervise the four toddler and preschool-age children who were playing outside while she was inside the home looking through a back window, and that her 12-year-old son was not an approved child care assistant.

It is further concluded that the violation of Rule 11(1) was both "wilful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with Rule 11(1), and failed to do so. Therefore, the violation was "wilful" under 1999 AACS, R 400.16001(1)(e).

Further, Petitioner's failure to comply with Rule 11(1) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that her noncompliance with the rule likely jeopardized the health, safety and care of children in the family child care home.

Count IV – R 400.1944(1)

In Count IV, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(n) of the Notice of Intent, evidences a violation of Rule 44(1), which states:

Rule 44. (1) Operable smoke detectors approved by a nationally recognized testing laboratory shall be installed and maintained on each floor of the home, including the basement, and in all sleeping areas and bedrooms used by children in care. 2009 AACS, R400.1944(1).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has violated Rule 44(1), as specified in the Notice of Intent. Petitioner acknowledged that she did not have the required operable smoke detector in the basement child care space at the time of the renewal inspection.

It is further concluded that the violation of Rule 44(1) was both "wilful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with Rule 44(1), and failed to do so. Therefore, the violation was "wilful" under 1999 AACS, R 400.16001(1)(e).

Further, Petitioner's failure to comply with Rule 44(1) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that her noncompliance with the rule likely jeopardized the health, safety and care of children in the family child care home.

Count V – R 400.1934(3)

In Count V, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(o) of the Notice of Intent, evidences a violation of Rule 34(3), which states:

Rule 34. (3) A carbon monoxide detector, bearing a safety certification mark of a recognized testing laboratory such as UL (Underwriters Laboratories) or ETL (Electrotechnical Laboratory), shall be placed on all levels approved for child care. 2009 AACS, R400.1934(3).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has violated 34(3). Petitioner acknowledged that she did not have the required operable carbon monoxide detector in the basement child care space at the time of the renewal inspection.

It is further concluded that the violation of Rule 34(3) was both "wilful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with Rule 34(3) and failed to do so. Therefore, the violation was "wilful" under 1999 AACS, R 400.16001(1)(e). Further, Petitioner's failure to comply with Rule 34(3) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that her noncompliance with the rule likely jeopardized the health, safety and care of children in the family child care home.

Count VI – R 400.1945(1)

In Count VI, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(l) of the Notice of Intent, evidences a violation of Rule 45(1), which states:

Rule 45. (1) A written plan for the care of children shall be established and posted for each of the following emergencies:

(e) Fire evacuation.

(f) Tornado watches and warnings.

(g) Serious accident or injury.

(h) Water emergencies, if applicable. 2005 AACS, R400.1945(1).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has violated Rule 45(1), as alleged in the Notice of Intent. Petitioner acknowledged that she did not have a written emergency plan posted at the time of the renewal inspection.

It is further concluded that the violation of Rule 45(1) was both "wilful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with Rule 45(1), and failed to do so. Therefore, the violation was "wilful" under 1999 AACS, R 400.16001(1)(e). Further, Petitioner's failure to comply with Rule 45(1) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that her noncompliance with the rule likely jeopardized the health, safety and care of children in the family child care home by not being properly prepared for emergencies.

Count VII – R 400.1945(3)

In Count VII, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(z) of the Notice of Intent, evidences a violation of Rule 45(3), which states:

Rule 45. (3) Fire drills shall be practiced at least once a month and a written record that includes the date and time it takes to evacuate shall be maintained. 2009 AACS, R400.1945(3).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has violated Rule 45(3). Petitioner acknowledged that she did not conduct fire drills every month and that she did not properly document the fire drills that were held.

It is further concluded that the violation of Rule 45(3) was both "wilful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with Rule 45(3), and failed to do so. Therefore, the violation was "wilful" under 1999 AACS, R 400.16001(1)(e). Further, Petitioner's failure to comply with Rule 45(3) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that her noncompliance with the rule likely jeopardized the health, safety and care of children in the family child care home from a fire safety standpoint.

Count VIII – R 400.1914(6)

In Count VIII, Respondent alleges that Petitioner's conduct, as set forth in paragraph 6(ee) of the Notice of Intent, evidences a violation of Rule 14(6), which states:

Rule 14. (6) The use of television, video tapes, movies, electronic devices, and computers by children in care shall be suitable to the age of the child in terms of content and length of use. 2009 AACS, R400.1914(6).

Based on the above findings of fact, a preponderance of evidence shows that Petitioner has violated Rule 14(6), as alleged in the Notice of Intent. It is more likely than not that Petitioner allowed a five-year-old child care child to have access to a "mature" rated videogame while in care.

It is further concluded that the violation of Rule 14(6) was both "wilful" and "substantial," as those terms are defined by 1999 AACS, R 400.16001(1). Petitioner knew or should have known that she was required to be in compliance with Rule 14(6), and failed to do so. Therefore, the violation was "wilful" under 1999 AACS, R 400.16001(1)(e). Further, Petitioner's failure to comply with Rule 14(6) also constituted "substantial" noncompliance under 1999 AACS, R 400.16001(1)(d), in that her noncompliance with the rule likely jeopardized the care and supervision of children in the family child care home.

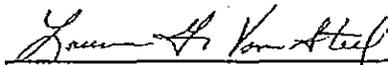
In summary, Respondent has proven by a preponderance of the evidence that Petitioner has willfully and substantially violated Rules 5(1); 7(1)(b); 11(1); 14(6); 34(3); 44(1); 45(1) and 45(3) of the Licensing Rules for Family and Group Child Care Homes, 2005 and 2009 AACS, R400.1901 *et seq.*

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Department Director adopt the above findings of fact and conclusions of law, and take action on the Notice of Intent as deemed appropriate under the Act.

EXCEPTIONS

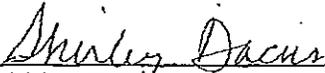
If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within twenty-one (21) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after Exceptions 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.



Lauren G. Van Steel
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 5th day of February, 2015.



Shirley Dacus
Michigan Administrative Hearing System

Lee Green
910 Merritt Street SE
Grand Rapids, MI 49507

Vicki C. Davison
Bureau of Children and Adult Licensing
350 Ottawa, N.W., Unit 13, 7th Floor
Grand Rapids, MI 49503

Joshua Hargrove
Bureau of Children and Adult Licensing
201 N. Washington Square, 4th Floor
P.O. Box 30650
Lansing, MI 48909

Jason Scheeneman
Bureau of Children and Adult Licensing
201 N. Washington Square, 4th Floor
P.O. Box 30650
Lansing, MI 48909

Scott Bettys
Bureau of Children and Adult Licensing
4809 Clio Road
Flint, MI 48504

Jerry Hendrick
Bureau of Children and Adult Licensing
350 Ottawa Avenue, N.W., Unit 13, 7th Fl
Grand Rapids, MI 49503