



RICK SNYDER  
GOVERNOR

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

MIKE ZIMMER  
DIRECTOR

April 15, 2015

Mr. Clarence Wimbley  
Right Start Learning Center  
137 East Cleveland Ave.  
Muskegon Heights, MI 49444

Re: License DC610095832; Muskegon Co. Circuit Court Case No. 14-49606-AA

Dear Mr. Wimbley:

Enclosed is a copy of the Muskegon County Circuit Court's Opinion and Order on Appeal wherein the Court has affirmed the Final Decision and Order of Maura D. Corrigan, Director of the Michigan Department of Human Services, dated July 11, 2014. In accordance therewith, your license renewal is refused effective March 18, 2015.

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

Enclosure.

Certified Mail- Return Receipt Requested.

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

\* \* \* \*

CLARENCE WIMBLEY, d/b/a RIGHT  
START LEARNING CENTER,

Petitioner/Appellant,

HON. WILLIAM C. MARIETTI

v.

Case No. 14-49606-AA

BUREAU OF CHILDREN AND  
ADULT LICENSING,

Respondent/Appellee.

\_\_\_\_\_  
FREDRIC F. BALGOOYEN (P10386)  
Attorney for Petitioner/Appellant

SCOTT R. SHIMKUS (P77546)  
Assistant Attorney General  
Attorney for Respondent/Appellee

\* \* \* \*

At a session of said Court held in the Hall of  
Justice, in the city of Muskegon, county and  
state aforesaid on the 18th day of March 2015.

PRESENT: HONORABLE WILLIAM C. MARIETTI  
Circuit Judge

OPINION AND ORDER ON APPEAL

The Petitioner/Appellant operates a child care center that must be licensed. The Respondent/Appellee refused to renew the license based upon substantial and willful violation of rules promulgated pursuant to the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111, *et seq.* Following a hearing before an administrative law judge and review by the Director of the Department of Human Services, the refusal to renew was sustained. The Petitioner seeks review in this court. The review is an inquiry of whether the decision to deny renewal was arbitrary, capricious or a clear abuse

of discretion and was supported by competent, material and substantial evidence or is contrary to law. *Houghton – Portage Township Schools v Petrelius*, 281 Mich App 520; 761 NW2d 395 (2008).

A review of the record in this case indicates no material disputes of the fact that the Petitioner violated Child Care Organization Act's rules. Specifically, the Petitioner did not maintain the proper ratio of staff to children in violation of R 400.520a(2). This is a significant matter that directly involves the safety of the children entrusted to Petitioner's care. This violation was observed on July 9, 2013. The Petitioner had been advised of the proper staffing ratios on, at least, two prior occasions in May of 2012. Exhibit G. In addition, a copy of licensing statutes and rules are provided to the Petitioner when he applies for a license. Transcript (T) p 13. Thus, after receiving a copy of those materials and being advised on at least two occasions of the staffing ratios required therein, the Petitioner had reason to know that the conduct observed on July 9, 2013 was a violation. This constitutes a willful violation of a rule. R 400.16001(e). The reason the Petitioner was advised of the proper staffing ratios in May of 2012 is because there were two separate observations of insufficient staffing. Thus, the July 9, 2013 violation was a repeat of the conduct observed in 2012 and meets the definition of substantial noncompliance. R 400.16001(d). Having found a willful and substantial violation, the Respondent was authorized to refuse to renew the Petitioner's license. MCL 722.121(2).

The July 9 inspection also revealed the existence of safety hazards in the playground area in violation of R 400.5117. Exhibit B. The Petitioner admitted that these conditions existed. T p 128. One of the hazards observed on July 9 was the same that was cited following an inspection in the autumn of 2012. Exhibit C. Again,

there is a willful and substantial violation that involves the safety of the children. This also justifies a refusal to renew a license.

On July 9, children were left unsupervised in violation of R 400.5105. Exhibit B. Petitioner acknowledged this. T p 132. Lack of supervision was observed also during the 2012 visit. This is yet another willful, substantial violation implicating child safety.

There were numerous other violations alleged regarding record keeping infractions. Suffice it to say, for the purpose of this review, the specific willful and substantial safety violations acknowledged, *supra*, dispel any claim that the refusal to renew was arbitrary, capricious, an abuse of discretion, not based upon competent, substantial and material evidence or contrary to law. The decision of the Respondent is **AFFIRMED.**

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'William C. Marietti', written over a horizontal line.

Hon. William C. Marietti

Jen Kerr

STATE OF MICHIGAN  
DEPARTMENT OF HUMAN SERVICES

In the matter of

Clarence Wimbley-  
Right Start Learning Center,  
Petitioner,

v

Bureau of Children and Adult  
Licensing,

Respondent.

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Docket No. 14-000812-DHS

Case No. DC 610095832

Agency: DHS

Case Type: DHS BCAL

Filing Type: Sanction

RECEIVED

JUL 16 2014

BUREAU OF CHILDREN  
AND ADULT LICENSING

Issued and entered  
this 11 day of July, 2014

by

Maura D. Corrigan, Director  
Department of Human Services

**FINAL DECISION AND ORDER**

This matter began with Respondent's December 5, 2013 amended notice of intent to refuse to renew license (notice of intent) regarding Petitioner's license to operate a child care center under the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing was conducted on March 5, 2014 by Administrative Law Judge Lauren G. Van Steel (ALJ). Petitioner and his wife Lizzie Wimbley appeared on Petitioner's behalf. Departmental Analyst Jennifer Kerr represented the Respondent.

Respondent seeks to refuse the renewal of 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 R 400.5103a which states in pertinent part:

\* \* \*

The center shall ensure that the qualifications of the lead caregivers meet 1 of the following:

- (a) Bachelor's degree or higher in early childhood education, child development, or a child related field.
- (b) Associate's degree or higher in early childhood education or child development.
- (c) Montessori credential with 480 hours [experience].
- (d) Child development associate credential with 480 hours [experience].
- (e) High school diploma/GED with 12 semester hours with 960 hours [experience].
- (f) High school diploma/GED with Combination of: 12 semester hours and/or 18 ceus to equal 180 clock hours with 1920 hours [experience].
- (g) High school diploma/GED with Combination of: 6 semester hours and/or 9 ceus to equal 90 clock hours with 3840 hours [experience]. [Rule 400.5103a (5)(a)-(g)]

\* \* \*

On June 22, 2013 and July 9, 2013, Respondent conducted an onsite renewal inspection of Petitioner's child care center. Petitioner did not have the required transcripts, certifications, or other required documentation to demonstrate the lead caregivers were qualified at the time of inspection. While Petitioner did eventually provide Respondent with the required documentation, the record indicated that Petitioner had previously been cited for this same violation, as noted in a licensing study report dated November 28, 2012 (Respondent's Exhibit C). Petitioner thus knew or had

reason to know that the documentation was required to be on file at the time of inspection. Therefore, the ALJ determined that Respondent sufficiently demonstrated Petitioner's willful and substantial violation of Rule 400.5103a (5)(a)-(g).

Respondent also alleged in Count II of the notice of intent that Petitioner violated R 400.5105, which states in pertinent part:

The center shall provide appropriate care and supervision of children at all times. [Rule 400.5105(1)]

During the June 22, 2013 inspection, Respondent observed a caregiver leave six children unsupervised. In addition, two preschool children were observed entering the building from the playground area to use the bathroom without supervision. Both incidents evidenced Petitioner's failure to provide appropriate supervision of said children. Therefore, the ALJ concluded that Respondent had shown by a preponderance of the evidence that Petitioner willfully and substantially violated Rule 400.5105 (1).

Respondent further alleged in Count III of the Notice that Petitioner violated R 400.5111, which states in pertinent part:

At the time of the child's initial attendance, a child information card, using a form provided by the department or comparable substitute, filled out by the parent, including written permission, signed by the parent, to seek emergency medical care shall be obtained and kept on file and accessible in the center. [Rule 400.5111(1)]

The ALJ determined that Petitioner failed to maintain the child information cards as required. The inspection revealed that eleven children enrolled in Petitioner's child care center did not have information cards accessible to caregivers. The lack of accessibility of these cards jeopardized the health and safety of the children in the event

of an emergency. Therefore, the ALJ determined that Respondent did show by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5111 (1).

In Count IV of the Notice, Respondent alleged that Petitioner violated R 400.5111, which states in pertinent part:

The center shall maintain an accurate record of daily attendance at the center that includes each child's first and last name, and each child's arrival and departure time. [Rule 400.5111(8)]

During the June 22, 2013 inspection, Respondent reviewed Petitioner's attendance records and found that several children had not been signed out the day before and some children were only listed by their first name. Accordingly, Petitioner did not accurately identify each child. In addition, according to the attendance record, one child was signed in and out but had not actually attended that day as identified in the attendance record, evidencing Petitioner's failure to accurately maintain daily attendance records. Therefore, the ALJ determined that Respondent did show by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5111 (8).

In Count V of the Notice, Respondent alleged that Petitioner violated R 400.5113, which states in pertinent part:

Medication, prescription or nonprescription, shall be given or applied only with prior written permission from a parent. [R 400.5113(b)(2)]

Petitioner did not refute that it failed to administer medication as prescribed. Therefore, the ALJ properly concluded that Respondent demonstrated by a

preponderance of the evidence Petitioner willfully and substantially violated R 400.5113(b)(2).

In Count VI of the Notice, Respondent alleged that Petitioner violated R 400.5117 which states in pertinent part:

An outdoor play area located on the center's premises and all outdoor play equipment shall be maintained in a safe condition and inspected daily before use to ensure that no hazards are present. [Rule 400.5117(5)]

Respondent observed a broken toddler slide at Petitioner's outdoor play area that created a hazardous condition for the children. In addition, a broken Consumer's Energy vent pipe with sharp edges was also observed in the play area that created a hazard to the safety of the children. Therefore, Petitioner failed to maintain the outdoor play equipment in a safe condition and the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5117 (5).

In Count VII of the Notice, Respondent alleged that Petitioner violated R 400.5201a, which states in pertinent part:

The ratio of caregivers to children present at all times shall be based on the following provisions:

(b) For infants and young toddlers, 0-29 months, there shall be 1 caregiver for 4 children or each fraction of 4, including children who are related to the staff and the licensee. [Rule 400.5201a (2)]

During the July 9, 2013 inspection, Petitioner's child care center was not in compliance with the required staff to child ratio. Respondent observed six infants/young toddlers being supervised by one caregiver, when Petitioner is required to have one caregiver for every for children. Petitioner's improper staffing ratios compromised the

safety of the children at its location. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5201a (2).

In Count VIII of the Notice, Respondent alleged that Petitioner violated R 400.5204, which states in pertinent part:

An infant shall rest or sleep alone in an approved crib or porta-crib. The following provisions shall apply:

\* \* \*

Blankets shall not be draped over cribs or porta-cribs. [R 400.5204 (5)(d)]

The record indicated Respondent observed blankets draped over each side of the crib. Petitioner did not refute the allegation. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5204 (5)(d).

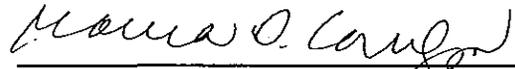
On April 30, 2014, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioner had willfully and substantially violated Rule 400.5103a (5); Rule 400.5105 (1); Rule 400.5111 (1); Rule 400.5111 (8); Rule 400.5113 (b)(2); Rule 400.5117 (5); and (8); Rule 400.5201a (2). The parties had 14 days to file exceptions and 14 days to file responses to any exceptions. On May 14, 2014, Petitioner filed exceptions. 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 license renewal is REFUSED effective on the date this Final Decision and Order is issued and entered.



**Maura D. Corrigan, Director**  
**Department of Human Services**

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 14 day of July, 2014.



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