



STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
INTERIM DIRECTOR

February 5, 2015

Ms. Jerene Calhoun
2121 Champagne
Ann Arbor, MI 48108

Re: License DG810254475

Dear Ms. Calhoun:

On or about January 21, 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 group child care home. In accordance with that Final Decision and Order, your license is revoked and is now no longer in effect as of February 2, 2015.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 black ink, appearing to read "Jerry Hendrick", written over a circular stamp or seal.

Jerry Hendrick, Acting Director
Child Care Licensing Division
Bureau of Children & Adult Licensing

JH:kam

cc: Ailene Buchtrup, Licensing Supervisor
Dalerie Jones, Licensing Consultant

CERTIFIED MAIL- Return Receipt Requested

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Jerene Calhoun,

Petitioner,

v

Bureau of Children and Adult
Licensing,

Respondent.

Docket No. 14-017654-DHS

Agency No. DG 810254475

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 21 day of January, 2015
by
Nick Lyon, Interim Director
Department of Human Services

FINAL DECISION AND ORDER

This matter began with Respondent's May 22, 2014 Notice of Intent to Revoke (notice of intent) Petitioner's license to operate a group child care home under the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing regarding the matter at issue was held by Administrative Law Judge Zainab A. Baydoun (ALJ) on October 29, 2014. Attorney Erane Washington represented Petitioner. Assistant Attorney General Kelley McLean represented Respondent.

Respondent sought to revoke Petitioner's license based on allegations in the notice of intent that Petitioner violated the Act, as well as administrative rules

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BUREAU OF CHILDREN
AND ADULT LICENSING

promulgated under the Act. In Count I of the notice of intent, Respondent alleged that Petitioner violated R 400.1913, which states in relevant part:

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

The record established that on December 7, 2011, an investigation resulted due to the allegations made by a parent whose child attended Petitioner's child care home. It was alleged that Petitioner slapped the child across the face in order to discipline said child. At the conclusion of the investigation, Petitioner was cited with five rule violations including Rule 400.1913 (2) and Rule 400.1913 (3) (a). On December 20, 2011, Petitioner signed a Corrective Action Plan (CAP) to show compliance with the cited rule violations (Respondent's Exhibit C). According to the terms of the CAP, Petitioner agreed not to use corporal punishment to discipline children in her care (Proposal for Decision (PFD), page 3). Petitioner agreed to exercise self-control and use developmentally appropriate positive methods of discipline (Respondent's Exhibit C, page 1). In addition, Petitioner agreed to obtain additional training on appropriate methods of discipline.

On or about March 5, 2014, Respondent received a complaint alleging Petitioner had struck a child in her care. Respondent made contact with Petitioner regarding the allegations. During the interview, Petitioner admitted to hitting Child A with a cardboard tube in order to get said child to comply with using the bathroom and not wetting herself during naps. While Petitioner argued that hitting Child A was more indicative of a "love tap," the record clearly demonstrates that Petitioner struck Child A as a method to encourage the child to self-control her ability to wet her pants. The ALJ properly

concluded that Petitioner failed to implement a developmentally appropriate positive method to assist the child in using the bathroom and not wetting her pants. Therefore, the ALJ properly determined Petitioner willfully and substantially violated of Rule 400.1913 (2).

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

Caregiving staff shall not do any of the following:

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

The record established that Petitioner was on notice that hitting was not an acceptable form of discipline as described in the December 2011 CAP. Petitioner did not dispute that she hit Child A with a cardboard tube and acknowledged that she knew hitting was a violation of the rules. In addition, Petitioner admitted that she failed to comply with her discipline policy (Respondent's Exhibit A, page 3 and Exhibit B). Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1913 (3)(a).

On November 12, 2014, the ALJ issued and entered a Proposal for Decision (PFD) that concluded Petitioner had willfully and substantially violated Rule 400.1913 (2) and Rule 400.1913 (3) (a). Parties had 14 days to file exceptions and 14 days to file responses to any exceptions. No exceptions were filed.

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

ORDER

NOW THEREFORE, IT IS ORDERED that:

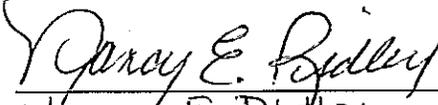
1. To the extent not inconsistent with this Order, the ALJ's Proposal for Decision (PFD) is adopted and is incorporated by reference, and made a part of this Final Decision and Order (see attached PFD).
2. The actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. Petitioner's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



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

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 23rd day of January, 2015.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Jerene Calhoun,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 14-017654-DHS

Case No.: DG 810254475

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 12th day of November, 2014
by: Zainab A Baydoun
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This matter was initiated on May 22, 2014, with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing a Notice of Intent to Revoke License, regarding the license of Jerene Calhoun (Licensee or Petitioner) to operate a group child care home pursuant to the authority of the Child Care Organizations Act, 1973 PA 116 (Act), as amended, MCL 722.111 *et seq.* On or around July 28, 2014, Petitioner requested a hearing to appeal the action.

On July 30, 2014, the Michigan Administrative Hearing System issued a Notice of Hearing, scheduling a hearing for September 3, 2014. On September 2, 2014, Respondent filed a request for adjournment. On September 9, 2014, an Order Granting Adjournment was issued, rescheduling the hearing to October 29, 2014.

The hearing commenced as scheduled on October 29, 2014, at 10:00 a.m. Petitioner was present at the hearing and was represented by her attorney, Erane Washington. Petitioner offered testimony on her own behalf and Larcee Burton, Diane Curry, Karla Robinson, and Patricia Lawson Chukwudi were presented as character witnesses on behalf of the Petitioner. Assistant Attorney General Kelley McLean represented Respondent at the proceeding. Respondent solicited testimony from Dalerie Jones-Hughes, Licensing Consultant. Ailene Buchtrup, BCAL Area Manager was present for the hearing on behalf of Respondent, but did not provide any testimony. There were no additional witnesses and the record closed at the conclusion of the hearing on October 29, 2014.

SUMMARY OF EXHIBITS

Respondent offered the following Exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
A.	A March 24, 2014, Michigan Department of Human Services Bureau of Children and Adult Licensing Special Investigation Report.
B.	Guidelines for Disciplinary Policy in a Day Care Home for Bed & Breakfast Childcare.
C.	A December 2011 Corrective Action Plan.
D.	An April 2012 Child Care Application.

Petitioner offered the following Exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1.	A paper towel roll.
2.	Weekly Time Schedule for Bed & Breakfast Childcare for the week of March 3, 2014, to March 7, 2014.

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, Rules 400.1913 (2) and 400.1913 (3) (a) of the Licensing Rules for Family and Group Child Care Homes, such that grounds exist to revoke Petitioner's license to operate a group child care home or to take other action under Section 11(2) of the Act.

The Act provides in pertinent part as follows:

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 wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license. * * *. MCL 722.121. (Emphasis supplied).

R400.1913 Discipline and child handling (Rule 13) provides in pertinent part as follows:

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

(3) Caregiving staff shall not do any of the following:

(a) Hit, spank, shake, bite, pinch, or inflict other forms of corporal punishment.

* * *

SUMMARY OF EVIDENCE

The following is intended as only as brief summary drawn from the relevant evidence presented at the October 29, 2014, proceeding. The present matter involves Petitioner's appeal of Respondent's Notice of Intent to Revoke License to operate a group child care home.

The hearing record indicates that Petitioner has been a licensed child care provider for over 29 years and that in 2003, Petitioner was issued a license to operate a group child care home, which is currently operating under the name Bed & Breakfast Childcare.

On December 7, 2011, Licensing Consultant Thanh Biehl completed an investigation and authored a Special Investigation Report (Report #201200895006), concerning allegations that Petitioner had slapped a child in her care across the face as a form of discipline. At the conclusion of the investigation, BCAL cited Petitioner with five licensing rule violations, including violations of rules R 400.1913(2) and R 400.1913(3)(a). On December 20, 2011, Licensee signed a Corrective Action Plan (CAP) to show compliance with the cited licensing rule violations, which was presented for review at the hearing. (Exhibit C). Respondent's witness, Dalerie Jones-Hughes, testified that in signing the CAP, Petitioner acknowledged that she was willing to correct the actions that led to the noncompliance and that she agreed to participate in a licensing rules orientation, as well as to obtain additional training on appropriate methods of discipline. A review of the CAP establishes that, among other things, Petitioner agreed that in order to be in compliance with the rules, she will not hit, spank, shake, or inflict other forms of corporal punishment in disciplining a child in her home. Petitioner further agreed that she would use positive developmentally appropriate methods of discipline and would exercise self-control. (Exhibit C, at p. 1).

As a result of the December 2011 incident, Petitioner's license was modified to 1st provisional status for six months. After completion of the additional training and orientation and at the conclusion of the six months, Petitioner's license to operate a group child care home was placed back in regular renewal status. (See MCL 722.111(l) and (m)).

Respondent presented for review at the hearing Petitioner's April 2012 Child Care Application to operate a group child care home on which she checked the box that states "I have reviewed the Child Care Organization Act (1973 PA 116) and the licensing rules for the operation of the child care organization indicated above, and if granted a license, certificate of approval, or certificate of registration, I agree to comply with the Act and Rules." (Exhibit D, p. 1). Petitioner's application was subsequently approved.

On or around March 5, 2014, BCAL received a complaint alleging that on March 4, 2014, Petitioner hit Child A (female, DOB 09/23/09), with a cardboard tube, which looked like a paper towel roll, after Petitioner discovered the Child A wet the bed while napping. Ms. Hughes testified that she was assigned to conduct an investigation based on the categorization of the incident as a "medium risk." On March 10, 2014, Ms. Hughes stated that she spoke with Child A's mother concerning the allegations. According to the Special Investigation Report and Ms. Hughes' testimony, Child A's mother informed Ms. Hughes that when she picked up Child A from child care on March 4, 2014, Petitioner informed her that she "whooped Child A with a cardboard tube because she laid there and peed on herself." Ms. Hughes testified that she was further informed by Child A's mother that Child A told her that "Ms. Jere whooped me with cardboard because I peed on myself." (Exhibit A, at p.2). Although Respondent maintained that Child A did not return to Petitioner's care after the incident, Petitioner offered the weekly time schedule and sign-in log for Bed & Breakfast Childcare to establish that the child was present at the child care home on March 5, 2014. (Exhibit 2, at p.2)

Ms. Hughes stated that on March 11, 2014, she conducted a face-to-face interview with Child A at the child's home with Child A's parents present, using the forensic interviewing protocol. Ms. Hughes provided an explanation concerning the process utilized to conduct a forensic interview and stated that she used a structured conversation model with open-ended questions that helped to establish whether the child could tell the difference between a truth and a lie, prior to asking the child questions concerning the incident. Ms. Hughes testified that during the course of the interview, Child A stated "Ms. Jere whooped me with cardboard because I peed on myself." Ms. Hughes indicated that Child A then pointed to her buttocks and side, stating those were the areas where she was hit with the cardboard. (Exhibit A, at p.2).

Ms. Hughes recalled that after the interview with the child on March 11, 2014, and pursuant to Department policy, she completed an unannounced on-site inspection and interviewed Petitioner at the childcare center. During the interview, Ms. Hughes stated that she asked Petitioner to explain the allegations, upon which Petitioner admitted that she hit Child A with the cardboard tube from a paper towel roll and showed Ms. Hughes the roll she used. Ms. Hughes testified and the Special Investigation Report indicates that Petitioner further explained that she told Child A to use the bathroom before Child A laid down for her nap but she did not. While Child A was lying down but still awake, Petitioner asked Child A for a second time to go to the bathroom and she still did not go. Child A wet herself while napping and after Petitioner cleaned the child up, Petitioner asked Child A "What does this mandate?" Child A began to cry and Petitioner told her "Remember what we talked about? I'm going to have to swat you to get you to remember to get up and use the bathroom when I ask you." (Exhibit A, at pp. 2-3).

During the interview with Ms. Hughes, Petitioner admitted to hitting Child A on the leg a couple of times but maintained that she did not hurt her. According to the Special Investigation Report, Petitioner indicated that she did not consider this a spanking and that she did not know what else to do because Child A continuously wets on herself during naptime. (Exhibit A, at p. 3).

Ms. Hughes testified that during the interview, she questioned Petitioner about whether she was aware of the Department policies concerning the prohibited use of physical discipline and that Petitioner stated she was. Petitioner provided Ms. Hughes with a copy of the discipline policy of Bed & Breakfast Childcare, a review of which establishes that for preschool/school age children, the policy provides that "[t]here will be no physical punishment even if parents give permission. Simply because all it does is cause negative behavior." The policy continued by stating the alternate solution should be positive discipline, including space-room arrangement, scheduling-parents involvement/child involvement, and supervision-communication, observation, rules, expectations. (Exhibit B, at p. 1). Petitioner confirmed to Ms. Hughes that she did not follow her discipline policy. (Exhibit A, at p. 3).

At the hearing, Petitioner did not dispute Respondent's allegations that she hit Child A in the leg with a paper towel roll three or four times; however, she asserted that the incident did not take place in discipline mode but rather in love mode. Petitioner acknowledged that she knew hitting was in violation of the rules and stated that she would not do this in the future. Petitioner's attorney called four character witnesses on behalf of Petitioner, all of whom presented as honest and credible. Petitioner's character witnesses provided testimony regarding their positive experiences and the remarkable level of care provided by Petitioner, as each of them had children in Petitioner's care for many years at various times and whose children were of all ages. Respondent's attorney asserted that because Petitioner's witnesses did not have first-hand knowledge

of the incident at issue, the testimony provided was irrelevant to the matter at hand, as the specific issue was whether Petitioner committed violations of the Rules and Act.

In closing, Petitioner's attorney asserted that the evidence presented by the Department was insufficient to establish *substantial* noncompliance with the Act and Rules, indicating that according to the dictionary definition, the December 2011 and March 2014 incidents did not amount to *repeated* violations, as required. Conversely, Respondent's attorney argued that a subsequent violation of the same rule was sufficient to establish a repeated violation, as the violation occurred more than once, and maintained that revocation of Petitioner's license to operate a group child care home was appropriate.

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. On or around March 25, 2003, Licensee was issued a license to operate a group child care home, with a current licensed capacity of 12, at 2121 Champagne, Ann Arbor, MI 48108. (Exhibit A, at p.1)
2. On December 7, 2011, Licensing Consultant Thanh Biehl completed an investigation and authored a Special Investigation Report (Report #201200895006) after receiving an allegation that Petitioner had slapped a child in her care across the face as a form of discipline.
3. At the conclusion of the December 2011 investigation, Respondent cited Petitioner with five licensing rule violations, including violations of rules R 400.1913(2) and R 400.1913(3)(a).
4. On December 20, 2011, Petitioner signed a Corrective Action Plan (CAP) to show compliance with the cited licensing rule violations. (Exhibit C)
5. As a result of the December 2011 investigation and subsequent CAP, Petitioner's license was modified to a 1st provisional status for six months and she was required to attend a licensing rules orientation and obtain additional training on appropriate discipline.
6. In April 2012 Petitioner completed a Child Care Application to operate a group child care home on which she acknowledged that she had reviewed the Child Care Organization Act and applicable licensing rules and agreed to comply with the Act and Rules. (Exhibit D)

7. On or around March 5, 2014, Respondent received a complaint alleging that on March 4, 2014, Petitioner hit Child A (female, DOB 09/23/09) with a cardboard tube after discovering that the child had wet the bed while taking a nap. (Exhibit A, at p.2)
8. On March 10, 2014, Respondent's Licensing Consultant, Ms. Dalerie Jones-Hughes, spoke with Child A's mother who stated that when she picked up Child A from Petitioner's child care home on March 4, 2014, Petitioner informed her that she "whooped [Child A] with a cardboard tube because she laid there and peed on herself." Child A's mother observed the cardboard roll, which looked like the tube from a roll of gift wrapping paper. When they arrived home, Child A told Child A's Mother that "Ms. Jere whooped [her] with cardboard because [she] peed on [her]self." Child A demonstrated being hit on her buttocks and chest. (Exhibit A, at p. 2)
9. On March 11, 2014, a forensic interview was conducted between Child A and Ms. Hughes during which Child A stated "Ms. Jere whooped me with cardboard because I peed on myself." Child A then pointed to her buttocks and side and stated that those were the areas that she was hit with the cardboard. (Exhibit A, at p. 2)
10. On March 11, 2014, Ms. Hughes made an unannounced on-site inspection at Petitioner's home and asked her to explain the allegations. During the interview, Petitioner admitted that she hit Child A with the cardboard tube from a paper towel roll and she showed Ms. Hughes the roll she used. (Exhibit A, at pp. 2-3)
11. During the interview, Petitioner informed Ms. Hughes that after Child A wet herself while napping, Petitioner cleaned up after her and asked Child A "What does this mandate?" Child A began to cry and Petitioner told her "Remember what we talked about? I'm going to have to swat you to get you to remember to get up and use the bathroom when I ask you." During the interview, Petitioner stated that she hit Child A on the leg a couple times and admitted that she did not know what else to do since Child A wets herself when she naps. (Exhibit A, at p. 3)
12. Petitioner provided Respondent with a copy of her discipline policy which states that for preschool/school age children, "[t]here will be no physical punishment even if parents give permission. Simply because all it does is cause negative behavior". The policy continued by stating the alternate solution should be positive discipline, including space-room arrangement, scheduling-parents involvement/child involvement, and supervision-communication, observation, rules, expectations. (Exhibit A at 3; Exhibit B)

13. Petitioner admitted that she failed to follow her discipline policy. (Exhibit A, at p. 3)

CONCLUSIONS OF LAW

In 1973, the State Legislature enacted the "Child Care Organization Act" to provide for the licensing and regulation of child care organizations and to provide standards of care for these organizations and penalties for violations of the Act, Act 116 of the Public Acts of 1973; MCL 722.111, et seq. The Department of Human Services BCAL now has the authority to license and evaluate child care organizations, including childcare group homes, pursuant to the Act.

MCL 722.121 provides:

(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 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 and Rules 13 (2) and (13(3)(a)). The Administrative Law Judge (ALJ) evaluates the testimony and 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 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 the allegations against Petitioner Calhoun.

COUNT I and COUNT II- R400.1913(2) & (3)(a)

In Count I, Respondent alleges that Petitioner has acted contrary to Rule 13(2), which states:

R400.1913 Discipline and child handling.

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

In Count II, Respondent alleges that Petitioner has acted contrary to Rule 13(3)(a), which states:

R400.1913 Discipline and child handling.

(3) Caregiving staff shall not do any of the following:

(a) Hit, spank, shake, bite, pinch, or inflict other forms of corporal punishment.

By these charges, Respondent asserts that Petitioner failed to utilize developmentally appropriate positive methods of discipline which encourage self-control, self-direction, self-esteem, and cooperation. Closely related to this is the allegation that Petitioner failed to refrain from the use of corporal punishment. Based upon the above findings of fact and the hearing record, it is concluded that a violation of Rules 13(2) and (3) (a) have been established by a preponderance of the evidence.

It was undisputed at the hearing that Petitioner did in fact use a paper towel roll to hit Child A after discovering that the child wet herself during a nap. Petitioner informed Child A's mother of the incident on or around March 4, 2014, when the mother came to pick up the child. Petitioner also admitted to the allegation in the interview with Ms. Hughes that was conducted during the unannounced on-site inspection, and Petitioner testified to the same at the hearing. (Exhibit A, at pp. 2-3; and hearing record). Although Petitioner recalled that she did not hit Child A in discipline mode but rather love mode, the Special Investigation Report indicates that during the interview with Ms. Hughes, Petitioner stated that she did not consider this a spanking and that she did not know what else to do because Child A continuously wets on herself during naptime. (Exhibit A, at p. 3). Therefore, it is established that Petitioner acted to discipline the child contrary to Rules 13 (2) and (3)(a).

It is further concluded that Petitioner's violation of both Rules 13(2) and (3)(a) was "willful" as defined by R 400.16001(1). Respondent signed a CAP on December 20, 2011, thereby agreeing to be in compliance with the rules and confirming that she will not hit, spank, shake, or inflict other forms of corporal punishment when disciplining a child in her home. Petitioner further agreed that she would use positive and developmentally appropriate methods of discipline and would exercise self-control, which she failed to do in this case. (Exhibit C, at p. 1). Petitioner also participated in a licensing rules orientation and obtained additional training on the appropriate methods of discipline prior to her license being modified back up to a regular renewal status.

In addition, Petitioner completed an April 2012 Child Care Application to operate a group child care home on which she checked the box that states "I have reviewed the Child Care Organization Act (1973 PA 116) and the licensing rules for the operation of

the child care organization indicated above, and if granted a license, certificate of approval, or certificate of registration, I agree to comply with the Act and Rules." (Exhibit D, p. 1).

Therefore, as a licensee who has been trained in the applicable rules, Petitioner knew or had reason to know that her group child care home was required to refrain from corporal punishment (including hitting with a paper towel roll) and to utilize developmentally appropriate positive methods of discipline as listed in the rule and willfully failed to do so.

Furthermore, Petitioner's failure to comply with Rule 13(2) and (3)(a) also constituted "substantial" noncompliance under R 400.16001(1)(d), in that her noncompliance with the rules likely jeopardized the care and supervision of child care children. The evidence presented established that in December 2011, not unlike March 2014, Petitioner was cited with five licensing rule violations, which included violations of Rule 13(2) and (3)(a), after it was discovered that Petitioner slapped a child in her care across the face as a form of discipline. Although Petitioner offered an explanation concerning the incident, as a result, Petitioner signed the CAP referenced above and participated in additional training sessions concerning appropriate methods of discipline. Petitioner also knowingly violated the discipline policy in place for her own group child care home. (Exhibit A, at p. 3).

Petitioner's attorney argued that in contested cases, in the absence of a defined term in the rules, the dictionary definition must be used. Petitioner's attorney asserted that in order for a violation to be *substantial*, it must be repeated, and because the word repeated is not defined in the Act or Rules, the dictionary definition of the word repeated must be used. Petitioner relied on a dictionary definition of the word repeated which indicates that in order for something to be repeated, it had to have happened several times. Thus, Petitioner's attorney argued that the violations that took place in December 2011 and March 2014, were not repeated, as they only occurred on two occasions, not several. Respondent's attorney asserted that a subsequent violation of the same rule was sufficient to establish a repeated violation, as the violation occurred more than once.

Based on the totality of the record in this case, it is found and determined that a second violation of the same rule, especially one involving physical discipline and child handling is sufficient to establish substantial noncompliance as defined under R 400.16001(1)(d), as Petitioner's conduct necessarily jeopardized the health, safety, care, treatment, maintenance, or supervision of children.

Although Petitioner maintained that she would not engage in this type of discipline in the future, and the character witnesses provided compelling testimony concerning

Petitioner's remarkable level of care, these arguments, while persuasive, do not negate the fact that that there was a violation of the licensing rules.

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 Rules 400.1913(2) and (3)(a) 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, Suite 2-700
Detroit, Michigan 48202



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 12th day of November, 2014.

Maria Ardelean
Maria Ardelean
Michigan Administrative Hearing System

Joshua Hargrove
Bureau of Children and Adult Licensing
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