



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF COMMUNITY AND HEALTH SYSTEMS

MIKE ZIMMER
DIRECTOR

August 19, 2015

Lindsay Brogan
21 Elder Drive
Marquette, MI 49855

Re: DF520354699
Docket No. 15-012936-DHS

Dear Ms. Brogan:

On or about July 13, 2015 you were certified mailed a copy of the Final Decision and Order upholding the Department of Licensing and Regulatory Affairs' intention to revoke your license to operate a family child care home. In accordance with that Final Decision and Order, your license is revoked and is now no longer in effect as of July 26, 2015.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,

Mark Jansen, Director
Child Care Licensing Division
Bureau of Community and Health Systems

MJ: sb
cc: Rose Rafferty-Aguirre

Enclosure

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

In the matter of:

Lindsay Brogan,
Petitioner

v

Bureau of Children and Adult
Licensing,
Respondent.

Docket No. 15-012936-DHS

Agency No. DF 520354699

Agency: LARA

Case Type: OCAL

Filing Type: Sanction

Issued and entered
this 12th day of July, 2015 by
Mike Zimmer, Department Director

RECEIVED
JUL 16 2015
BUREAU OF CHILDREN
AND ADULT LICENSING

FINAL DECISION AND ORDER

This matter began with Respondent's April 20, 2015 Amended Notice of Intent to Revoke Petitioner's Certificate of Registration to operate a family child care home under the Child Care Organizations Act, 1978 PA 116, MCL 722.111 *et seq.* A properly noticed hearing regarding the matter at issue was held by Administrative Law Judge Robert H. Mourning (ALJ) on May 7, 2015. The Petitioner did not appear at the scheduled hearing, and the hearing proceeded in Petitioner's absence under Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, MCL 24.201 *et seq.* and Respondent requested a default be entered against the Petitioner in accord with Section 78 of the APA. The ALJ granted the default against the Petitioner.

On May 12, 2015, the ALJ issued a Proposal for Decision (PFD) that contained findings of fact and conclusions of law regarding the Respondent's Notice of Intent to Revoke Petitioner's Certificate of Registration. Parties were notified of the right to file

Exceptions to the PFD. After review of the hearing record, it is evident no Exceptions or Responses to Exceptions were timely filed. The ALJ's Proposed Decision recommended that the Department Director adopt the findings of fact and conclusions of law, including that the Petitioner committed willful and substantially violated those Rules specified in the PFD and as set forth in the Amended Notice of Intent.

Now, therefore, after review of the hearing record and the ALJ's Proposed Decision, the following Order is entered:

ORDER

NOW THEREFORE, IT IS ORDERED that:

1. The ALJ's Proposal for Decision (PFD) is adopted in its entirety and is incorporated by reference, and made a part of this Final Decision and Order (see attached PFD).
2. The actions of the Bureau of Children and Adult Licensing to REVOKE the Petitioner's Registration are AFFIRMED.


Mike Zimmer, Director
Department of Licensing and Regulatory Affairs

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Lindsay Brogan,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 15-012936-DHS

Case No.: DF 520354699

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 12th day of May 2015
by Robert H. Mourning
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding was commenced with Lindsay Brogan (Petitioner) filing an appeal from the Amended Notice of Intent to Revoke Certificate of Registration (Amended Notice of Intent) to operate a family child care home issued by the Child Care Licensing Division, Bureau of Health Care Services (Respondent), formerly Bureau of Children and Adult Licensing. On March 5, 2015, a Notice of Hearing was mailed, scheduling a hearing for April 6, 2015, beginning at 9:00 a.m., at the Michigan Administrative Hearing System, Ottawa State Office Building, 2nd Floor, 611 West Ottawa Street, Lansing, Michigan.

On March 10, 2015, the Respondent filed a request for an adjournment of the hearing. On March 11, 2015, the Administrative Law Judge issued an Order Granting Adjournment, rescheduling the hearing date to May 7, 2015.

A hearing was held on May 7, 2015. Neither the Petitioner nor an attorney on behalf of the Petitioner appeared at the hearing. Jennifer Kerr, a departmental analyst, appeared on behalf of the Respondent.

The Respondent was allowed to proceed in the Petitioner's absence pursuant to Section 72(1) of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.272(1). A default was granted on behalf of the Respondent pursuant to Section 78(2) of the APA, being MCL 24.278(2).

Sec. 72(1) of the APA provides in pertinent part:

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

Sec. 78(2) of the APA provides, in pertinent part:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

ISSUES AND APPLICABLE LAW

The general issue is whether the Petitioner violated the Child Care Organizations Act, 1973 PA 116, as amended (Act), MCL 722.111 *et seq.* The specific issues are whether the Petitioner violated 2009 AACS, R 400.1902(2), 2005 AACS, R 400.1911(1), 2005 AACS, R 400.1961(1), 2005 AACS, R 400.1962(1) and (2), 2005 AACS, R 400.1908(1), 2005 AACS, 400.1910(1) and (2), 2009 AACS, R 400.1943(7), 2009 AACS, R 400.1907(3), 2009 AACS, R 400.1903(4)(a), and 2009 AACS, R 400.1907(1)(a) as set forth in the Amended Notice of Intent.

FINDINGS OF FACT

As a result of the default, the factual allegations contained in the Amended Notice of Intent are deemed proven.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon the Respondent to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Petitioner. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School Dist*, 428 Mich. 248 (1987).

1999 AACS, R 400.16001(d) and (e) provides definitions for substantial noncompliance and willful noncompliance as used in 1973 PA 116, as amended:

(d) 'Substantial noncompliance' means repeated violations of the act or act 218 or any 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 certificate of registration.

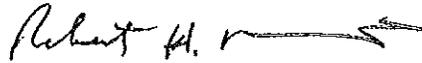
Having granted a default in this case, it is concluded that the Respondent has established, by a preponderance of the evidence, that the Petitioner has willfully and substantially violated Petitioner violated 2009 AACS, R 400. 1902(2), 2005 AACS, R 400.19011(1), 2005 AACS, R 400.1961(1), 2005 AACS, R 400.1962(1) and (2), 2005 AACS, R 400.1908(1), 2005 AACS, 400.1910(1) and (2), 2009 AACS, R 400.1943(7), 2009 AACS, R 400.1907(3), 2009 AACS, R 400.1903(4)(a), and 2009 AACS, R 400.1907(1)(a) as set forth in the Amended Notice of Intent.

PROPOSED DECISION

The Administrative Law Judge proposes that the Director adopts the above findings of fact and conclusions of law.

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within twenty-one (21) days after it is issued and entered. An opposing party may file a response within fourteen (14) days after initial Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Michigan Administrative Hearing System, Ottawa State Office Building, 2nd Floor, 611 West Ottawa Street, Lansing, Michigan 48909, and served on all parties to the proceeding.



Robert H. Mourning
Administrative Law Judge