STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

July 7, 2015

Tawana Mason
15828 Fairfield St
Detroit, MI 48238

Re: DF820357759

Dear Ms. Mason:

On or about January 15, 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 In accordance with that Final Decision and Order, your license is revoked and is now no longer in effect as of May 18, 2015.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: Erika Bigelow

Enclosure

LARA is an equal opportunity employer/program.
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.
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STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF:	Docket No.: 15-002774-DHS
Tawana Mason,	Case No.: DF 820357759
Petitioner	Agency: Department of Human Services
v	
Bureau of Children and Adult Licensing, Respondent	Case Type: DHS BCAL
	Filing Type: Sanction

_____/

RECEIVED
JUL 07 2015
BUREAU OF CHILDREN AND ADULT LICENSING

Issued and entered
this 19th day of May, 2015
by
Nick Lyon, Director
Department of Health and Human Services

FINAL DECISION AND ORDER

This matter began on January 16, 2015 with Respondent's Summary Suspension and an amended notice of intent to revoke certificate of registration (notice of intent) to operate a family child care home pursuant to the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111 *et seq.* The notice of intent was amended on March 3, 2015. A properly noticed hearing was held by Administrative Law Judge Eric J. Feldman (ALJ) on March 19, 2015. Assistant Attorney General Kelley T. McLean appeared on behalf of Respondent. Neither Petitioner nor an attorney appeared on her behalf.

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

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

On April 1, 2015, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioner willfully and substantially violated Rule 400.1902 (2); Rule 400.1911 (1); Rule 400.1913 (3)(a) and (c); Rule 400.1916 (13); Rule 400.1922 (2); Rule 400.1932 (1); and MCL 722.119 (3) and that Summary Suspension was proper. No exceptions were filed.

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

ORDER

NOW THEREFORE, IT IS ORDERED:

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

Nick Lyon, Director
Department of Health and Human Services

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 19th day of May, 2015.

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Department of Health and Human Services

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Kelley T. McLean
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Detroit, MI 48202

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Tawana Mason,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 15-002774-DHS

Case No.: DF 820357759

Agency: Department of Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 1st day of April, 2015
by: Eric J Feldman
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This matter commenced with the Bureau of Children and Adult Licensing (BCAL or Respondent) issuing an Order of Summary Suspension and Amended Notice of Intent to Revoke Certificate of Registration of Registrant, Tawana Mason (Petitioner), to operate a family 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 January 16, 2015, BCAL issued an Order of Summary Suspension and Notice of Intent to Revoke Certificate of Registration to Petitioner and BCAL requested an administrative hearing.

On January 23, 2015, the Michigan Administrative Hearing System (MAHS) issued a Notice of Hearing, scheduling a hearing for March 5, 2015.

On February 10, 2015, Assistant Attorney General (AAG) Kelley T. McLean filed an Appearance of Counsel on behalf of BCAL and also requested an adjournment.

On February 19, 2015, this Administrative Law Judge (ALJ) issued an Order Granting Adjournment and notified both parties that the hearing is rescheduled for March 19, 2015.

On March 9, 2015, AAG Kelley T. McLean submitted a subpoena request, which this ALJ granted and issued a Subpoena on March 10, 2015.

On March 3, 2015, BCAL issued an Order of Summary Suspension and Amended Notice of Intent to Revoke Certificate of Registration to Petitioner.

The hearing proceeded as scheduled on March 19, 2015 and ALJ Eric Feldman presided. Assistant Attorney General (AAG) Kelley T. McLean, Licensing Consultant Jacquelin Windham, and Child Protective Services (CPS) Investigator Sonya Collins appeared for BCAL. Also, witness Sharise Talley (mother of the children) appeared for BCAL. There was no appearance on behalf of the Petitioner. Further, there was no request for adjournment by Petitioner and no good cause was presented for the failure to appear at the hearing.

Pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et.seq.*, the hearing proceeded in the Petitioner's absence. Additionally, BCAL requested a default judgment and this was entered against Petitioner pursuant to Section 78 of the APA.

Section 72(1) of the APA provides:

> 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.

Section 78(2) of the APA provides:

> 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.

As a result of the default, the factual allegations contained in Respondent's Order of Summary Suspension and Amended Notice of Intent to Revoke Certificate of Registration are deemed true.

SUMMARY OF EXHIBITS

Respondent Exhibits:

Exhibit A – Photos of Child A;

Exhibit B – A January 15, 2015, Special Investigation Report;

Exhibit C – A Statement of Registration Family Child Care Home received by BCAL on May 30, 2014; and

Exhibit D - A March 3, 2015, Proof of Service.

ISSUES and APPLICABLE LAW

The general issue presented is whether the Respondent acted in a legally appropriate manner in its summary suspension and intent to revoke the certificate of registration against the Petitioner.

The specific issues concern alleged violations of Rules 400.1902(2); 400.1911(1); 400.1913(3)(a)(c); 400.1916(13); 400.1922(2); 400.1932(1); and Michigan Compiled Laws (MCL) 722.119(3), which provide, in pertinent part:

> **R 400.1902**
> Caregiver and child care home family.
>
> (2) An applicant or the caregiver shall be of responsible character and shall be suitable and able to meet the needs of children and provide for their care, supervision, and protection.
>
> **R 400.1911**
> Supervision
>
> (1) The caregiver shall assure appropriate care and supervision of children at all times.
>
> **R 400.1913**
> 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.
>
> (c) Inflict mental or emotional stress, such as humiliating, shaming, threatening a child, or using derogatory remarks.
>
> **R 400.1916**
> Bedding and sleeping equipment.
>
> (13) If night time care is provided, then children shall sleep in age appropriate cribs and beds.
>
> **R 400.1922**
> Nighttime Care.
>
> (2) If the caregiving staff and children in care are sleeping, then at least 1 caregiving staff shall be on the same floor level as the sleeping children.

R 400.1932
Home maintenance and safety.

(1) The structure, premises, and furnishings of a child care home shall be in good repair and maintained in a clean, safe, and comfortable condition.

MCL 722.119
Child care organization: presence of certain individuals prohibited; conditions; unsupervised, contact by certain individuals prohibited: conditions; documentation that individuals not named in central registry; policy regarding supervision of volunteers; children's camps or campsites.

3) ... If an updated central registry clearance documents that a licensee, registrant, adult household member, licensee designee, chief administrator, staff member, or unsupervised volunteer is named as a perpetrator in a central registry case, he or she may not be present in the child care organization ....
[Note: MCL 722.111 (1)(a) defines a "child care organization" to include "family child care homes".]

FINDING OF FACTS

Based upon the default granted on March 19, 2015, and the entire record in this matter, the following findings of facts were established:

1. On or about June 3, 2014, Petitioner was issued a license to operate a family child care home with a registered capacity of six at 15828 Fairfield Street, Detroit, Michigan 48238.

2. Between December 14, 2014, and December 15, 2014, Petitioner provided overnight care to Child A (Male, DOB: 08/02/05), Child B (Male, DOB: 10/22/06), and Child C (Female, DOB: 11/03/07). Petitioner failed to adhere to child care licensing rules regarding overnight care. Petitioner had Children A, B, and C sleep on cots in child care area located in the basement of the home. Petitioner did not sleep on the basement level with Child A, Child B and Child C. The children remained unsupervised in the basement during the overnight hours of December 14, 2014.

3. During the morning hours of December 15, 2014, Petitioner went downstairs to the basement level and woke up Child A, Child B and Child C. Petitioner instructed the children to clean up the child care area. Petitioner began yelling and cursing at the children when they did not move quickly. [redacted]

[redacted] Child A proceeded to walk away from the Petitioner's home. Child A was not wearing shoes during this time period.

4. On December 15, 2014, after Child A walked away from the Petitioner's home, Juan Mason, the Petitioner's husband, drove his vehicle to Child A's location. Child A got into the car and was transported back to the child care home. Child A remained unattended in Mr. Mason's vehicle while his siblings finished cleaning the child care area. During this time period, Mr. Mason contacted Child A's mother and informed her that she needed to pick up her children. [redacted]

5. [redacted]

6. On December 18, 2014, and January 7, 2015, Licensing Consultant Jacquelin Windham conducted inspections of Petitioner's child care home. Ms. Windham found that Petitioner failed to maintain her home in a clean and safe condition, as evidenced by the following:

   a. On December 18, 2014, and January 7, 2015, the living room and dining room of the home had an excessive amount of clutter. There was clothing, paperwork, empty containers and other household items strewn about the two rooms.
   b. On December 18, 2014, the kitchen countertop and stove were covered with dirty dishes. The kitchen sink was also filled with used dishes.
   c. On December 18, 2014, the carpeting in the child care area was covered with an excessive amount of crumbs and lint.
   d. On December 18, 2014, the floor in the child care area was covered with toys and trash. The area was cluttered to an extent that it posed a tripping hazard.
   e. On December, 18, 2014, the trash cans in the kitchen and bathroom were overflowing.
   f. On January 7, 2015, Ms. Windham observed several puddles of urine on a diaper pad that was placed on top of the Petitioner's changing table. Petitioner informed Ms. Windham that the cat must have urinated on the diaper pad.
   g. On January 7, 2015, the multipurpose table in the child use area was soiled and stained with old food.

h. On January 7, 2015, the countertop used for child care food preparation was cluttered with paperwork, food wrappers and other household items.
i. On January 7, 2015, Ms. Windham observed a live cockroach near the bookcase in the child use area.

7. [redacted]

8. The March 3, 2015 Order of Summary Suspension and Amended Notice of Intent to Revoke Certificate of Registration replaced the Order of Summary Suspension and Notice of Intent to Revoke Certificate of Registration issued on January 16, 2015.

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 Bureau of Children and Adult Licensing (BCAL) now has the authority to license and evaluate child care organizations, including foster family 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 hearings. The burden of proof is upon Respondent to prove, by a preponderance of the evidence that grounds exists for the summary suspension and intent to revoke the certificate of registration against Petitioner. The Administrative Law Judge (ALJ) evaluates the testimony and the evidence elicited at the hearing and renders a proposed decision setting forth an opinion as to whether the Petitioner 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.

The words "willful and substantial" as used in the Act are defined in the applicable Administrative Rule as follows:

R 400.16001
(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, though, under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. See Smith v Lansing School Dist., 428 Mich. 248 (1987). Based upon a default being granted in this matter, the allegations cited in the Order of Summary Suspension and Amended Notice of Intent to Revoke Certificate of Registration are deemed true. Moreover, evidence and testimony by Jacqueline Windham, Sonya Collins, and Sharise Talley (mother of children) were elicited at the hearing for BCAL. See Exhibits A to D. This testimony and evidence presented by BCAL only further support the factual allegations deemed true in Respondent's Order of Summary Suspension and Amended Notice of Intent to Revoke Certificate of Registration. Accordingly, Respondent has proven, by a preponderance of the evidence, that Petitioner willfully and substantially violated Rules 400.1902(2); 400.1911(1); 400.1913(3)(a)(c); 400.1916(13); 400.1922(2); 400.1932(1); and MCL 722.119(3).

PROPOSED DECISION

The Administrative Law Judge proposes that the Director conclude that there were willful and substantial violations of Rules 400.1902(2); 400.1911(1); 400.1913(3)(a)(c); 400.1916(13); 400.1922(2); 400.1932(1); and MCL 722.119(3).

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
Fax: (313) 456-3681

Eric Feldman
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 1st day of April, 2015.

Maria Ardelean
Michigan Administrative Hearing System

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