



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
FOS/168360

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Winnebago County Department of Human Services in regard to Foster Care, a hearing was held on November 30, 2015, at Neenah, Wisconsin.

The issue for determination is whether sufficient evidence has been presented to demonstrate that the agency correctly revoked Petitioners' foster home license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Attorney [REDACTED] of the office of the
Winnebago County Corporation Counsel
448 Algoma Blvd, PO Box 2808
Oshkosh WI 54903-2808

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioners are residents of Winnebago County.
2. Petitioners have had a foster home license and had been foster parents of [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) as of August 2013. The children were removed from Petitioners' home in July 2015.
3. On August 18, 2015 the county agency sent Petitioners a letter that informed Petitioners that their FH license was revoked. This was effective with the removal of the children as noted at Finding # 2. The removal of the children and the revocation of the license have the same basis. The letter

indicated that Petitioners had violations of Wisconsin Administrative Code provisions including locking a child in a room, inappropriate response to disruptive behavior and failing to provide a humane physical and psychological environment. At minimum and more specifically, the social service agency assigned to help Petitioners - Family Training Program, Inc. – noted the following issues for the county agency:

- Petitioners used food as a consequence for behavioral issues by denying a snack or dessert for a child with food issues created by traumas that were part of treatment that led to removal from her parental home,
- Grounding [REDACTED] by confining her to her bedroom for as much as 2 weeks,
- Placing a childproof door knob cover on [REDACTED]'s bedroom door so she could not get out of the room.

DISCUSSION

A foster home license may lawfully be revoked if the licensee fails to meet the minimum requirements for a license. *Wis. Stat. § 48.75(1d)*. In order to meet the minimum requirements for a license, it is necessary to meet all requirements contained in Department of Children and Families (DCF) foster care rules unless an exception has been granted. *Wis. Stat. § 48.67; Wis. Admin. Code §§ DCF 56.02(2) & 56.05(1)(c)1*. A licensee is required to be familiar with DCF foster care rules and comply with their requirements. *Wis. Admin. Code § DCF 56.05(1)(c)intro. & 56.05(1)(c)1*. Thus, a foster home license may be revoked for any failure to meet a requirement contained in DCF foster care rules (absent, where allowed, an exception).

Furthermore, being a foster parent entails a partnership between a social service agency and the foster parents. The agency certainly has to assess a child’s needs and strengths. *See Wis. Admin Code, §DCF 56.01(1)*. Both have a duty to protect the health and safety and to promote the welfare of children in care. Regardless of the circumstances for the placement of children in the foster care system, it has to be a traumatic event for the child and one would expect foster parents to be aware of that.

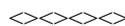
Relevant here are the following Wisconsin Administrative Code provisions:

DCF 56.05 Licensee qualifications. (1) PERSONAL REQUIREMENTS AND BACKGROUND. (a) *General.* 1. A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, who does not abuse alcohol or drugs or have a history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children or operating a foster home, as described in Ch. DHS 12, and who exercises sound judgment and displays the capacity to successfully nurture foster children.

2. The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not he or she meets the requirements under subd. 1. Giving false information or withholding relevant information shall constitute grounds for denial or revocation of the license.

...

Wis. Admin. Code, §DCF 56.09(1)(a)(1) and (2).



DCF 56.09 Care of foster children. (1) PRINCIPLES FOR NURTURING CARE. The foster parent shall provide nurturing care to each child placed in a foster home. Nurturing care is care that does all of the following:

(a) Ensures that the child is provided a humane physical and psychological environment.

...

(o) Responds appropriately to disruptive behavior.

...

(5) DISCIPLINE.

...

(h) No foster child may be mechanically restrained or locked in any enclosure, room, closet or other part of the house or elsewhere on the premises for any reason.

(i) No foster child may be punished by being restricted to an unlocked room or area of the home except as follows:

1. A foster child under 6 years of age may be restricted to an unlocked living area of the home for not longer than 10 minutes for any episode of misbehavior. The foster child shall be within hearing of a responsible caretaker and shall be permitted use of the toilet if necessary.
2. A foster child 6 to 10 years of age may be restricted to an unlocked living area of the home for not longer than 30 minutes for any episode of misbehavior. The foster child shall be within hearing of a responsible caretaker and shall be permitted use of the toilet if necessary.
3. A foster child over 10 years of age may be restricted to an unlocked living area of the home for up to 60 minutes for any episode of misbehavior. The foster child shall be within hearing of a responsible caretaker and shall be permitted use of the toilet if necessary.

I am sustaining the revocation. Petitioners have violated the discipline law noted above. That by itself is sufficient to sustain the revocation. And I am doing so. Further, the overall behavior of Petitioners as [REDACTED] and [REDACTED] as described by the September 4, 2015 letter from the social service agency to the county agency (Ex B-10) is evidence of a lack of sound judgement and ability to nurture. I also noted that even if I were not sustaining the revocation that it would not affect placement of children. Those are decisions are not made by the Division of Hearings and Appeals; rather, they are made by social service agencies and the Courts.

CONCLUSIONS OF LAW

That the agency correctly revoked Petitioners' foster home license.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of March, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 28, 2016.

Winnebago County Department of Human Services

DCF - Foster Care

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