



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FOS/169923

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the [Redacted] of Wisconsin & Upper Mich in regard to Foster Care, a hearing was held on January 29, 2016, at Green Bay, Wisconsin.

The issue for determination is whether the agency correctly removed foster child, [Redacted] from the petitioners' home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: [Redacted], Foster Care Worker
[Redacted] of Wisconsin & Upper Mich
[Redacted]
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioners are residents of Brown County.
2. Prior to October 26, 2015 the petitioners, [Redacted] and [Redacted], were a licensed foster home.

3. On August 15, 2015 [REDACTED] contacted the agency, and asked if they would approve a sex offender staying in a camper in her backyard. She informed the County that the sex offender's probation agent was aware of it, and would approve it. The petitioners have children that they adopted. This sex offender is the biological father of those adopted children.
4. The worker told [REDACTED] that the sex offender could not stay on her property, and that if she allowed this she would be jeopardizing her foster care license.
5. On October 13, 2015 a foster care home planner from the Department of Children and Families received an e-mail stating that the petitioners' address appeared on the sex offender registry. The worker verified the petitioners were still foster parents, and that their current address was listed on the sex offender registry. On October 23, 2015 this worker forwarded this information to Brown County.
6. On October 23, 2015 a Brown County social worker went to the petitioners' home. Nobody was home. The worker called [REDACTED] and asked if this sex offender was staying with her. [REDACTED] said that the sex offender needed an address, and that they let him use their address. She went on to say that she did not what street this sex offender sleeps on.
7. The petitioners had two foster children in their care. One child was a two year whom they had since birth. They were in the process of adopting this child. The other foster child was a 15 year old girl. The 15 year old girl had a baby. The baby was placed in the petitioners' home.
8. This sex offender was convicted of second degree sexual assault of a child after a jury trial. The victim was a 15 year old girl. The sex offender was 29 years old at the time of the assault.
9. The County confirmed with the sex offender's probation agent that the sex offender had been staying on the petitioners' property since on or about August 21, 2015. The sex offenders' probation officer confirmed this through home visits and GPS monitoring.
10. The village where the petitioners live has an ordinance, which makes it a violation for sex offenders to live in that village. It is the Department of Correction's policy that they cannot approve an offender committing an ordinance violation. For that reason, if the sex offender is "staying" in a village with such an ordinance, the sex offender is listed as homeless. The Department monitors through GPS that the offender is "staying" in the noted home in the community where it is an ordinance violation for the sex offender to live. They then require the sex offender to leave that location, and stay somewhere else at least one night per week. It is the Department's position that this does not violate the village ordinance because for one night per week the offender is not staying there. Nonetheless, the agent conducts home visits at the noted place where the offender stays six out of the seven nights per week. The offender also keeps his personal items and property at that location. This was the arrangement with the petitioners' home from August 21, 2015 until late September or October when the sex offender registry was updated to reflect their address.
11. The petitioners' residence is a typical suburban community. Their lot is an acre or less. They had a camper parked on their lot. The petitioner stayed in the camper during the day. At night he stayed on the couch in their family room.
12. The County made the decision to revoke the petitioners' foster care license on Friday, October 23, 2015. They removed the foster children from the petitioners' home that same day. On Monday, October 26, 2015, the agency sent the petitioners a notice stating that their foster care license had been revoked.
13. On October 29, 2015 the agency sent the petitioner a notice stating that they were removing [REDACTED] from the petitioner's home because their foster care license had been revoked and because the petitioners were unable to provide a safe and stable home for [REDACTED]

14. On November 30, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The petitioners filed two separate appeals. One appeal regarding the removal, and another appeal regarding the revocation of their foster care license. The hearings on both cases were conducted together. I am issue two separate decisions. The revocation issue is decided under case number 169922. This decision addresses the removal issue.

The purpose of the law regulating foster care licenses is to protect and promote the health, safety, and welfare of children placed in foster homes. Wis. Stat. § 48.67; Wis. Admin. Code § DCF 56.01(1)(September 2011). The best interests of the child must always be the paramount consideration. Wis. Stat. § 48.01(1) intro.

An Administrative Law Judge lacks the authority to order a county agency to return the child to petitioner and/or make any placements of foster children with a foster licensee. This is a well-settled rule of law. *See*, DHA-Work & Family Services Unit, f/k/a, Office of Administrative Hearings, Case No. FOS-51/68441 (OAH March 19, 1992)(DHSS), OAH Case No. FOS-40/74526 (OAH April 5, 1993)(DHSS); and more recently, DHA Decision Nos. FOS-53/85323 (Wis. Div. of Hearings & Appeals September 21, 2007)(DHFS), and FOS-67/97562 (Wis. Div. of Hearings and Appeals January 5, 2009)(DCF) .

Wisconsin Statute § 48.64(4)(a) declares that any decision or order issued by an agency that affects the head of a foster home or the children involved may be appealed to the department under fair hearing procedures established under the department's rules.

The Wisconsin Supreme Court has interpreted this to mean that foster parents are entitled to a fair hearing on decisions which affect the interests of foster parents even in settings in which the outcome of the hearing will in no way affect a child's placement. *Bingenheimer v. DHSS*, 129 Wis.2d 100, 102, 383 N.W.2d 898 (1986). A foster parent is entitled to use such a fair hearing to dispute the allegations of the county agency in order to clear her name, protect her interest in equitable treatment, and defend against mistaken, negligent, or arbitrary agency allegations. *Bingenheimer*, 129 Wis.2d at 110. Such a fair hearing might, for instance, result in a decision to produce factual findings relevant to future licensing of the parents. *Bingenheimer*, 129 Wis.2d at 110. However, the administrative hearing is rendered "...ineffectual and meaningless..." on the subject of the child's placement. *Bingenheimer*, 129 Wis. 2d at 106-7.

If a child has been in a foster home for more than 6 months, the agency must notify the foster parents of a pending removal from the home at least 30 days prior to the removal, unless the safety of the child requires earlier removal. Wis. Stat., §48.64(1m).

The petitioners would like foster child, [REDACTED] returned to them. The petitioners believe that they had established a long term bond with [REDACTED] as they were the only parents she has ever known. They took her home from the hospital. I am somewhat sympathetic to their concerns. That said, I do not have the authority to return the child to these petitioners.

The remaining issue is whether this was an emergency situation, and whether the removal was correct. This issue is largely moot as I have concluded that the revocation of the petitioner's foster license was correct. Without a foster license, the petitioners cannot have foster children staying with them. I nonetheless conclude that this was an emergency situation for much of the same reasons I have concluded that revocation of the petitioners' foster care license was correct. The petitioners had a sex offender living in their home.

█ initially sought the agency's approval for this sex offender to stay with them on August 15, 2015. The County worker was concerned that █ would even request this, and explained to her that a sex offender could not stay in her home. The worker went on to explain that she would be risking her foster care license if she were to allow this sex offender to stay in her home. On August 21, 2015 the petitioners' allowed this sex offender to "stay" with them five to six days and nights per week. The petitioners never informed the sex offender's probation agent that they are a licensed foster care home. They also never informed Brown County or █ that they were allowing a sex offender to stay with them.

The petitioners argue that this sex offender is not the monster that everyone is making him out to be, and even if he was, they had a safety plan to protect all of the children in their care. Their safety plan was to have him stay in the camper during the day and at night to sleep in the family room while █ stayed up all night monitoring him. When one is a foster parent, these are not decisions that one gets to make. The agency is responsible for foster children's welfare. The agency must be informed of all of the information in order to make informed decisions. The petitioners wanted to do what they wanted to do. They saw this sex offender as someone who was in need of a place to live. They mistakenly believed that their foster children were not at risk, and despite being told that they would be risking their foster care license, they allowed this sex offender to live in their home.

Another concerning factor is that the petitioners knew this sex offender had been convicted of sexually assaulting a 15 year old girl. Knowing this they allowed the agency to place a vulnerable 15 year old foster child and her baby in their care. This 15 year old was placed in the petitioners' home after the sex offender had moved in, and after the petitioners knew the specifics about his sexual assault of a child conviction. This foster child is not the child at issue for this removal. It nonetheless shows the emergency aspect of this situation.

It is important to understand that when the foster children were removed the sex offender was still staying on the property. He only moved after the removal. The petitioners argue that no sex offender was ever residing at their address, that they did not need to report that the sex offender was "staying" with them, that they have been fully cooperative and honest with the County, and that they have exercised sound judgment. I fail to see any distinction between "living," "staying," and "residing." GPS monitoring shows that the majority of days and nights from August 21, 2015 to October 23, 2015 this sex offender was at their home or in their yard. The probation agent conducted several home visits to the camper in the petitioners' backyard. The fact that █ mentioned the possibility of this sex offender moving into the camper less than a week before he began staying with them shows that she knew this was important information to disclose. She knew that the agency would never allow it, and instead of disclosing to the agency, she failed to report that he was staying there. She also failed to report to the sex offenders' probation agent that she was a licensed foster home. I do not view this as sound judgment or being fully cooperative with the agency. Rather the petitioners exercised very poor decision making that put foster children at risk, and warranted both the removal of the children and revocation of their foster care license.

CONCLUSIONS OF LAW

The agency correctly removed foster child, █ from the petitioners' home.

THEREFORE, it is

ORDERED

That the petition 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 18th day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals

