



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: FOS - 173797

PRELIMINARY RECITALS

Pursuant to a petition filed on April 19, 2016, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Department of Children and Families regarding Foster Care, a hearing was held on August 18, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly revoked the petitioner's foster care license effective April 14, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Attorney

Department of Children and Families
Office of Legal Counsel
201 East Washington Avenue, Room G200
Madison, WI 53708

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of County.

2. In January 2016 the petitioner held a foster care home license. She had a nine month old child, [REDACTED] in her care at that time.
3. As part of the foster care licensing process the petitioner had agreed to immediately seek emergency medical care for the foster child when necessary and promptly report to the agency any accident or unusual illness of the foster child or any serious or continued illness in the foster home. She had also signed and acknowledged that she understood that giving false information or withholding information shall constitute ground for denial or revocation of the license.
4. On January 17, 2016 the petitioner left an agency worker a message stating that [REDACTED] had fallen down the stairs, but that she had taken him to urgent care, and he was okay.
5. On January 21, 2016 two agency workers assigned to [REDACTED] visited the petitioner's home. This was a pre-scheduled monthly visit. One of the workers was the RN in-home visit nurse.
6. These workers observed [REDACTED]. They saw a lot of bruising on his face. They asked the petitioner what had happened. The petitioner said that [REDACTED] had fallen down the stairs. She said that she had a gate up, and that [REDACTED] had pulled himself up with the gate. This caused the gate to fall down, and he fell down the stairs.
7. The agency workers were concerned given the extent of [REDACTED]'s injuries. They discussed the bruising with the petitioner. The petitioner said that she was concerned when his eye had begun to swell shut, and at that point she took him to a [REDACTED] urgent care.
8. The workers asked to see the paperwork from the urgent care visit. The petitioner said that the paperwork was in her car. They asked her to get it. She went to her car, and looked, but she could not find the paperwork.
9. The workers also asked to see the gate. The petitioner said that the gate was in the garage. She never showed them the gate.
10. The RN then contacted [REDACTED] to get the documentation from [REDACTED]'s the urgent care visit. The RN learned that [REDACTED] had not been to any [REDACTED] facility for a recent visit. The RN also spoke to [REDACTED]'s pediatrician who worked for the same health system. He said that there was nothing in their computer system for a recent visit.
11. The RN contacted the petitioner. The petitioner said that she did not take [REDACTED] to a [REDACTED] urgent care. Rather, she had taken him to the [REDACTED]. The RN contacted the [REDACTED] closest to the petitioner's home. The clinic informed the RN that they do not see children under 18 months old. [REDACTED] was nine months old.
12. On January 22, 2016 an agency worker contacted the petitioner to tell her that they were picking up [REDACTED] to take him to [REDACTED] hospital to be evaluated. At this point the petitioner was returning from a visit to the pediatrician. The pediatrician noted [REDACTED]'s facial injuries, and that the petitioner told him that [REDACTED] had fallen down five stairs. He further noted that Child Protective Services (CPS) was involved, which was appropriate.
13. [REDACTED] was taken to [REDACTED] Hospital Emergency Department where he was evaluated. The Dr. evaluating him at [REDACTED] noted the injuries. The injuries included not only the facial bruising, but also the bruising to his left ear. The doctor noted the following:

While the bruising to the face is in one plane and may have been caused by the complicated fall reported, it may also have been caused by abuse. Ear bruising would not be expected from the fall as described. Bruising to the ear is usually caused by blunt force impact to the ear (e.g. a punch or slap) or by direct pulling on the ear, handling, or activity of a healthy child. A severe impact to the ear may cause additional serious injuries such as ruptured tympanic membrane (ear drum)

- resulting in hearing impairment or loss, or blood clot formation within the layers of the ear resulting in permanent ear deformity (i.e. cauliflower ear).
14. While at [REDACTED] the [REDACTED] Police Department was contacted about the suspected child abuse. They investigated the abuse, and were referring charges to the District Attorney's Office. The agency did not substantiate a child abuse allegation against the petitioner.
 15. [REDACTED] was discharged from [REDACTED] on January 22, 2016. He was placed in another foster home.
 16. The petitioner later admitted to lying about seeing an Urgent Care and the [REDACTED].
 17. On April 14, 2016 the agency sent the petitioner a notice stating that they were revoking her foster care license.
 18. On April 21, 2016 the Division of Hearings and Appeals received the petitioner's Request for Hearing.

DISCUSSION

The Wisconsin Administrative Code, Chapter DCF 56, sets out the duties of a foster parent. Foster parents must obtain a license. Wis. Admin. Code §DCF 56.01. Licensing is done to protect the public, and this case to protect young and vulnerable foster children. *Id.* Holding a license is not a right or an entitlement, it is a privilege granted by the Department. The licensee must be familiar with the Wisconsin Administrative Code, Chapter DCF 56, and must comply with its requirements. Wis. Adm. Code, §DCF 56.05(1)(c). Violation of administrative provisions may be grounds for revoking the foster home license. Wis. Stat., §48.715(4)(d).

Foster parent requirements relevant to this appeal are as follows:

Wis. Admin. Code § 56.09(4)(d) states “[a] foster parent shall ensure that each foster child who needs medical attention receives appropriate and adequate medical services promptly.”

Wis. Admin. Code § 56.01(a)(2) states “giving false information or withholding relevant information **shall** constitute grounds for denial or revocation of the license.” (emphasize added).

Wis. Stat. § 48.75(1d) states a foster care license “may be revoked [] because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department promulgated under s. 48.67 or because the licensee fails to meet the minimum requirements for a license.”

The agency has presented evidence that the petitioner lied to the agency on multiple occasions about seeking medical attention for a nine month old foster child who had fallen down the stairs. These lies would have gone undetected except that four days after this fall a, previously scheduled, routine home visit occurred. The workers saw the child's injuries. After seeing these injuries, the workers contacted [REDACTED] urgent care, [REDACTED], and the foster child's pediatrician. They determined that the petitioner had not taken the child to the doctor as she had informed the agency.

The agency workers then took the child to [REDACTED] Hospital. Doctors from [REDACTED] were suspect of child abuse noting that the child's "ear bruising would not be expected from the fall as described. Bruising to the ear is usually caused by blunt force impact to the ear (e.g. a punch or slap) or by direct pulling on the care, handling, or activity of a healthy child."

The issue in front of me is not whether or not the petitioner abused this foster child. Rather, the issue is whether the agency correctly revoked her foster care license. Abuse could be a basis to revoke the license; however, here the agency revoked the petitioner's license for failing to seek the proper medical care and for lying to the agency about seeking medical care. The petitioner admits that she lied to the agency about getting [REDACTED] medical care. This alone is sufficient to revoke her license.

The petitioner would like me impose an alternative disposition. I am an administrative law judge. I have no equitable power. There is no statute or code provision that would allow me to impose an alternative disposition. In fact, the administrative code states that "giving false information [] **shall** constitute grounds for [] revocation of the license." The word shall does not give me the authority to do anything except revoke the petitioner's foster care license.

Even if I had equitable authority, I would still make the same decision to revoke the petitioner's foster care license. The petitioner submits many character letters saying that she was a good foster parent. The problem is that these are simply letters. I do not think that any of the letter writers were aware of this factual situation or that the petitioner did not seek medical care, and lied to the agency on multiple occasions about seeking medical care. The letter writers were not available for cross examination and were not presented as actual witnesses.

Although the petitioner presents well, I do not know what happened to this child. The child very well could have been abused by the petitioner when nobody was looking. Without a doubt, the petitioner lied to the agency about seeking medical care for this child. If the petitioner truly thought that medical care was not necessary, I see no reason for her lying about taking the child to urgent care. Before the agency visited her home or saw the child, the petitioner called the agency and left a voicemail stating that she had sought medical care. This demonstrates that she knew she should seek medical care, chose not to do so, and then lied about it. Perhaps this implies abuse, rather than a fall; however that issue is not in front of me. Based upon the evidence presented, I see no alternative except for revocation of the petitioner's foster care license.

CONCLUSIONS OF LAW

The agency correctly revoked the petitioner's foster care license effective April 14, 2016.

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, **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 26th day of August, 2016

\s _____
Corinne Balter
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 August 26, 2016.

Foster Care

Attorney [REDACTED]

Attorney [REDACTED]