



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOS/142837

PRELIMINARY RECITALS

Pursuant to a petition filed August 02, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Family Works foster care agency in regard to Foster Care, a hearing was held on September 18, 2012, at Balsam Lake, Wisconsin. A hearing scheduled for August 23, 2012, was rescheduled at the petitioner's request.

The issue for determination is whether Family Works correctly seeks to revoke the petitioner's foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Valerie Smith, Foster Care Worker
Family Works

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Polk County.
2. The petitioner is licensed by Family Works, Inc., to run a treatment foster care home. On July 19, 2012, Family Works notified the petitioner that it was seeking to revoke her license.

3. The petitioner and her husband moved to a new home around July 12, 2012. She placed her foster child into respite care at that time, but he returned to her home on July 15, 2012, which was before she had completed making the new home habitable.
4. When the foster child moved into the new home, the temperature was close to 100 degrees; his room had no smoke alarm, screen, or regular bed; and his medication was readily accessible to him without her supervision. The petitioner had not submitted a drawing of the layout of the home, there was no fire safety evacuation plan, there was no carbon monoxide detector in the home, and the basement stairway did not have a handrail.
5. The petitioner's previous home was still available for her and her foster child to live in when she moved.

DISCUSSION

The petitioner operates a treatment foster home licensed by Family Works, Inc., a child welfare agency. Child welfare agencies may revoke a foster home license if 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." Wis. Stat. § 48.75(1d). Family Works seeks to revoke the petitioner's foster care license because of several alleged violations of Wis. Admin. Code, Chapter 56, which contains the foster care rules promulgated under Wis. Stat. § 48.67.

The background is that the petitioner notified the agency on June 29, 2012, that her family was moving to a new home in Clayton, Wisconsin, on August 1, 2012. However, when the agency's social worker, Dawn Ferguson, came to the petitioner's home on July 9, 2012, the petitioner informed her that her family would be moving to a rental home in Clear Lake rather than in Clayton, which would allow the children to remain in the same schools. A good deal of confusion and miscommunication, none of which appears to be intentional, followed. The petitioner did not realize that she would have to be relicensed at her new house, but rather thought she would only need an inspection before moving there. After talking to Ms. Ferguson on July 11, 2012, she assumed that Ms. Ferguson would return the next day and inspect her house and bring paperwork that Ms. Ferguson had misplaced before an earlier visit. Ms. Ferguson did not show up on July 12, apparently because she was delayed by another appointment. Because the petitioner thought that she could move into the new house on short notice, her family began moving on July 12. On that date, she dropped her foster child off with the only family that was approved to provide respite care to him, expecting that he would remain there until she and her husband completely moved into the new home. Instead, the respite family returned him to the petitioner's home on July 15, 2012, because they had a new placement coming into their home. When Family Works inspected the petitioner's new home, it found a number of violations that led it to inform the petitioner on July 19, 2012, that it was revoking her license.

The agency contends that the petitioner violated the following provisions in the Wisconsin Administrative Code:

1. Wis. Admin. Code, § DCF 56.04(4)(c)2 by failing to submit a completed and signed license modification application form and other required supporting material before moving into a new home.
2. Wis. Admin. Code, § DCF 56.04(4)5m for failing to submit a drawing of the layout of the foster home. (The agency incorrectly cites this as § DCF 56.04(5m))
3. Wis. Admin. Code, § DCF 56.05(4) for failing to provide proof of homeowners or renters insurance before moving into the home.
4. Wis. Admin. Code, § DCF 56.07(4)(g)1 and 3 for having only one rather than the required two exits from the home and failing to provide adequate cooling, ventilation and humidity as a result of a window that would not open. (The agency incorrectly states that this subsection applies to 2nd floor rooms. It does not. Rather it applies to basement rooms and rooms above the second floor.

Wis. Admin. Code, § DCF 56.07(4)(i) requires that a bedroom, regardless of where it is located, have a “window that allows natural light to enter” and “adequate ventilation.”)

5. Wis. Admin. Code, § 56.07(5)(b) for failing to post emergency numbers near each telephone.
6. Wis. Admin. Code, § 56.07(10)(b) for failing to have screens on windows used for ventilation.
7. Wis. Admin. Code, § 56.08(1)(a) for leaving medications on a counter and thus allowing them to be stored in areas readily accessible to the child.
8. Wis. Admin. Code, § 56.08(7)(a)1, 2, and 3 for failing to have smoke detectors at the head of every open stairway, on each floor and in each sleeping room.
9. Wis. Admin. Code, § 56.08(8) for not having a fire safety evacuation plan either in place or posted.
10. Wis. Admin. Code, § 56.08(9m) for not having a carbon monoxide detector in the home.
11. Wis. Admin. Code, § 56.08(12) for failing to have a handrail on the stairway leading to the basement.

I have little doubt that the petitioner has been a good foster parent because there was no evidence submitted that the agency had ever had any concerns before the present ones. In addition, her demeanor at the hearing was calm, and she was believable. She clearly cared for her foster child. Still, she ultimately admits most of the allegations listed above, but believes some were exaggerated and points out that there were extenuating circumstances involving her move and the lack of respite care. There is discretion to grant an exception to many of these licensing requirements if the exception would not “jeopardize the health, safety or welfare of the foster children.” Wis. Admin. Code, § DCF 56.02(2)(a)1. But it appears that whatever misunderstanding led to these problems could have been rectified by remaining in her previous residence until the new home was habitable. That house was not vacant: Two of the petitioner’s adult children (one an 18 -year-old about to enter college) remained there. If they could remain in the house, the petitioner and the foster child could also have stayed there rather than moving to a house that lacked ventilation during a time when the temperature approached 100 degrees and was not ready to move into. In addition, even if the inspection had occurred on July 12 and the child had remained with the respite providers a few more days, given the amount of work that needed to be completed, there is no certainty that the house would have been approved for the child to live in.

Moreover, some of the provisions in Chapter DCF 56 cannot be waived. Because they cannot be waived, they constitute the minimum requirements for a license. Any person who does not meet these requirements may have her license revoked under Wis. Stat. § 48.75(1d) . The requirements that each bedroom have a smoke detector, that the foster parent submit a printout of the layout of the home before moving in, and that there be a fire safety evacuation plan are all mandatory provision that the petitioner did not comply with before moving with her foster child into the new home. *See* Wis. Admin. Code, § DCF 56.02(2)(a)1 Although I understand the circumstances that led to the petitioner’s violation of these provisions, because she does not meet at least three of the minimum requirements for a foster license, Family Works correctly seeks to revoke that license.

CONCLUSIONS OF LAW

The foster care licensing agency correctly seeks to revoke the petitioner’s treatment foster care license because she did not meet the minimum requirements for holding that license.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of November, 2012

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 6, 2012.

Foster Care
DCF - Foster Care