



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

In the Matter of

[REDACTED]
Atty Daniel Johnson
[REDACTED]

DECISION

FOS/143260

PRELIMINARY RECITALS

Pursuant to a petition filed August 21, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Walworth County Department of Human Services in regard to Foster Care, a hearing was held on January 09, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its denial of a foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
Atty Daniel Johnson
[REDACTED]

Petitioner's Representative:

Attorney Daniel Johnson
[REDACTED]

Respondent:

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

By: Michelle Snead, Asst. Corp Counsel
Walworth County Corp. Counsel
1800 County Rd NN
PO Box 1001
Elkhorn, WI 53121

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Walworth County.

2. Petitioner applied for a foster care license because he lives with a woman who is an active foster parent.
3. The license was denied by letter dated August 7, 2012. Petitioner, therefore, had to move from the home with his significant other.
4. The letter explained the reason for the denial was a 1995 criminal charge in Georgia. That charge was dismissed by the prosecutor prior to trial. The documentation from the Georgia case demonstrates that the prosecutor dismissed the case because of “insufficient evidence to prove guilt beyond a reasonable doubt.”
5. The Department did not produce any witnesses to establish facts from the Georgia case.
6. There was no conviction from the Georgia case.
7. Petitioner does not 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.
8. Petitioner filed a timely appeal.

DISCUSSION

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). The best interests of the child must always be the paramount consideration. Wis. Stat. § 48.01(1). Given this mandate, foster care rules must be applied and interpreted strictly to do so.

A foster home license application may be denied if the licensee fails to meet the minimum requirements for a license. See Wis. Admin. Code § DCF 56.04(5); and see, Wis. Stat. § 48.67. In order to meet the minimum requirements for a license, it is necessary to meet all requirements contained in 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. Furthermore, 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 denied for any failure to meet a requirement contained in DCF foster care rules (unless an exception has been granted). In this case, no exception has been granted.

The Wisconsin Administrative Code sets forth provisions concerning foster home licensee qualifications in Chapter §DCF 56 – “Foster Home Care for Children”. The Department points first to WI Admin Code §§DCF 56.05(1) as a basis for the denial in this case. That section provides, in relevant part, the following general and basic licensee qualification:

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.

The Department also cites Wis. Admin Code Chapter DHS 12 which regulates caregivers (including foster parents) and defines bars to caregiver status based on “whether a crime of delinquency adjudication...is substantially related to the care of a client.”

Mr. [REDACTED] was charged with a crime and spent nearly a year in custody. He was ultimately offered a time-served disposition and declined, forcing the prosecutor's hand. The prosecutor dismissed the case without further prosecution rather than proceed before a jury. This was all nearly 20 years ago. **This is not even a close case**. The county concedes that there was no conviction in this case. Therefore, the provision of 56.05 cannot apply.

The Department argued at hearing that the language of DHS 12 is more broad in that it does not require a conviction. This argument is illusory. The section cited by the Department still requires a crime. The Department would need to establish that a crime was committed. It could do that by showing a conviction or by bringing in witnesses to convince me that a crime occurred. It did neither.

The denial by the Department was baseless. I cannot imagine this action would have been taken if it had first been vetted by counsel because it so clearly did not meet the criteria in the rules. I suspect that she was well-aware that this action by the agency was not founded in law. I can only suspect that her superiors or clients did not allow her the discretion to dispose of this case prior to hearing. They should have.

CONCLUSIONS OF LAW

The Department erred in its denial of petitioner's application for a foster care license.

THEREFORE, it is

ORDERED

The matter is remanded to the Department and its county agent with instructions to reverse the denial of the foster care license for petitioner. This action must be completed within 10 days.

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 12th day of February, 2013

\sJohn P. Tedesco
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 February 12, 2013.

Walworth County Department of Human Services
DCF - Foster Care
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