FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOS/148114

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2013, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Douglas County Department of Human Services in regard to Foster Care, a hearing was held on May 29, 2013, at Superior, Wisconsin. A hearing scheduled for April 18, 2013, was rescheduled at the petitioner's request.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

[redacted]

,

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: No Appearance
Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Douglas County.

2. The county agency notified the petitioner on March 4, 2013, that it would seek to revoke her foster care license.

3. [redacted] has not lived with the petitioner while she has been a foster parent.

4. The living conditions in the petitioner's house do not interfere with the ability of those living there to provide foster care.

5. The petitioner is a mature person who provides quality care to the children in her care.

DISCUSSION

The petitioner has been licensed to run a foster home. She cares for one of her sibling's three grandchildren. At some point, she dated a man named [redacted] who has a felony drug conviction and now is subject to a restraining order she filed against him. The county alleged that Mr. [redacted] lived with her from June 2012 through January 2013. It contends that Wis. Admin. Code, § DCF 55.04(4)(c) was violated because Mr. [redacted] did not obtain a foster home license, that § DCF55.05(1)(a)1 was violated because he was not a mature person who did not abuse drugs or alcohol or have a conviction that substantially relates to caring for children or operating a foster home, and that DCF 56.05(1)(e)1 was violated because not all of the members of the household were free of physical or mental conditions that would interfere with their ability to provide foster care. The petitioner denies that Mr. [redacted] ever lived with her or that she has ever provided inadequate care to the children in her household.

I note initially that this matter was scheduled twice, once for a telephone hearing and then for an in-person hearing in Superior. In each case, notices were sent to both the Northern Consortium and the Department of Children and Families' Foster Care Unit. No one representing either agency responded to either notice or appeared at the hearing. I held the hearing anyway because I had traveled a substantial distance and the petitioner had put significant effort into preparing for the hearing.

As mentioned, the petitioner denied the agency's allegations. I accept her testimony because it is uncontroverted and she appeared credible. In addition, when Douglas County removed the children as part of the license revocation, it had Bayfield County investigate the situation. Bayfield County determined that the allegations against the petitioner were unsubstantiated. She then challenged the removal of the children in Douglas County Circuit Court. Judge George Glonic found no substance to Douglas County's allegations. In particular, he found that the petitioner "denies the two [she and Mr. [redacted]] lived together and there is no credible evidence to prove otherwise." *Findings from Order of March 5, 2013, in Douglas County Circuit Court Cases 7 JC 13, 10 JC 20, and 10 JC 21,* p.3. Relying on the evidence before him and the recommendation of the guardian ad litem, he found that the best interests of the children were that they be returned to the petitioner and ordered that to happen.

The agency has twice before had an opportunity to prove that the petitioner is unfit to care for the children in her care. It did not prove that on those occasions and has not done so now. Therefore, I will order it to reinstate her foster license.

After the hearing, a representative of the agency called and said that neither the Northern Consortium nor the Department informed it of the hearing. The agency can request a new hearing, but it will have to make a compelling case because the petitioner should not be penalized for the various parts of the government's inability to communicate with one another. If a rehearing is granted and the petitioner hires an attorney, they can seek reimbursement for her hearings costs, including attorney's fees, unless it prevails or shows that it is substantially justified in continuing to seek to revoke her foster care license.

CONCLUSIONS OF LAW

The foster care agency has not presented sufficient evidence to establish that the petitioner's foster license should be revoked.

THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner's foster care license.

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 5th day of June, 2013

_____

\sMichael D. O'Brien
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 June 5, 2013.

Douglas County Department of Human Services
DCF - Foster Care
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