



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/149056

PRELIMINARY RECITALS

Pursuant to a petition filed April 25, 2013, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Foster Care in regard to Foster Care, a hearing was held on June 4, 11, 2013, at Milwaukee, Wisconsin. The agency presented its case at the hearing on June 4, 2013. The Petitioner requested additional time to prepare his case on the grounds that he had not received the agency's exhibits prior to the hearing date. The matter was adjourned to July 11, 2013. On July 6, 2013, DHA received an email from the Petitioner indicating that he did not wish to present evidence or testimony and requested a hearing based on the record made to that point. The record was closed on July 6, 2013.

The issue for determination is whether the agency properly revoked the Petitioner's foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Nancy Wettersten

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. Petitioner is the step-father to MM, a 17 year old child.

2. On July 6, 2012, the Petitioner completed and signed a Foster Care Application. The application was to be a foster parent specifically to MM. At the time of the application, Petitioner, his adult son DM and his minor son DarM were members of the household. See Exhibit R-1.
3. On July 19, 2012, the Petitioner completed and signed a Written Approval for Care and Supervision of Foster Children. He indicated that his son, DM, would be responsible for the supervision of MM when he was employed away from the home. This was approved by the agency on July 26, 2012. See Exhibit R-2.
4. On July 19, 2012, the Petitioner completed and signed a Foster Parent Agreement. He agreed to immediately report any arrest, criminal or civil court proceedings against any member of the household. See Exhibit R-3.
5. On July 20, 2012, a foster home license was issued to the Petitioner specific to MM for the period of July 20, 2012 – July 19, 2013.
6. On August 8, 2012, an employment verification was submitted to the agency from the Petitioner's employer. It states that the Petitioner works 40 hours/week, 1:00 p.m. – 9:00 p.m. See Exhibit R-1. Petitioner currently works 1:00 p.m. – 9:30 p.m. Testimony of Petitioner.
7. MM has an extensive history of running away. She has been a victim of sex trafficking and physical abuse from her biological father. She has a history of engaging in prostitution.
8. From August 10 – 22, 2012, MM was at a group home. On August 23, 2012, MM moved into the Petitioner's home.
9. From October 1 - 5, 2012, MM was considered AWOL because she did not come home from a friend's house. The Petitioner asked for her removal due to out-of-control behaviors. From October 6 – 8, 2012, MM was placed in secure detention. From October 8, 2012 – March, 2013, MM was placed at a group home.
10. On January 28, 2013, February 5, 2013, February 14, 2013, March 3, 2013 and March 11, 2013, DarM was charged with five separate crimes. On March 12, 2013, DarM was placed in detention. Petitioner did not report these charges to the agency.
11. On February 19, 2013, the Petitioner reported to the agency that DM would be moving to Wisconsin Dells. TW was identified by the Petitioner as the person who would be responsible for MM when he was at work.
12. On March 19, 2013, MM was placed in respite care.
13. On March 29, 2013, DM moved to Wisconsin Dells and DarM moved to a delinquency shelter with home passes at the discretion of his probation officer.
14. On February 1, 2013, a background information disclosure (BID) form was submitted by TW. The results of the BID indicated that TW had open civil warrants and an arrest from 2010 for assault and battery and disorderly conduct.
15. On April 15, 2013, the agency revoked Petitioner's foster care license. See Exhibit R-8

DISCUSSION

The licensing of foster homes is governed by Wis. Stats. § 48.62 which requires the Department of Children and Families (DCF) to promulgate rules for licensing. Those rules have been promulgated by DCF at Wisconsin Administrative Code § DCF 56. Rules pertinent to this case include:

56.05(1)(a) 2. The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not he or she meets the requirements

under subd. 1. Giving false information or withholding relevant information shall constitute grounds for denial or revocation of the license.

56.09(2)(b) Both foster parents may not be employed away from the home on a full-time, part-time or seasonal basis without written approval of the licensing agency. When there is only one foster parent, that person may not be employed away from the home without written approval of the licensing agency. Approval by the licensing agency for this employment shall depend on the foster parent or parents presenting satisfactory evidence that there are suitable plans for the care of the children and for responding in emergency situations during the absence of the foster parent or parents from the home.

56.09(2)(e) A licensee shall ensure that foster children 10 years of age or older receive responsible supervision appropriate to their age, maturity and abilities as might reasonably be provided by a prudent parent to that parent's own children.

The agency bases its action to revoke the Petitioner's foster care license on the Petitioner's failure to provide adequate supervision to MM and failure to report the arrest and pending criminal charges against DarM.

MM required a high level of supervision because of her history of running away and history of being a victim of sex abuse and trafficking as well as out of control behaviors. Petitioner's plan was to have DM supervise MM and DarM while he was at work. The fact that DarM committed a number of crimes while he was supposed to be supervised by DM demonstrates DM's inability to provide adequate supervision. When it was learned that DM would move from the home, the Petitioner proposed to have TW provide supervision. The agency reasonably determined that TW's outstanding warrants at the time and her arrest record demonstrated that she would not provide appropriate supervision to MM.

Further, the Petitioner did not dispute that he did not immediately report DarM's arrest and criminal charges to the agency in violation of the foster parent agreement.

Based on all of the evidence presented, the Petitioner was not in compliance with foster care regulations requiring him to immediately report DarM's arrest and criminal charges. Further, the evidence demonstrates the Petitioner did not have an appropriate plan for supervision for MM when he was working. Therefore, the agency acted within its authority to revoke the foster care license of the Petitioner.

CONCLUSIONS OF LAW

The agency acted within its authority to revoke the foster care license of the Petitioner due to the Petitioner's failure to comply with foster care regulations.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 13th day of September, 2013

\sDebra Bursinger
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 September 13, 2013.

Foster Care