FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOS/149373

PRELIMINARY RECITALS

Pursuant to a petition filed May 9, 2013, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Wisconsin Department of Children and Families, and its agents, in regards to the revocation of a foster license, a hearing was held on November 6, 2013, at Waukesha, Wisconsin. At the request of the Department the record was held open for 10 days for the submission of an electronic recording of testimony submitted in a separate, but related, matter known as DHA Case No. FOS/148821.

The issue for determination is whether the Department by its agents, correctly revoked the petitioner's foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Jennifer Wakerhauser, Assistant Legal Counsel

ADMINISTRATIVE LAW JUDGE:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She was granted a two year foster license by the Wisconsin Department of Children and Families in November, 2012. The petitioner has two children that live with her, her son T
2. In mid-November, 2012, child protection and services workers removed [redacted]'s three minor children from her care and the only home they had known, maternal grandmother [redacted]

's home, and placed them with the petitioner, their maternal aunt, as foster children. then moved to her other sister's ( ) residence.

3. The three minor children so placed were: (then 2 ½ years old); (then 13 months old); and (then 4 years old).

4. The biological mother of the three children named in Finding of Fact #2 above, , had, prior to moving in with , lived in 's residence from birth to at least mid-November, 2012. This meant that her three then existing children, also lived with and from each child's respective birth until at least November, 2012, in the same home, 's.

5. A fourth sibling, sister , was subsequently born to in January, 2013, and remained in her care.

6. On January 22, 2013, a meeting was convened at the offices of the Department's foster home management agency, Children's Hospital of WI Community Services, with the petitioner, her two sisters, and , and the petitioner's mother, , all in attendance. The agency representatives from Integrated Family Services were and . In addition, six staff members from Children's Hospital of WI Community Services (, , , , and) were also present. The four adult women from the family (, , and) were informed in a clear and direct manner by the Department's representatives that the six grandchildren of 's that were place by the Department with (3 children) and (3 children) must be living and residing in the respective foster homes in which they were placed by Integrated Family Services. And Children's Hospital of WI Community Services. In addition, all four family women agreed that they would do so, and that any of them would communicate with case professionals on a daily basis, if need be, to ensure that changes in the provision of care be reported immediately.

7. On February 28, 2013, the Department's agent, Licensing & Placement Specialist was denied full access to the petitioner's residence during a scheduled home visit, specifically refusing to allow to see the bedroom area for the three minor foster children in her care. See, Exhibit R-8, at pp. 4-5.

8. On March 1, 2013, the Milwaukee County Child Protection Service agency received a telephone report that during a visit to the home was sharing with on February 28, 2013, the reporter observed that infant was observed to have dark bruises on each cheek, described as "blackish/bluish, with a little red". The bruises were further described as "round, 1 bruise was bigger than the other, and higher up". When questioned how her child got the bruises, reportedly answered "I was wondering the same thing."

9. On March 1, 2013, Initial Assessment Social Worker and Ongoing Care Manager went to 's residence to attempt to locate and observe physically. She found , , and at the residence about 4:16 P.M. and were also present, along with another minor cousin, . Mrs. declined a request from to turn a lamp or lights on so she could more closely examine . had bring the child to the couch by the front window, where she could detect the bruits to 's face, as well as a large round mark on her lower back. was then dressed and prepared for transport to a medical facility for examination. See, Exhibit R-6.

10. On the same date, at 7:22 P.M., IASW received a phone call from Dr. at Children's Hospital providing an update that indicated a head cat scan was planned; that the bruises on 's face were not diagnosed as bite-marks and that the bruising on her eye, cheek, chest and back were all indicative of abuse. Dr. stated that had linear bruising on her arm, elbow and wrist. See, Exhibit R-6, p.3.

11. On the same date, at 7:27 P.M., OCM called and report that had been diagnosed with multiple fractures in her leg, rib and arm. See, Exhibit R-6, p.3.

12. On the same date, at 7:28 P.M., IASW [redacted] arrived with IASW Holl and two Milwaukee Police Department officers at the home of the petitioner and requested to see the three foster children placed with her. The children were taken into custody to transport to a medical facility for physical abuse exams. None of the foster children in the petitioner's care were found to have any indicia of abuse or injury. The children were not returned to the petitioner's care after the medical checkup ended that night.

13. The three foster children in the petitioner's care were frequently spending the night at [redacted]'s home under the care of [redacted] and their biological mother, [redacted], because the petitioner reported for work very early in the morning, between 5:00 A.M. and 6:00 A.M. This was occurring between 3 – 5 nights per week. [redacted] was reported to "sometimes" stay the night, but usually leave after the children went to sleep. The petitioner admitted to social worker [redacted] during an interview on March 11, 2013, that sometimes the children slept over at [redacted]'s home up to 7 nights per week. See, Exhibit R-6, pp. 10 – 12.

14. [redacted] and/or [redacted] would transport the three foster children to daycare in the morning on the nights that the children stayed over at [redacted]'s home. [redacted] on occasion transported the children without a valid driver's license; and without car seats and using only seatbelts. Frequently, [redacted] and/or [redacted] would pick up the foster children from daycare or school, and transport them back to [redacted]'s home.

15. On [redacted] 8, 2013, the Department, by its agent, Children's Hospital of Wisconsin Community Services, issued a Revocation of Foster Care License letter notice to the petitioner informing her that her foster license was revoked because: (1) she was allowing the 3 foster children to essentially reside with [redacted] and [redacted], violating Wis. Admin. Code §DCF 56.09(1) for failing to provide nurturing care; (2) she had not demonstrated that she was a responsible, mature individual who is fit and qualified; exercising sound judgment; and displaying the capacity to successfully nurture foster children, because she allowed [redacted] to transport the foster children to and from daycare and school without a valid driver's license and without using child safety seats; had refused to allow a Licensing & Placement Specialist full access to her home on February 28, 2013, denying her access to the children's bedroom; and (3) that the children were no longer safe in her foster home because their sibling [redacted] had been abused by an unknown maltreater while in [redacted]'s care, suffering multiple bruises and fractures, and the petitioner was allowing [redacted] hours and hours of access to the foster children almost every day. All of these acts were cited as in violation of Wis. Admin. Code §DCF 56.05(1)(a). As additional grounds, the agency assert that: (4), on January 22, 2013, the Department's agents specifically informed the petitioner during a family team meeting at which she was present with [redacted], [redacted] and [redacted], that the family was instructed, and agreed, that all children placed in their cares need to reside in the approved and legal placements made by Integrated Family Services and Children's Hospital of Wisconsin Community Services and further that all case professionals were to be informed by these adults should changes be made to the provision of care to the children on a daily basis. However, the Department determined that the petitioner violated this agreement on at least March 1, 2013, when its agents discovered that the three foster children in the petitioner's care were actually residing with [redacted]. See, Exhibit R-13, pp. 1-2.

16. At no time after January 22, 2013, did the petitioner report that the three foster children in her care were living in [redacted]'s home and not her own home.

17. On May 13, 2013, the petitioner filed an appeal contesting the Department's action of [redacted] 8, 2013, revoking her foster license.

DISCUSSION

The Wisconsin Administrative Code, Chapter DCF 56, sets out the duties of a foster parent. 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:

(1) 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.

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.

3. In determining whether a person is fit and qualified, the licensing agency shall consider the person's qualifications under this section and any history of civil or criminal violation of statutes, regulations or ordinances of the United States, this state, any other state, any local government or other U.S. jurisdiction substantially related to the care of children.

(b) *Characteristics.*

1. `All foster parents.' As evidenced through interviews with foster family members, the use of formalized assessment systems, communication with references, and other methods considered to be effective components of a comprehensive foster home study, a licensee shall have or exhibit all of the following characteristics to a degree that will allow the licensee to adequately provide foster care services:

a. An adequate understanding of what it means to be a foster child and a recognition of a child's strengths and needs consistent with the child's age and abilities, or a motivation to learn.

b. A history of managing or an indication of the ability to manage stress related to economic resources, employment, home, neighborhood, family size, health problems, or other factors and an indication of an ability to cope with an additional stress factor of the placement of a foster child.

c. A satisfactory self-concept.

d. An ability to communicate ideas, feelings, and needs.

e. An outlook regarding his or her own history that indicates that any negative aspects have been recognized and adequately addressed.

f. Parenting ability appropriate to the age, abilities, strengths, and needs of foster children to be placed in the licensee's home or a motivation to learn.

g. A history of positive parenting, if applicable.

h. An adequate knowledge of child growth and development or a motivation to learn.

i. Reasonably constructive social relationships and the ability to provide encouragement and understanding of a foster child's need for positive social relationships.

j. Effective intrafamilial communication and the existence of appropriate family roles, marital or other relationship stability, integration into the community, and organization in the home.

k. An appropriate understanding of child abuse and neglect as a social problem or a motivation to learn.

L. An appropriate understanding of the needs of children who have been abused or neglected and of parents who abuse or neglect their children or a motivation to learn.

m. Adequate preparation of all family members to become a foster family, particularly preparation for the stress that having a foster child in the family may place on each family member.

n. An appropriate motivation for applying to be a foster family and an ability to follow through on difficult endeavors.

o. A willingness to work with the supervising agency, placing agency, licensing agency, and the biological or adoptive parents in achieving a foster child's permanence goal as established in the child's permanency plan.

2. `Level 3 to 5.' In addition to the requirements under subd. 1., a foster parent who operates a foster home with a Level 3 to 5 certification shall have the following knowledge, skills, and qualifications prior to placement of a child in the foster home:

a. Knowledge of the specific behavioral, emotional, or physical conditions; symptomology; and treatment and care needs of the child to be placed.

b. Knowledge of the operation of any specialized equipment and emergency back-up systems for the child to be placed.

c. Recognition of escalating symptoms or side-effects of the child's condition and appropriate responses.

d. Knowledge of the medications, services, and treatments of the child to be placed.

e. Knowledge of the care requirements and techniques required for the child to be placed.

f. A demonstrated commitment to providing care for a child with serious treatment needs.

g. Commitment and time to receive the required pre-placement, initial, and ongoing training.

h. Ability to appropriately bond with the child.

i. A demonstrated capacity to deal effectively with the dependency needs of the child.

j. Availability at all times except when respite care under s. DCF 56.21 or other arrangements for care of the child have been made with the supervising or licensing agency.

Wis. Admin. Code §DCF 56.05.

First, it is crystal clear that [redacted] drove these three foster children to daycare at times when she did not have a driver's license, and at times without the use of appropriate safety seats. The petitioner, the legal foster parent and caretaker of the children at these times, left these children in the care of [redacted] for, at a minimum, such transportation. She was fully aware that these children had been removed from [redacted]'s care due to serious concerns about [redacted]'s ability to parent and to ensure child safety for her own children. And yet, due to the press of the petitioner's need to get to work early, she ignored the possibility that [redacted] was transporting and doing so without [redacted]'s help. Likewise, the petitioner was fully aware of her sister's many behavioral and social problems in this time frame, and yet did not question exactly whether [redacted] had a license, whether she was driving, and whether the kids were strapped into car safety seats always. Rather, it appears that she *assumed* that her sister, and her own mother [redacted], *would ensure* safe transportation of the foster children to daycare because of the birth relationship. But facts had already demonstrated to the petitioner that [redacted] had often not provided safety and care for her biological children in the past; and that is why a foster parent was needed in the first place.

Second, it is likewise crystal clear that the petitioner did not allow Licensing & Placement Specialist [redacted] *full* access to her foster home on February 28, 2013, when [redacted] made a simple request to view the bedroom where the foster children slept. Rather, it is obvious from [redacted]'s testimony and Exhibit R-8, pp. 3-5, that the petitioner avoided doing so by asking [redacted] to come back the next day; that the room needed picking up; and that she immediately needed to leave to pick up children from school.

The petitioner asserted that she *was* in a hurry to pick up the children, and that was why she refused to allow the inspection. That answer is simply unacceptable. Commonsense, and my experience in reviewing foster cases for 23 years, tells me that a view of a properly laid out bedroom at a foster home should take under a minute. In fact, under thirty seconds should be more than sufficient if all is in order. The refusal to allow the view was extremely suspect, and not at all justified by any time limitation imposed by the need to leave and pick up children. This defense testimony by the petitioner was self-serving, convenient, evasive, uncorroborated by any other witnesses or evidence and not credible. It does not have the ring of truth about it. A foster parent has a duty to cooperate with the Department and its agents in all regards to ensure that the children placed in the home are safe and well cared for. And that includes that the bedroom where the children sleep and live is clean and adequate in square footage and bed layout. In fact, refusing to allow such an agent to view the bedroom in which children have been placed for over three months is simply outrageously unacceptable conduct by a foster parent. It evinces a lack of judgment, maturity, fitness, cooperative spirit and is highly suspicious behavior as well. One might well conclude that there was something in that room that the foster head did *not* want the Department's representative to see. And this refusal also violated the terms of the Foster Parent Agreement the petitioner signed on [redacted] 17, 2012. See, Exhibit R-10, p.1, at subsecs. 3 & 17.

Third, it is apparent that the one child that remained in [redacted] [redacted]'s care, a two month old, incurred significant and multiple fractures and bruises over a period of time, by an unknown maltreater. The Department was fully justified in having concern about the extended and nearly daily contacts by [redacted] with the children after the extent of the sibling's injuries were known. Family re-unification is a goal of child protective services. But it is not the only goal, nor even the primary goal of wards of the Department. That primacy is held by the health, safety and welfare of the foster children. The petitioner was, in effect, operating an inter-household foster home with surrogate family members supervising the children for many hours in the week, sometimes most of the hours in a week. And one of those family members was the very parent from whom they had been removed. It is one thing for a parent from whom custody has been removed by the Department to have contact and provide periodic cares. This might teach parenting skills and improve family bonding. It is *another thing entirely* to turn almost all cares of the foster children to that biological parent and her mother in the same living arrangement as before the children were removed. That is a clever manipulation of the system by the adult family members, but it is not what was contemplated by the child protection and services system to ensure health, safety and welfare of the foster children.

Fourth, and finally, the voluminous testimony and documentation provided by the Department's witnesses convinces me that these three foster children were essentially living with [redacted] and [redacted] at [redacted]'s residence, *much as before the placement.* In allowing this arrangement, the petitioner was failing to provide safe care for these three foster children. Presumably she was also getting paid foster rate payments for their care that was essentially being remanded back to [redacted] and [redacted]; but even if this was not the case, the care was being provided by grandmother and biological mother for great periods of time. The petitioner herself reported to DHS-BMCW Worker [redacted] [redacted] that the three foster children were staying overnight at [redacted] [redacted]'s home an estimated 3 – 5 nights per week, but sometimes up to 7 nights per week. She explained that this occurred on nights before the petitioner's work shifts starting at 5:00 A.M. or 6:00 A.M., which appears to have been her primary shift. See, Exhibit R-6 at p. 11. [redacted] also noted that [redacted] [redacted] had told her separately that the three foster children stayed at her house about 3 nights per week. Ibid, at p. 11. This conclusion is buttressed by the testimony of [redacted] [redacted] in a separate appeal hearing before Division ALJ John Tedesco in DHA Case No. FOS-148821. The record was held open to obtain a CD of the hearing of November 4, 2013. (Note: That action is still pending for further proceedings and a decision.) I obtained that CD and under oath [redacted] [redacted] testified that she let the foster children stay at her home any time they wanted to do so, and sometimes she let [redacted] sleep over too. See, Exhibit R-16. In addition, the preponderance of the evidence suggests that the petitioner had not even set up the three beds paid for by the Department for the three foster children in the foster home. She subsequently reported, nearly *three months after she picked*

them up, that she did not have enough mattresses for the beds to be used by the children. That testimony is simply incredible. It is self-serving, evasive, convenient, contradicted by the home visits and contacts from the Department in Exhibit R-8 demonstrating repeated contacts about the beds with never a mention of the lack of some mattresses until February 29, 2013, several months after the children were placed with her. I did not fall off the turnip truck yesterday. The petitioner is very intelligent. She may even be well-meaning in the general sense. Her performance as her own advocated during the hearing certainly demonstrated that she is no "shrinking violet", as she mounted a vigorous and sometimes effective defense. But I find her testimony on this particular point wholly not credible. It is a construct of fiction to justify the refusal to show the bedroom to [redacted] on February 28, 2013, and repeated fiction in this hearing. It does not have the ring of truth. Rather, it demonstrates a lack of insight and mature judgment into the nature of her duties as a foster parent in both allowing the beds to not be set up and used for months or in not complaining for three months if parts were truly missing; and in any event a lack of judgment in using such a flimsy explanation for the refusal to show the bedroom to a licensing and placement worker during a visit. A foster parent has a duty to cooperate completely with the Department. Period. If he or she does not want to do so, then he or she would be well-advised to remove themselves from that business.

I find that the Department has established by the preponderance of the evidence in this record that it correctly revoked the petitioner's foster license on all grounds stated in the Notice of [redacted] 8, 2013. The revocation action must be sustained.

CONCLUSIONS OF LAW

The Department, by its foster licensing agents, established by the preponderance of the evidence that it correctly revoked the petitioner's foster license due to a failure to provide direct nurturing care at all times; due to a failure to demonstrate that she is a mature individual who is fit and qualified or exercises sound judgment and the capacity to successfully nurture children; and who withheld information and/or gave false information to the Department about the de facto living arrangement whereby the three foster children placed with her were in fact generally residing at grandmother [redacted]'s home and not the foster home.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby 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 5th day of December, 2013

_____

\sKenneth D. Duren, Assistant Administrator
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 December 5, 2013.

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DCF - Foster Care
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