



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/154464

PRELIMINARY RECITALS

Pursuant to a petition filed December 26, 2013, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by My Home, Your Home, Inc. to revoke Petitioner's foster home Care license, a hearing was held on April 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has offered evidence sufficient to demonstrate that it correctly revoked Petitioner's foster home 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: Tammie Golden of My Home, Your Home, Inc.
6200 West Center Street
Milwaukee, WI 53210

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner has been a licensed treatment foster home for about 5 years.
3. Petitioner was sent a letter by My Home, Your Home, Inc. (MHYH) that informed her that it was revoking Petitioner's foster home (FH) license. The letter is not dated but was sent to Petitioner on or about December 17, 2013.

4. The reasons for the revocation of Petitioner’s FH license by MHYH are based on its conclusion that Petitioner was using physical discipline on foster children in her home based on the following Bureau of Milwaukee Child Welfare (BMCW), child protective service or similar referrals:

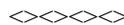
- 3/13/2011 – child(ren) allege physical discipline - unsubstantiated
- 5/22/2013 – child(ren) allege physical discipline - screened out
- 10/15/2013 – 18 year old in home alleges Petitioner hit her but that 18 year old was arrested for threatening Petitioner with knife
- 10/19/2013 – unsubstantiated use of physical discipline

DISCUSSION

A foster home license may lawfully be revoked if the licensee fails to meet the minimum requirements for a license. *Wis. Stat. § 48.75(1d)*. 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 revoked for any failure to meet a requirement contained in DCF foster care rules (unless an exception has been granted). Relevant here is the following law:

DCF 56.05 Licensee qualifications. (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.

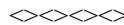
...
Wis. Admin. Code, §DCF 56.05(1)(a).



DCF 56.09 Care of foster children. (1) PRINCIPLES FOR NURTURING CARE. The foster parent shall provide nurturing care to each child placed in a foster home. Nurturing care is care that does all of the following:

...
 (k) Does not inflict or tolerate infliction of physical or verbal abuse, physical punishment, ill treatment or harsh or humiliating discipline of the child.

...
Wis. Admin. Code, §DCF 56.09(1)(k)



...
(5) DISCIPLINE. (a) Disciplinary action by a foster parent or any other person serving as a substitute caretaker in the absence of the foster parent shall be aimed at encouraging the foster child to understand what is appropriate social behavior.

(b) The type of discipline imposed shall be appropriate to the child’s age and understanding.

(c) Physical punishment of foster children is prohibited.

(d) A licensee may not subject any foster child to verbal abuse, profanity, derogatory remarks about the child or his or her family or to threats to expel the child from the home.

(e) A licensee may not permit another adult or child, other than a responsible care provider, to discipline a foster child.

...

Wis. Admin. Code, §DCF 56.09(5).

No evidence other than hearsay has been presented here, thus the record does not contain any evidence upon which to base a finding of fact that physical discipline has occurred as alleged. “Hearsay” is defined as an out of court statement used to prove the truth of the matter asserted. When the individual who made the statement is not at a hearing to be cross-examined regarding his or her statement, the usefulness of that statement is severely reduced. The reason is not that the individuals making those statements are inherently untruthful or unreliable. The reason is that those individuals are not present to be questioned regarding the basis of their opinions or to explain why they made those statements.

I understand why MHYH has concerns about the allegations of physical discipline but revoking someone’s foster home license is a serious step. The main problem with MHYH’s case is that it consists entirely of allegations with no actual evidence such as testimony from those relied upon when making the allegations or even CPS reports or testimony from workers who interviewed the children involved here. What MHYH relies upon is not only hearsay, but fairly vague hearsay of multiple layers.

The rules of evidence are somewhat relaxed at administrative hearings, certainly more so than in a Circuit Court hearing, and hearsay is allowed under some circumstances. Nonetheless, Wisconsin courts have long held that agencies may never base findings solely upon uncorroborated hearsay. The Wisconsin Supreme Court reinforced this position in *Gehin v. Wisconsin Group Insurance Board*, 2005 WI 16, a decision that overturned a finding based upon untestified to medical records that were contradicted by petitioner’s sworn testimony. The court’s rationale is that “the purpose of allowing the admission of hearsay evidence is to free administrative agencies from technical evidentiary rules, but at the same time this flexibility does not go so far as to justify administrative findings that are not based on evidence having rational probative force.” *Id.* at ¶54.

Furthermore, the only firsthand evidence here is the testimony of Petitioner who testified that she does not use physical discipline. Thus, while I understand why MHYH is reluctant to continue licensing Petitioner, especially as it avers that the Bureau of Milwaukee Child Welfare passes on the allegations noted herein with the admonition to take some action, it has not presented enough probative evidence to justify revoking that license. I do note, however, that it has no obligation whatsoever to place any children in Petitioner’s home.

CONCLUSIONS OF LAW

That the agency has not offered any evidence at hearing other than uncorroborated hearsay in support of its decision to revoke Petitioner’s foster home license and has not, therefore, met its burden of proof.

NOW, THEREFORE, it is **ORDERED**

That this matter is remanded to MHYH with instructions to reverse its revocation of Petitioner’s foster home license. This must be done within 10 days of the date of this hearing.

It should again be noted that this decision does not require that children be returned to or placed in Petitioner’s home.

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 18th day of June, 2014

\sDavid D. Fleming
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 18, 2014.

Foster Care
brendahoskins@mhyh.org