



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOS/161091

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 03, 2014, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the New Horizon Center, Inc. in regard to Foster Care, a hearing was held on October 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly revoked Petitioner's foster care license effective September 11, 2014 after a separate independent agency substantiated a neglect finding against Petitioner.

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: Saleem El-Amin, Foster Care Worker  
New Horizon Center, Inc.  
4200 North Holton Street, Suite 100  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner was a licensed treatment foster care home prior to September 11, 2014.

3. Two children, [REDACTED] and [REDACTED] were placed in Petitioner's treatment foster home before April 30, 2014. The children were approximately ages 5 and 3. On April 30, 2014 [REDACTED] got a hold of a Nyquil bottle while Petitioner slept. Petitioner awoke, and learned of this. Petitioner did not report this incident to the agency, nor did she seek medical care for the small child. Petitioner watched the child, and believed that the child appeared fine, so she did nothing. Petitioner later reported this incident to the birth mother, who informed her ongoing case worker, who informed the agency. Petitioner did not dispute this allegation. The agency had further concerns when Petitioner said that her son was watching the children when this incident occurred. Petitioner's son was not an approved caregiver.
4. Following the April 2014 incident, the agency placed Petitioner on a corrective plan of action. The agency found that Petitioner violated several DCF administrative code sections including DCF 56.06 and 56.08. Specifically Petitioner was to report the ingestion of poison, the Nyquil should not have been in area accessible to the children, and the foster parent is responsible for supervising the children. Petitioner was on a corrective plan until August 8, 2014.
5. On July 12, 2014 Petitioner reported that the children, [REDACTED] and [REDACTED], had gotten out of her home. Petitioner reported that she was napping, and that when she woke up she could not find the children. She went outside to look for the children and the children were coming into the front door. A neighbor saw the children and told the children to go home.
6. When the second incident occurred on July 12, 2014 Petitioner was still on a corrective plan from the previous incident in April 2014.
7. Petitioner has had 10 total child protection services referrals.
8. Community Impact, an independent third party, investigated the July 12, 2014 incident. Community Impact substantiated a neglect finding against Petitioner.

### DISCUSSION

Child welfare agencies may revoke foster home licenses if “the licensee has substantially and intentionally violated any provision of [Chapter 48] or of the rules of the department promulgated pursuant to s. 48.67 or because the licensee fails to meet the minimum requirements for a license.” Wis. Stat. § 48.75(1d). The minimum requirements for a license are found in Wis. Adm. Code § DCF 56.05:

(1) GENERAL REQUIREMENTS. (a) 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.

More specific requirements found in Wis. Adm. Code § DCF 56.05(c) require that foster parents:

3. Cooperate fully with the licensing agency and any other agency responsible for supervising foster children in the licensee's care and keep the licensing agency and any other responsible agency informed of each child's progress and problems.

...

7. Cooperate with efforts of the supervising agency to maintain relationships between foster children and their families and with the agency's efforts to implement plans for care and treatment and for arranging a permanent living arrangement as required under s. 48.38, Stats.

8. Allow the supervising agency up to 30 days in which to make alternate placement plans when the licensee asks that a foster child be removed from the home.

9. Maintain in confidence all personal information about foster children and their families.

In addition, foster parents “may not leave foster children under 10 years of age without supervision by a responsible care provider” and must “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.” Wis. Adm. Code, § DCF 56.09(2)(d) and (e). Finally, foster parents must comply with the following rules found at Wis. Adm. Code, § DCF 56.09(12) concerning confidentiality:

The foster parent and other persons in the household having access to confidential information about the foster child and his or her family may not discuss or otherwise disclose that information to any other person while the child is in the foster home or after the child leaves the foster home, except as follows:

- (a) To the licensing agency or agency placing the child in the care of the licensee.
- (b) To another foster parent or respite care provider as authorized by the agency, such as when another foster parent is being considered as a placement for the child or the person is providing respite for the child.
- (c) By order of a court.
- (d) As otherwise provided by law.

Licensing agencies can grant an exception to most of the rules found in Chapter DCF 56 if it determines that the exception will not jeopardize the health, safety or welfare of the foster children.” But certain sections cannot be waived. These include the requirement in § DCF 56.09(2)(e) that “foster children 10 years of age or older receive responsible supervision” and the requirements in § DCF 56.09(12)(a), (c), and (d) pertaining to confidentiality. However, the requirement in § DCF 56.09(2)(d) that foster parents “may not leave foster children under 10 years of age without supervision by a responsible care provider” is not one of those listed as unwaivable. As with all matters involving Chapter 48, when making a decision concerning the revocation of the petitioner’s foster license, “the best interests of the child shall always be of paramount consideration.” Wis. Stat. § 48.01(1).

In this case it is significant that an independent third party group substantiated a neglect finding against Petitioner for the July 2014 incident. In the July 2014 incident the 5 and 3 year old in Petitioner’s care left Petitioner’s home while she was sleeping. At the time of that incident Petitioner was on a corrective plan. The corrective plan was the result of Petitioner not watching the children, and the children getting into Nyquil while they were unsupervised and Petitioner slept. I also find it significant that there were a total of 10 child protective services referrals for Petitioner. Petitioner wants to blame each incident on the agency and the high need level of the various children placed in her home. Petitioner is a treatment foster home. She was receiving \$1800 per month for these two children who were placed in her home. The payment is that amount because these are young children, one of the children has significant needs, and both children need constant supervision. Even if the children were not high need children, children ages 5 and 3 cannot supervise themselves in a bedroom while a caregiver naps. This is a recipe for disaster that resulted in two potentially deadly situations for these two small children placed in Petitioner’s care.

At the hearing Petitioner sought to blame the agency for the children they placed in her home and for not providing her the proper services that she needed to care for the children placed in her home. Petitioner did not dispute the two incidents. She did not believe that those incidents should have resulted in the revocation of her foster care license regardless of whether a neglect finding was substantiated.

The purpose of Chapter 48 is to protect children, preserve the unity of the family, assure children’s health and safety, recognize that children have basic needs, protect the children, and do what is in the children’s best interest. Wis. Stat. § 48.01. It is important to remember that these children are placed in foster homes after the children are removed from a parent’s home due to neglect or abuse. It would not promote the best interest of the child to remove the child from a parent’s home because the parent neglected the child only to

place the child into a different non-parent, non-relative home where a neglect finding has been previously substantiated.

### CONCLUSIONS OF LAW

The agency correctly revoked Petitioner's foster care license effective September 11, 2014 after a separate independent agency substantiated a neglect finding against Petitioner.

**THEREFORE, it is**

**ORDERED**

That the Petition 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 4th day of November, 2014

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\sCorinne Balter  
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 November 4, 2014.

New Horizon Center, Inc.  
DCF - Foster Care