



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOS/158517

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2014, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a revocation decision by the Foster Care agency in regard to Foster Care, a telephonic hearing was held on September 03, 2014, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for August 6, 2014 was rescheduled. At the request of the parties, the record was held open for consecutive briefs to the Division of Hearings and Appeals (DHA). The petitioner represented herself at the September 3, 2014 hearing. However, on September 26, 2014, Attorney Bettie Rodgers faxed to DHA a statement confirming that she had been retained by the petitioner to assist her in preparing her written closing argument. Both the county agency and petitioner's attorney timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the Department correctly revoked the petitioner's treatment foster home as of June 9, 2014, after the June 7, 2014 emergency removal of her two foster children.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:

Attorney Bettie A. Rodgers (retained as counsel as of 9-26-2014)
6045 North Green Bay Avenue, Suite 3
P.O. Box 11736
Shorewood, WI 53211

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen M. Steinbach, treatment foster home supervisor,
La Causa, Inc.
1212 South 70th Street, Suite 115A
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has been licensed for many years as a treatment foster home provider.
3. On April 7, 2014, two treatment foster siblings (ages 5 and 6) were placed in the petitioner's treatment foster home by the child care agency, [REDACTED].
4. On June 7, 2014, the petitioner inappropriately contacted the children's birth mother to inform her that her children were "out of control," and that she was going to call the police about those two children.
5. After that phone call with petitioner, the birth mother was very upset, and promptly contacted the foster care agency to complain about the safety and well-being of her children in petitioner's care.
6. A treatment foster care (TFC) worker, Ms. [REDACTED] promptly contacted the petitioner to inform her that the agency had already notified petitioner not to contact the birth mother after her prior inappropriate contacts with the birth mother, and that her comments to the birth mother were inappropriate. The petitioner responded to the TFC worker that she was "fucking done with this shit" and to not "call me again unless you are coming to pick these kids up . . ."
7. La Causa treatment foster care supervisor, Karen Steinbach, sent a TFC worker to the petitioner's foster home about 6:30 p.m. on June 7, 2014 to remove the children due to serious concerns about the safety and emotional health of the two children.
8. When the TFC arrived at petitioner's foster home, petitioner at first refused to answer the door. When she did finally answer the door, the foster care worker informed petitioner that she was there to pick up the two children and would need their stuff to take with them. Petitioner responded by stating: ". . . she was "sick of this shit" and that she does not "give a fuck anymore. Come get these fucking kids right now. Yea, you can come get them right now." Petitioner also stated that she was not going to provide the stuff she bought and to "Get the fuck out of my house." The worker indicated that she would leave, but that she needed the girls' clothes because clothing purchased for a foster child belongs to that foster child. See § DCF 56.05(6), "Clothing." After at first refusing, the petitioner relented and left the children's clothes outside her house.
9. The TFC worker proceeded to remove petitioner's two foster children from her treatment foster home and placed those children in respite care.
10. After investigation, the county agency sent a June 9, 2014 notice to the petitioner stating that her treatment foster home license was revoked effective immediately, due to petitioner's serious foster home violations of requirements of Wis. Adm. Code § DCF 56.05(1)a, § 56.05(1)(c), and §56.09(5)(d). See Exhibit 1.

DISCUSSION

The purpose of the law regulating foster care licenses is to protect and promote the health, safety, and welfare of children placed in foster homes. Wis. Stat. § 48.67; Wis. Admin. Code § DCF 56.01(1). The best interests of the child must always be the paramount consideration. Wis. Stat. § 48.01(1). Given this mandate, foster care rules must be applied and interpreted strictly to do so.

A foster home license application may be denied if the licensee fails to meet the minimum requirements for a license. See Wis. Admin. Code § DCF 56.04(5); and see, Wis. Stat. § 48.67. 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 denied for any failure to meet a requirement contained in DCF foster care rules (unless an exception has been granted). In this case, no exception has been granted.

The licensing of foster homes by Milwaukee County Department of Human Services is covered under Wis. Stat., §48.75. Sub. (1d), and provides that **a foster license may be revoked if “the licensee has substantially and intentionally violated any provision of this chapter or of the [Wisconsin Administrative Code, Chapter 56] or because the licensee fails to meet the minimum requirements for a license (emphasis added).”**

The Wisconsin Administrative Code sets forth provisions concerning foster home licensee qualifications in Chapter §DCF 56 – “Foster Home Care for Children”. WI Admin Code §§DCF 56.05(1) provides, in relevant part, the following general and basic licensee qualification:

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.**

(b) Characteristics. 1. “all foster parents.” As evidenced through interviews with foster family members . . .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) **Responsibilities.** The licensee shall be familiar with the requirements of this chapter and do all of the following:

- 1. Comply with all the requirements of this chapter.
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- 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.

56.09(5)(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.**

(Emphasis added).

During the September 3, 2014 hearing, foster care supervisor, Karen Steinbach presented a well-organized case to establish that the county agency correctly revoked the petitioner’s treatment foster home license as of June 9, 2014. Ms. Steinbach’s testimony was convincing and with her exhibits established

clear violations of § DCF 59.09(5)(d), 56.01(1)(a) and 56.01(c)(3). The agency offered substantial evidence of persuasive reasons for revoking the petitioner's foster home license based upon the following serious violations of WI Admin Code DCF Chapter 56:

- a) §DCF 56.05(1)(a) - [Licensee Qualifications] states: "A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified . . . and who exercises sound judgment and display the capacity to successfully nurture foster children." In the instant case, the petitioner's ongoing swearing (with the children able to hear her swearing) and statements that she "was fucking done" with her foster care of the children clearly indicated irresponsible behavior which indicated unsound judgment for a treatment foster provider.
- b) §DCF 56.09(5)(d) – [Discipline] – states: "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." In the instant case, the petitioner even admitted her swearing later in the hearing and in her lawyer's closing argument. As indicated in Finding of Facts #4 and #8 above, the petitioner's profanity and out-of-control verbal abuse clearly violated this code section.
- c) §DCF 56.05(1)(c)1 - [Responsibilities] states: "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 inform of each child's progress and problems." The hearing record is clear that on June 7, 2014, petitioner completely failed to "cooperate" with the foster care worker who appropriately contacted the petitioner after a complaint from the children's birth mother. Petitioner's response to the TFC worker was not only not cooperative, but verbally abusive to the foster care worker. See Findings of Fact #3 - #8 above.

During the September 3, 2014, hearing, petitioner attempted to offer some inconsistent and unconvincing explanations for what had happened on June 7, 2014. Her testimony was contradictory, inconsistent, and generally not credible. The petitioner at first during the hearing declared that everything Ms. Steinbach said was "untrue," and that the whole case against her was wrong. However, later in the hearing, petitioner admitted that she told the TFC worker to "get the fuck out of my home" and other profanities against the worker. Even in her lawyer's closing argument, Attorney Rodgers stated in part: "Ms. [REDACTED] admits that she yelled at the TFC Specialist and told her to get the f_k out of her house . . . and admits that her language was unprofessional but maintains that at no time was her language or conversation directed at the girls. She does admit that the girls may have overheard her yelling at the TFC Specialist." Such admissions confirm clear violations of the above code sections.

During the hearing, petitioner (and letters from friends) explained that petitioner had just received medical news that based upon tests she might have cancer. Petitioner was very upset which was understandable. However, even under stressful situations, the treatment foster worker is expected to maintain good judgment for the health and safety of the two very young foster children in her care. In her initial September 14, 2014 brief, Ms. Steinbach stated in pertinent part on page 3:

The petitioner testified that it was because of the news she received regarding her health that lead to the behaviors she exhibited on that Saturday but the agency observed many of the same behaviors prior to that date. These are patterns of behavior that the petitioner was unwilling to look at, unwilling to discuss and self-examine. While we empathize with the news that the petitioner received regarding her health, the manner of which she displayed herself was emotionally abusive and traumatic to the already traumatized 5 and 6 year old girls in her care. We have all had events in our life that have left us in states of turmoil but as professionals in the field, the expectations to perform at a highly professional level even under those

circumstances is required due to the nature of our consumers. The petitioner contacted the mother that Saturday morning and threatened to call the police on her children. The birth mother in turn called our agency as she was fearful for the safety of her children.

During the hearing and in her attorney's closing argument (Attorney Rodgers was not retained by petitioner until after the hearing), petitioner argued unpersuasively that she had already voluntarily surrendered her foster home license, and thus the agency did not have the legal right to revoke her treatment foster home license. However, the clear timeline in this case was that the agency issued its revocation notice to the petitioner on June 9, 2014. The agency did not receive the petitioner's surrender of her license until June 10, 2014. Thus, the petitioner's surrender of her treatment foster home license was after the issuance of the revocation notice to the petitioner.

The petitioner further argued that her credentials, current position as a human services worker through the Juvenile Justice Center, and other achievements are reflective of her training and experience as a treatment foster home provider. However, Ms. Steinbach correctly responded that: "One's credentials, honors, achievements and current employment position do not in and of themselves make one competent to be a foster parent or to demonstrate the characteristics needed to be a foster parent. As previously stated, although her experience and credentials assisted in the petitioner meeting the general qualifications to even be eligible for a Level 3 Certification, it takes a great deal more to be a foster parent."

The petitioner offered other allegations, excuses or explanations. However, none of the petitioner's allegations or explanations reliably refute the clear violations of the Wisconsin Administrative Code, and the unrefuted record of petitioner's violations of Chapter 56 required that the county agency revoke the petitioner's foster home license. In fact, petitioner appeared rather oblivious to the fact that some of her admissions required the revocation of their foster care license because such revocation was mandated by some of the above sections of the Wisconsin Administrative Code. The factual evidence in the hearing record clearly documented that petitioner violated several foster home licensee qualifications required by the Wisconsin Administrative Code. Accordingly, for the above reasons, I must conclude that the Department correctly revoked the petitioner's treatment foster home license effective June 9, 2014.

CONCLUSIONS OF LAW

The Department correctly revoked the petitioner's treatment foster home as of June 9, 2014, after the June 7, 2014 emergency removal of her two foster children.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of March, 2015

\sGary M. Wolkstein
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 March 9, 2015.

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