



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
Redact

DECISION

FOS/160565

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2014, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Outagamie County Department of Human Services in regard to denial of a foster care license application, a hearing was held on November 19, 2014, by telephone. The hearing record was held open for 10 days for a submission from the petitioner's probation agent; that submission was received.

The issue for determination is whether the agency correctly denied the petitioner's 2014 foster care license application.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
Redact

Respondent:

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

By: *Redact*, CYF Social Worker/foster care coordinator
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.

2. The petitioner applied for a foster home license in August 2014. The Department's agent issued written notice of denial of the application on August 20, 2014.
3. The agency's basis for license denial was that the petitioner was not "fit and qualified" to be a foster care parent, in that she has a criminal record, the circumstances of which substantially relate to caring or children or operating a foster home. The petitioner timely appealed from the denial.
4. The petitioner was convicted of forgery (felony) and bail jumping in 2003, and was sentenced to two years in prison with eight years of probation. She did serve prison time. In 2009, she was convicted of credit card fraud and failure to return a rental car. As a result, she was sentenced to four years in a Tennessee prison, with parole eligibility after two years. In March 2011, she cashed bad checks in Wisconsin and was sent back to a Wisconsin prison. She was released in September 2013 and is currently on Wisconsin probation until 2021.
5. The petitioner maintains a residence that would be a satisfactory home for RS. She is employed full-time, and is doing well on her current probation. The child RS is fond of the petitioner. RS' mother is incarcerated.

DISCUSSION

The petitioner concedes that the events described in Finding #4 occurred. However, she seeks a foster home license so that she may provide a successful placement for a child in foster care in Minnesota, who is quite attached to her, RS. The petitioner asserts that she has reformed herself and can function as a successful parent to RS.

The Department's agent denied the petitioner's application under the general language of Wis. Admin. Code §DCF 56.05(1)(a), which states 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.

Wis. Admin. Code § DCF 56.05(1)(a)1. The agency does not question the mutual attachment of RS and the petitioner to each other. Similarly, the agency does not question the petitioner's sincerity in desiring to provide a home for RS. The petitioner submitted a statement from her current probation officer, in which he declares that she is employed and doing well on probation. He states that he is supportive of her efforts to become a foster parent for RS. *See*, Exhibit 3, statement of Jon Nolan.

The concern in this case is that the petitioner is not fit to operate a foster home, due to her extensive history of financial fraud. A foster parent receives a monthly payment from the state, to be used to meet the child's needs. Additionally, a foster parent is expected to manage her personal finances in such a way that the home environment is stable.

If the petitioner had only the 2003 convictions on her record, followed by a decade of lawful behavior in the community, I would have accepted the petitioner's testimony that she is a changed person and approved the application. However, her recidivism while on probation in 2009,

followed by another bout of criminality in 2011, is just too much risk to overlook. The petitioner bears the burden of proving that her application was incorrectly denied, and that burden has not been met. Therefore, the agency’s denial action is sustained.

CONCLUSIONS OF LAW

1. Denial of the petitioner’s foster care license application was correct because she does not satisfy the criterion at Wis. Admin. Code § DCF 56.05(1)(a).

THEREFORE, it is

ORDERED

That the petition is 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 22nd day of January, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 22, 2015.

Outagamie County Department of Human Services
DCF - Foster Care