



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOS/163697

PRELIMINARY RECITALS

Pursuant to a petition filed February 02, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Children's Service Society of Wisconsin (CSSW) in regard to Foster Care, a telephonic hearing was held on February 25, 2015, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for one week for the submission by both parties of written closing argument to the Division of Hearings and Appeals (DHA). Both the foster care agency and petitioner timely submitted their closing arguments to DHA which are received into the hearing record. CSSW's closing argument is marked as Exhibit A, and the petitioner's argument is marked as Exhibit B.

The issue for determination is whether the foster care licensing agency correctly denied the petitioner's November 18, 2014 foster home license application, due to petitioner providing false information on her foster home application in violation of DCF 56.05(1)(a)(2), Wis. Admin. Code.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: ~~Re: Redact~~, foster care supervisor
Children's Service Society of Wisconsin
620 South 76th Street, Suite 120
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On November 18, 2014, the Children's Services Society of Wisconsin (CSSW) received the petitioner's application to become licensed as a respite foster home provider. CSSW is licensed as a child care agency by the Department of Children and Families (DCF). See Exhibit 1.
3. As part of the licensing process, CSSW investigated if petitioner has been previously licensed, denied or revoked within the State of Wisconsin.
4. CSSW confirmed that Lutheran Social Services First Choice for Children formally denied petitioner's foster care license applications on February 3, 2005 and November 16, 2005. See Exhibits 3, 8 and 9.
5. On November 30, 2005, the petitioner filed an appeal with DHA regarding her November 16, 2005 foster home license denial in Case No. FOS-40/73777.
6. An evidentiary hearing was held on March 8, 2006 in Case No. FOS-40/7377 before ALJ Brian Schneider. In his March 15, 2006 decision, Judge Schneider concluded that the foster licensing agency correctly denied petitioner's general foster license because of concerns about the petitioner's husband's mental health along with secondary concerns about petitioner's psychological background. See Exhibit 10.
7. In petitioner's November, 2014 foster home license application, petitioner was asked whether she or any household member ever applied for or been licensed as a foster parent previously. The petitioner accurately checked, "Yes," and indicated she had applied for a foster home license with Lutheran Social Services as well as Children's Service Society of Wisconsin. See Exhibit 2, page 5 of 8.
8. In that same November, 2014 respite foster home application, petitioner was asked whether her foster home license was ever revoked or denied, petitioner falsely checked "No." See Exhibit 2, page 5 of 8.
9. The county agency sent a January 28, 2015 notice to the petitioner stating that her foster home license application was denied due to not meeting the licensee qualification of Wis. Admin. Code DCF §56.05(1)(a)(2). That notice indicated stated her foster care license was denied because she did not provide truthful information to CSSW regarding her past foster home license denials on February 3, 2005 and November 16, 2005 in violation of DCF §56.05(1)(a)(2). See Exhibit 1.
10. The petitioner was not credible that she "forgot" to state in her November, 2014 foster care application that her previous foster care license applications were denied, as the November 16, 2005 denial resulted in an evidentiary hearing with a written decision by Judge Schneider. See Findings of Fact #3 - #8 above.

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 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.

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.**

(Emphasis added).

During the February 25, 2015 hearing, foster care supervisor [Redacted] and foster care worker [Redacted] presented persuasive testimony, and a well-organized and documented case to establish that the county agency correctly denied the petitioner’s application for a foster home license. Ms. [Redacted] and Ms. [Redacted] sent a detailed January 28, 2015 notice to petitioner which explained the basis for denying her foster home license application based upon her failure to provide truthful information to CSSW on her application regarding her past foster home license denials, as required by the Wisconsin Administrative Code DCF Chapter 56.

During the February 25, 2015 hearing, petitioner admitted that her February 3, 2005 and November 16, 2005 foster home license applications had been denied. The petitioner was unable to refute the accuracy of the agency’s testimony or evidence. However, the petitioner argued during the hearing and in her February 27, 2015 closing argument that her failure to report her foster home application denials was just an “error” or that she had “forgotten” (or did not recall) to mention those two denials on her November, 2014 foster care application because it was about 9-10 years ago.

Such excuse or explanation might have been credible. However, it was not credible that petitioner “forgot” those denials when her November 16, 2005 denial was appealed by her to DHA, and resulted in a March 8, 2006 evidentiary hearing with a written decision issued by Judge Schneider. See Finding of Fact #6 above. Moreover, the agency witnesses further testified regarding petitioner’s inconsistencies, contradictions, and lack of credibility. This lack of credibility was convincingly argued on page 1 of the agency’s February 26, 2015 closing argument by these two clear contradictions:

. . . When Ms. [Redacted] called Ms. [Redacted] on 01/28/2015 to tell her of the agency’s decision to deny her a foster care license, Ms. [Redacted] denied ever having been denied a foster care license. As the conversation went on, Ms. [Redacted] did state that she and her former husband were in fact denied a foster care license but denied ever having appealed a denial. During the phone appeals hearing on 02/25/2015 at 1:15pm, Ms. [Redacted] stated that she found the denial letter in her home. . .”

See Exhibit A.

The seriousness of the false statement on her November, 2014 foster home application and subsequent falsehood to Ms. **Redact** on January 28, 2015 do indicate a pattern of negative actions by the petitioner which severely undermines the petitioner as “a responsible, mature individual who is fit and qualified . . . and who exercises sound judgment and display the capacity to successfully nurture foster children.” Petitioner was unable to convincingly refute the reason for which the county had denied the petitioner’s application for a foster care license. As a result, those acts were clear violations of the Wisconsin Administrative Code, and the record of petitioner’s violation of Chapter 56 required that the county agency deny the petitioner’s foster home license application. The factual evidence in the hearing record documented that petitioner violated the foster home licensee qualification of DCF 56.05(1)(a)(2) required by the Wisconsin Administrative Code.

The ultimate objective of the licensing process is to determine if the potential foster parent is able to provide the high level of caretaking necessary for foster children. The petitioner has failed to do so. Furthermore, the evidence in the record indicates petitioner fails to meet a specific foster home licensee qualification required by the Wisconsin Administrative Code. Accordingly, for the above reasons, I must conclude that the Department correctly denied the petitioner’s foster home license application.

CONCLUSIONS OF LAW

The foster care agency correctly denied the petitioner’s November 18, 2014 foster home license application, due to providing false information on her foster home application in violation of DCF 56.05(1)(a)(2), Wis. Admin. Code.

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, Room G200, 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 18th day of May, 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 May 18, 2015.

Children's Service Society of Wisconsin
DCF - Foster Care