



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/164632

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the My Home, Your Home, Inc. in regard to Foster Care, a hearing was held on April 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely and if so, whether My Home, Your Home, Inc. (the agency) correctly denied the Petitioner's Foster Care 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, Licensing Specialist, Foster Care Worker
MY Home, Your Home, Inc.
6200 W. Center St.
Milwaukee, WI 53210

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. My Home, Your Home Inc. is a foster care licensing agency. (Testimony of Ms. Golden)
3. On October 8, 2014, the Petitioner and her husband completed a form entitled, "Data Sheet for Treatment Foster Care, Respite and Foster Care." The form asked the Petitioner, "Have you or any member of your immediate family or household ever been arrested?" The Petitioner answered, "Yes" and indicated that she and her husband had been arrested. The Petitioner referred the agency to the

background check it would perform for dates of arrest and she indicated that there had been a conviction. (Exhibit 11, pg. 17)

4. In that same document, the Petitioner was asked, "Have you or any member of your immediate or extended family ever been REFERRED to a Child Protective Service Agency for a child abuse or neglect complaint?" The Petitioner answered, "Yes" and stated, "Yes, took children of family members" when asked about the circumstances. (Exhibit 11, pg. 17)
5. On October 9, 2015, the Petitioner and her husband completed separate Background Information Disclosure (BID) forms. Each was asked, "Do you have any criminal charges pending against you or were you ever convicted of any crime anywhere, including federal, state, local, military and tribal courts?" They both answered, "Yes". That same section advised the Petitioner and her husband that they might be, "asked to supply additional information including a certified copy of the judgment of conviction, a copy of the criminal complaint or any other relevant court or police documents." (Exhibit 11, pgs. 21 and 23)
6. The BID also asked the Petitioner, "Have you had a caregiver background check done within in the last 4 years?" The Petitioner answered, "Yes" and provided the names and contact information of two home care agencies that conducted the caregiver background check. (Exhibit 11, pg. 22)
7. On another unspecified date Ms. Golden called the Petitioner and advised her that the agency discovered arrest and conviction records in Illinois. Ms. Golden asked the Petitioner to withdraw her application for a license and reapply, because the agency did not have enough time to complete their investigation into the Illinois criminal history. The Petitioner indicated that she did not want to withdraw the application, and offered to drive to Illinois to get the information for the agency. Ms. Golden informed the Petitioner that if she did not withdraw her application, the agency would deny her application. (Testimony of Ms. Golden; Testimony of the Petitioner)
8. Ms. Golden's supervisor directed her to deny the Petitioner's application for a foster home license. (Testimony of Ms. Golden)
9. On February 13, 2015, the agency prepared a letter notifying the Petitioner that her application for a level 3 foster care license was denied. (Exhibit 11, pgs. 2-4)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 13, 2015. (Exhibit 1)

DISCUSSION

Timeliness

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

Pursuant to Wis. Admin. Code §DCF 56.10(1) if the Department of Children and Families or its agent (in this case, My Home, Your Home, Inc.) denies an application for a foster home license or revokes a foster home license, the applicant/licensee may request a hearing. However, the request for hearing "shall be received no more than 15 days after the date of the notice of the agency decision to deny, revoke or not renew the license." Wis. Admin. Code §DCF 56.10(2)

In the case at hand, the agency produced a copy of a notice dated February 13, 2015. However, the Petitioner testified that she never saw that letter until the date of the hearing. The Petitioner testified that she was told verbally over the phone that her application was going to be denied, but never received anything in writing.

The agency has not provided any evidence that it actually mailed the notice to the Petitioner. According to Ms. Golden, the person responsible for mailing the letter is no longer with the agency and therefore, unable to offer any testimony. Further the record contains no documentation showing the letter was ever mailed.

Ms. Golden's supervisor, Tarina Dodds testified that on an unspecified date she overheard a conversation between the Petitioner and an agency director, during which the Petitioner stated that she lost the notice. However, when comparing page two of Exhibit 1, with the February 13, 2015 letter produced by the agency, it is clear that they are two different documents. Indeed, the February 13, 2015 letter contains a signature line that is missing from whatever was provided to the Petitioner in Exhibit 1.

Given the aforementioned discrepancy and the absence of any evidence that the February 13, 2015 letter was actually mailed to the Petitioner, there is no evidence upon which to base a finding that the Petitioner was given timely and adequate notice of the denial of her foster home license. Accordingly, it is found that the Petitioner's appeal is timely.

Did the Agency Correctly Deny the Petitioner's license?

According to Wis. Admin. Code DCF§56.04(5)(a), with certain exceptions not applicable here, a foster care licensing agency shall approve or deny an application within 60 days after receiving a completed application for a foster home license. However, delays that are caused by an applicants act or omission are not counted in that 60-day time limit.

Under Wis. Admin. Code DCF§56.04(5)(b), an agency shall be allowed one 30-day extension of the 60-day time limit, if it is needed to, "collect information necessary to make an informed decision, such as to obtain a criminal records check or responses from references. The agency shall notify the applicant or licensee if an extension is necessary."

In the case at hand, it appears the Petitioner completed an application for a foster care license in October 2014, which would mean the agency should have made a decision by December 2014, if it were applying the 60-day time limit or by January 2014, if it took the 30-day extension. It is unclear why it took the agency until February 2015 to make a decision. The agency offered no explanation for why it took 125 days to process the Petitioner's application. It should be noted that Ms. Golden testified that the agency did not implement the 30-day extension. Accordingly, it is found that the agency did not follow the processing time limits set forth in Wis. Admin. Code DCF§56.04(5)(a) and (b), above.

The agency argues that it properly denied the Petitioner's application, because it did not have enough time to complete a background check due to the Petitioner's vague responses regarding her arrest record, criminal history and contact with child protective services; but, as indicated above, any delays caused by the Petitioner would not be counted in the 30 days and the agency could have taken a 30-day extension to complete its background check. As such, this was not a proper basis for denying a foster home license.

The agency also argues that the Petitioner was not forthright in her application, as and such, the agency was justified in its denial of her application. The agency's argument is disingenuous. The Petitioner clearly answered in the affirmative when asked whether she and her husband had ever been arrested or convicted of a crime and when she was asked if she ever had contact with a child protective services agency. If the Petitioner's answers were unacceptably vague, the agency should have returned the application to her and asked for additional information. There is no evidence the agency did this. It accepted her application and "processed" it for four months.

Because the agency still needs to complete its criminal background check of the Petitioner, the appropriate remedy would be for the agency to take the additional 30-days allowed under Wis. Admin. Code DCF§56.04(5)(b) to contact Illinois for the necessary information regarding the arrest and conviction history of the Petitioner and her husband.

Once the agency makes its final determination, based upon that background check, the agency should issue a new notice to the Petitioner, telling her whether her application has been approved or denied. If her application is again denied, the Petitioner will have to file a NEW request for fair hearing.

CONCLUSIONS OF LAW

1. Petitioner's appeal is timely.
2. The agency did not take the proper steps to deny the Petitioner's application for a foster home license.

THEREFORE, it is**ORDERED**

- 1) Within 10-days of this decision, the agency shall send to the Petitioner written notice of its intent to take 30-days to complete a criminal background check.
- 2) Within 30-days of that notice, the agency shall complete its background investigation of the Petitioner and her husband and issue to the Petitioner a new notice telling her whether her application has been approved or denied.

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 Milwaukee,
Wisconsin, this 13th day of April, 2015.

\sMayumi M. Ishii
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 April 13, 2015.

MY Home, Your Home, Inc.
DCF - Foster Care