



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

FOS/172388

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2016, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Iowa County Department of Social Services in regard to petitioner's Foster Home license, a telephonic hearing was begun on March 24, 2016 and continued and completed on March 30, 2016, at Dodgeville, Wisconsin. At the request of the parties, the record was held open for the submission of consecutive briefs to the Division of Hearings and Appeals (DHA) and to the other party. Attorney ██████ timely submitted the county agency's initial and reply briefs to DHA and to petitioner. ██████ timely submitted his responsive brief to DHA and to the county agency. The briefs are received into the hearing record for the above-captioned case.

The issue for determination is whether the county agency correctly revoked the petitioner's foster home license effective February 23, 2016 per DCF Chapter 56 Admin. Code, based upon the reasons indicated in the county agency's February 23, 2016 revocation notice sent to the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: ████████████████████, corporation counsel
Iowa County Corporation Counsel
222 North Iowa Street
Dodgeville, WI 53533

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Iowa County.
2. The petitioner signed application to be approved as a foster home provider on August 13, 2015. Exhibit 5.
3. The Department of Children and Families (DCF or Department) issued a foster home license to the petitioner, [REDACTED], located at [REDACTED] for the period of August 18, 2015 to August 12, 2017 for one male child. Exhibit 1.
4. On September 20, 2015, a foster child in petitioner's foster home (during a respite placement) drank 1/8 bottle of whiskey, and became intoxicated and sick. The petitioner had left that whiskey bottle unattended in his kitchen during a Packer game. The petitioner failed to store that alcohol in an area not readily accessible to his foster child in violation of DCF 56.08(1)(a), Wis. Admin. Code. Exhibit 8.
5. The petitioner and the county agency representatives signed a September 30, 2015 Foster Parent Corrective Action Plan for the petitioner, due primarily to his intoxicated foster/respite child, explained in Finding of Fact #4 above. That corrective action indicated that prior to having any further foster care and/or respite placements, [REDACTED] needed to complete the Foster Parent Foundation Training. Exhibit 4.
6. During that corrective action plan period, petitioner initiated some questionable electronic communications with the same juvenile who had become intoxicated while in his care (after the juvenile was no longer residing in his foster home). Exhibit 7 ("screen shots" of those electronic communications of petitioner with this prior foster child occurred from December 23, 2015 through February 7, 2016). Those communications served to further concern the foster home licensing personnel regarding petitioner's judgment and fitness to serve as a foster parent.
7. Exhibit 6 are e mails between Iowa county foster care coordinator [REDACTED] and petitioner pertaining to his foster care application and employment status dated August 13 and 14, 2015.
8. Dane County Child protective services sent a February 15, 2016 notice to the petitioner stating that petitioner was alleged to be a "maltreater of a child" (allegation of physical abuse). Exhibit 3. The petitioner received Exhibit 3.
9. The petitioner, as a foster home licensee, failed to immediately notify the licensing agency that on February 15, 2016 he received notice of the allegation of his abuse of a child in Dane County as detailed in Exhibit 3, as required by DCF 56.05(1)(f)4, Wis. Admin. Code. Instead, the petitioner only talked to a social worker investigator regarding the allegation of his abuse.
10. After a thorough investigation, Iowa county foster care coordinator, [REDACTED], sent a February 23, 2016 notice to the petitioner indicating that his foster home license was revoked effective immediately, due to petitioner's serious and ongoing foster home violations of requirements of Wis. Adm. Code § 56.05(1)(f)4, § DCF 56.05(1)a, §56.05(1)(a)2, and DCF 56.08(1)(a). Exhibit 2.
11. Attorney [REDACTED] sent an initial April 5, 2016 brief and an April 15, 2016 reply brief which persuasively established that the county agency correctly revoked the petitioner's foster home license due to petitioner's violations of the Wisconsin Administrative Code.

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.

.....

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.

(f)4 [Background] states: "An applicant or licensee shall immediately notify the licensing agency of any arrests or convictions, any allegations or determinations specified under subd. 3. B., or investigations of maltreatment of a child under s. 48.981, Stats., relating to the applicant or licensee or any member of the applicant's or licensee's household. This information shall be used by the licensing agency in making a determination to issue or deny a license, to renew or not renew a license, or to revoke a license."

(Emphasis added).

During the March 24, 2016 hearing, Iowa County foster care coordinator, Iowa County Corporation Counsel ██████████ presented a well-organized case to establish that the county agency correctly revoked the petitioner's treatment foster home license as of February 23, 2016. Foster care coordinator, ██████████ provided convincing testimony and with the agency's reliable exhibits established the petitioner's violations of the requirements of Wis. Adm. Code § 56.05(1)(f)4, § DCF 56.05(1)a, §56.05(1)(a)2, and DCF 56.08(1)(a). 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)(f)4 - [Background] states: "An applicant or licensee shall immediately notify the licensing agency of any arrests or convictions, any allegations or determinations specified under subd. 3. B., or investigations of maltreatment of a child under s. 48.981, Stats., relating to the applicant or licensee or any member of the applicant's or licensee's household. This information shall be used by the licensing agency in making a determination to issue or deny a license, to renew or not renew a license, or to revoke a license." The hearing record is clear that petitioner failed to "immediately notify the licensing agency" of his February 15, 2016 notice of allegation of abuse of a child in Dane County. See Findings of Fact #8 and #9 above.
- b) §DCF 56.08(1)(a) - [General Requirements] - states: "Materials and equipment that may be hazardous to children, such as power tools, flammable or combustible materials, insecticides, poisons, plastic bags, detergents, **alcohol**, tobacco products and medications, **shall be stored in areas not readily accessible to foster children**. In the instant case, the petitioner did not contest that he failed to leave alcohol inaccessible to the foster child, and in failing to do so was a substantial violation of this code section when his foster child drank 1/8 of a bottle of whiskey to the point of being intoxicated and sick. (Emphasis added). See Findings of Fact #4 and #5 above.
- c) §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 substantial, intentional, and repeated violations even after the opportunity to continue as a foster home licensee after agreeing to the "Foster Parent Corrective Action Plan" demonstrated that he lacked the responsibility and sound judgement required of a foster parent per DCF 56.05(1). See Findings of Fact #5 and #6 above.

During the March 24, 2016 and continued hearing on March 30, 2016, petitioner offered many excuses, explanations, and rationalizations. Overall, the petitioner argued that his foster home revocation was "inequitable and unjust." He provided one witness, ██████████, who attempted to justify how or why the respite foster child obtained and drank the 1/8 bottle of whiskey at ██████████'s foster home on

September 20, 2015. [REDACTED] did provide some perspective, but neither [REDACTED] nor the petitioner were able to refute the simple fact that petitioner failed to lock up that whiskey or take other required measures to store that alcohol in an area not readily accessible to his foster child in clear violation of DCF 56.08(1)(a), Wis. Admin. Code. Finding of Fact #4 above. The petitioner's other witness, [REDACTED], was basically only a "character witness" who had no direct knowledge regarding the specific reasons for the revocation.

In his hearing testimony and his April 13, 2016 responsive brief, [REDACTED] confirmed that he is a highly articulate, intelligent and clever man who provided explanations and rationalizations to explain his interpretation of why his foster home license should not be revoked. However, his credibility was questionable. In his brief, the petitioner attempted an unpersuasive series of legalistic arguments to attempt to undermine the county agency's revocation action. For example, petitioner attempted to assert that it was not clear to him that he had not complied with the requirement to "immediately notify the licensing agency" (not a social worker) that he received a notice of the allegation of his abuse of a child. Finding of Fact #8 and #9. Such assertion is simply not credible, as the petitioner repeatedly demonstrated that if he had chosen to contact [REDACTED] of the abuse allegation he would not have been stopped by her not being available during his one phone call to her. In any case, none of the petitioner's allegations or explanations reliably refuted his 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 his persuasive April 15, 2016 Reply brief, Attorney [REDACTED] provides responses to many of the petitioner's excuses and allegations, and provides detailed, convincing arguments to establish why the county agency correctly revoked the petitioner's foster home license:

. . . .

[REDACTED] intentionally chose not to personally contact the Department to provide notification of the allegation of abuse. Despite the fact that he had previously had numerous contacts with the Department via phone, writing, and e-mail (see, e.g., Hearing Exs. 2, 6), he incredulously claims that after only one failed attempt to reach [REDACTED] by phone - in which he did not even leave a message as to the allegation that he abused a child in another county - passing the information through a Dane County investigator was the "the best way I knew how to get through to [REDACTED] the information." ([REDACTED] letter brief, p. 2).

[REDACTED]'s refusal to accept accountability for failing to provide proper notice of the Dane County allegation come as no surprise, as he also refuses to accept accountability for allowing a child in his care to consume alcohol to the point of being sick. While seeking praise for how he handled an intoxicated child after he "caught" him sneaking drinks (after 1/8 of a bottle had already been consumed), [REDACTED] conveniently ignores the fact that such an outcome could have been avoided entirely if he had simply followed the mandate of DCF 56.08(1)(a) that "alcohol . . . shall be stored in areas not readily accessible to foster children."

It is patently unreasonable for a foster parent to expect, using [REDACTED]'s own words, "a child who has previously suffered abuse and who acts out through violence and the breaking of rules in his own home" ([REDACTED] letter brief, p. 4), to avoid the temptation of a bottle of alcohol that is not properly secured. That is precisely why adherence to DCF 56.08(1)(a) is required of foster parents, and [REDACTED]'s continued minimization of his violation of that code provision call into question his qualifications to serve as a foster parent. While he may not have intended for the child to become intoxicated, it was an intentional choice on the part of [REDACTED] to

leave alcohol accessible to the child, and doing so was a substantial violation of DCF 56.08(1).

Despite that failing, rather than revoke his license in September, 2015, the Department instead gave ██████████ the opportunity to embark on a corrective action plan (Hearing Ex. 4). While on that corrective action plan, ██████████ initiated numerous electronic communications with the same juvenile who had become intoxicated while in his care (Hearings Ex. 7). From the perspective of the department, the nature of those communications further called into question ██████████'s judgment and fitness to serve as a foster parent.

When ██████████ then failed to notify the Department of the allegation of abuse in Dane county, the department made the decision to terminate his foster home license. The decision to revoke his licensure was not, as ██████████ suggests, an act of retaliation for his appeal of the corrective action plan imposed last fall. Rather, the revocation was appropriate under Wis. Stat. Ch. 48 and Wis. Admin code DCF 56 based on a series of substantial, intentional, and repeated violations by ██████████ which demonstrates that he lacks the minimum responsibility and sound judgment required of a foster parent by DCF 56.05(1).

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 conclude that the county agency correctly revoked the petitioner's foster home license effective February 23, 2016, due to petitioner's serious and ongoing foster home violations of the requirements of Wis. Adm. Code § DCF 56.05(1)(f)4, § DCF 56.08(1)(a), § DCF 56.05(1)a, and § DCF 56.05(1)(a)2.

CONCLUSIONS OF LAW

The county agency correctly revoked the petitioner's foster home license effective February 23, 2016, due to petitioner's serious and ongoing foster home violations of the requirements of Wis. Adm. Code § DCF 56.05(1)(f)4, § DCF 56.08(1)(a), § DCF 56.05(1)a, and § DCF 56.05(1)(a)2.

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 5th day of May, 2016

\sGary M. Wolkstein
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 May 5, 2016.

Iowa County Department of Social Services
DCF - Foster Care
Attorney [REDACTED]